

2009 DRAFTING REQUEST

Bill

Received: **09/30/2008**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Miner**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Adl. Drafters:

Subject: **Agriculture - other**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Miner, BB0143 -

Topic:

Seed license program revisions

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/P1	btradewe 10/03/2008	kfollett 10/10/2008	rschluet 10/10/2008	_____	sbasford 10/10/2008		State
/P2	btradewe 10/14/2008	kfollett 10/14/2008	rschluet 10/14/2008	_____	cduerst 10/14/2008		State
/1	btradewe 10/22/2008	kfollett 10/22/2008	phenry 10/22/2008	_____	lparisi 10/22/2008		

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<END>

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/P2	btradewe 10/14/2008	kfollett 10/14/2008	rschluet 10/14/2008	<i>Ph</i>	cduerst 10/14/2008		

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**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0457/lins
RCT:.....

- 1 **Insert 2-7**
- 2 **SECTION 1.** 94.38 (6) of the statutes is repealed. *4*
- 3 **Insert 2-7** *3-2*
- 4 **SECTION 2.** 94.38 (21) of the statutes is repealed. *x*

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/?							State
/P1	btradewe 10/03/2008	kfollett 10/10/2008	rschluet 10/10/2008		sbasford 10/10/2008		

FE Sent For:

1P2 kjf
10/14

10/14/8

<END>

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Subject: **Agriculture - other**

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DOA:.....Miner, BB0143 -

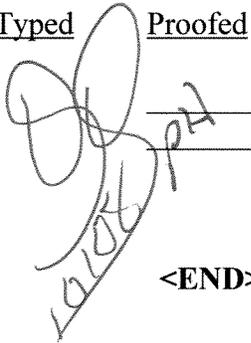
Topic:

Seed license program revisions

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe	1/1/08 10/10					

FE Sent For:

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2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Seed License Program Revisions
- Tracking Code: BB0143
- SBO team: Agriculture, Environment and Justice
- SBO analyst: Andrew Miner AM
 - Phone: 266-1103
 - Email: andrew.miner@wisconsin.gov
- Agency acronym: DATCP
- Agency number: 115
- Priority (Low, Medium, High): High

Intent: Make the following changes to the Seed License program. See attached sheets for language suggestions.

4. Seed License Program Revisions (DIN 5060)

DATCP currently administers the Wisconsin Seed Law under ss. 94.38 to 94.46, Stats., in cooperation with the Wisconsin Crop Improvement Association and the University of Wisconsin College of Agricultural and Life Sciences. The law is designed to prevent the sale of adulterated or misbranded agricultural or vegetable seed. However, the current law is outdated in various respects.

DATCP proposes budget legislation to do all of the following:

- Increase fees for some seed labeler licenses, and authorize DATCP to adjust fees by rule.
- Expand current DATCP rulemaking authority so that DATCP can update seed labeling and quality standards as needed.
- Authorize the Wisconsin Crop Improvement Association to certify weed-free mulch, hay and straw, as well as agricultural and vegetable seed.

Statutory Language:

SECTION ____. 94.38(3) to (5) of the statutes are repealed.

SECTION ____. 94.38(5m) of the statutes is created to read:

94.38(5m) "Department" means the Wisconsin department of agriculture, trade and consumer protection.

SECTION ____. 94.38(8) of the statutes is repealed and recreated to read:

94.38(8) "Labeler" means any person who, as a grower processor, jobber, distributor or seller, labels or accepts responsibility for labeling information pertaining to any container or lot of agricultural or vegetable seed and whose name and address are required by s. 94.39 or department rule to appear on the seed label.

SECTION ____. 94.38(9), (12), (13), (15), (19), (20) and (22) to (24) of the statutes are repealed.

SECTION ____. 94.385(1) and (2) of the statutes are amended to read:

94.385(1) Each container of agricultural or vegetable seed which is sold, distributed or offered or exposed for sale within this state for seeding or sprouting purposes shall bear or have attached to it in a conspicuous place a label containing the information specified in s. 94.39 and any other information required by the department by rule.

(2) Except as provided under s. 93.43(2), each bulk lot of agricultural or vegetable seed sold within this state for seeding or sprouting purposes shall include with the invoice or shipping document furnished the purchaser at the time of delivery a label containing the information specified in s. 94.39 and any additional information required by the department by rule.

SECTION ____ . 94.39 of the statutes is repealed.

SECTION ____ . 94.40 of the statutes is repealed and recreated to read:

94.40 Seed certification. The Wisconsin crop improvement association, a nonprofit organization incorporated under the laws of this state, in cooperation with the university of Wisconsin-Madison college of agricultural and life sciences and the department, shall do all of the following:

(1) Be the certifying agency for the certification of agricultural and vegetable seed in the state.

(2) Be the certifying agency for the certification of weed free mulch, hay and straw, based on recommendations of the North American weed management association.

(3) Establish standards and procedures for the certification of agricultural and vegetable seed, subject to department approval. Standards and procedures established under this subsection shall comply with applicable department rules and shall be no less stringent than those prescribed by the association of official seed certifying agencies

SECTION ____ . 94.41(1)(a) and (b) of the statutes are amended to read:

94.41(1)(a) Unless the test to determine the percentage of germination required under s. 94.39 or department rule is completed within a 12-month period immediately prior to the ~~date it~~ end of the month in which the seed is sold, distributed or offered or exposed for sale, ~~as shown by records, exclusive of the calendar month in which the test is completed,~~ except that seeds seed packaged in hermetically sealed containers may be sold, distributed or offered or exposed for sale under such conditions as the department may prescribe by rule, for a period of 36 months following the end of the month in which the ~~seeds are~~ seed is tested. No ~~seeds seed~~ in hermetically sealed containers ~~shall~~ may be sold, distributed or offered or exposed for sale beyond ~~such~~ that 36-month period unless it is retested within the ~~preceding 9-month period, exclusive of the calendar month in which the retest is completed~~ immediately prior to the end of the month in which it is sold, distributed or offered or exposed for sale. ~~Seed, for which the germination test date has expired, shall be relabeled by a licensed labeler prior to its being sold, distributed or offered or exposed for sale.~~ Retested seed shall be labeled with the extended expiration date.

(b) Not labeled in accordance with s. 94.39 and department rules, or containing any labeling statements which modify or deny label information required under s. 94.39 or department rule, or having any other false or misleading labeling.

SECTION ____ . 94.41(1)(e) to (g) of the statutes are repealed.

SECTION ____ . 94.41(2)(a) and (e) of the statutes are amended to read:

94.41(2)(a) To detach, alter, deface or destroy any label attached to or accompanying seed, or to alter or substitute seed in a manner which would defeat the purposes of s. 94.39 or department rules or result in the sale or distribution of seed in violation of ss. 94.38 to 94.46 or department rules thereunder.

(e) To use the word "trace" as a substitute for any labeling required under s. 94.39 or department rule relating to the composition of seeds or seed mixtures.

SECTION ____ . 94.43(3)(intro.) and (b) to (e) of the statutes are amended to read:

94.43(3)(intro.) Application for a seed labeler's license shall be submitted on a form prescribed by the department and shall be accompanied by a fee based on the gross sale of seed within the state by the applicant under his or her own label during the previous 12 months prior to filing the application. Fees for a labeler's license shall be computed on gross sales according to the following schedule, except as otherwise provided by the department by rule:

(b) For gross sales that are \$10,000 or more but less than ~~\$25,000~~ 50,000: \$50.

(c) For gross sales that are ~~\$25,000~~ 50,000 or more but less than ~~\$75,000~~ 100,000: \$100.

(d) For gross sales that are ~~\$75,000~~ 100,000 or more but less than ~~\$200,000~~ 250,000: ~~\$150~~ 300.

(e) For gross sales that are ~~\$200,000~~ 250,000 or more but less than \$500,000: ~~\$200~~ 500.

SECTION ____ . 94.43(3)(f) to (i) of the statutes are created to read:

(f) For gross sales that are \$500,000 or more but less than \$1,000,000: \$750.

(g) For gross sales that are \$1,000,000 or more but less than \$10,000,000: \$1,000.

(h) For gross sales that are \$10,000,000 or more but less than \$100,000,000: \$1,500.

(i) For gross sales that are more than \$100,000,000: \$2,500.

SECTION ____ . 94.45 (6) of the statutes is repealed and recreated to read:

94.45(6) To promulgate rules to do any of the following:

* (a) Create standards for labeling, distribution and sale of agricultural and vegetable seed.

(b) Govern methods of sampling, inspecting, analyzing, testing and examining agricultural and vegetable seed.

(c) Prescribe tolerances for purity and rate of germination of agricultural and vegetable seed.

(d) Prescribe tolerances for the occurrence of noxious weed seeds in agricultural and vegetable seed.

(e) Identify prohibited weeds and noxious weeds.

(f) Govern the issuance of seed labeler licenses, including license fees.

(g) Administer and enforce ss. 94.38 to 94.46.

Initial Applicability. The treatment of sections 94.38(3) to (5), (9), (12), (13), (15), (19), (20) and (22) to (24), 94.39 and 94.41(1)(e) to (g) of the statutes by this act first applies 18 months after the effective date of this act or upon the effective date of rules adopted by the department under s. 94.45(6) of the statutes as affected by this act, whichever is later.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0457/P1
RCT... *kgf*

In 10/3

DOA:.....Miner, BB0143 - Seed license program revisions

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

OWate

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1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

AGRICULTURE

This bill makes several changes in the laws related to agricultural and vegetable seed.

Currently, the statutes include detailed requirements for the labeling of agricultural and vegetable seed, including information about the presence of noxious weed seeds in excess of stated amounts. The statutes prohibit the sale of seed with more than specified amounts of certain noxious weed seeds. The statutes list certain weeds as noxious weeds, but also authorize DATCP to add or remove types of weeds from the list of noxious weeds.

This bill repeals the statutory requirements for labeling agricultural and vegetable seed, the prohibitions on the sale of seed containing more than specified amounts of certain noxious weed seeds, and the list of noxious weeds. The bill requires DATCP to promulgate rules on the subjects of seed labeling, the amount of noxious weed seeds in agricultural and vegetable seed, and the designation of weeds as noxious weeds.

X Current law requires persons who are required to label agricultural or vegetable seeds (such as growers or distributors) to obtain a seed labeler's license from DATCP and specifies license fees that are based on gross sales of agricultural and vegetable seed. This bill lowers the fees for seed labeler's licenses for some persons with annual gross sales of less than \$100,000 and increases the fees for

persons with higher annual gross sales. The bill also authorizes DATCP to change the fees by rule.

Current law prohibits the sale of certain seed unless the seed is certified by an official seed certifying agency. Under current law, the Wisconsin Crop Improvement Association, a nonprofit organization, is the official seed certifying agency for this state. Under this bill, the Wisconsin Crop Improvement Association is also the agency for certifying that mulch, hay, and straw is weed free.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Insert
2-1

1 SECTION 1. 94.38 (3) of the statutes is repealed.

****NOTE: The term "certified seed" is still used in s. 94.41 (1) (h) and (k). Is there any problem with the term not being defined?

2 SECTION 2. 94.38 (4) of the statutes is repealed.

3 SECTION 3. 94.38 (4m) of the statutes is repealed.

4 SECTION 4. 94.38 (5) of the statutes is repealed.

5 SECTION 5. 94.38 (8) of the statutes is amended to read:

6 94.38 (8) "Labeler" means any person who as grower, processor, jobber,
7 distributor or seller labels seed or accepts responsibility for labeling information
8 pertaining to any container or lot of agricultural seed or vegetable seed and whose
9 name and address is are required by the department by rule to appear on the label
10 under s. 94.39.

History: 1975 c. 39, 308; 1983 a. 189; 1985 a. 138; 1993 a. 112.

11 SECTION 6. 94.38 (9) of the statutes is repealed.

12 SECTION 7. 94.38 (12) of the statutes is repealed.

13 SECTION 8. 94.38 (13) of the statutes is repealed.

14 SECTION 9. 94.38 (15) of the statutes is repealed.

15 SECTION 10. 94.38 (19) of the statutes is repealed.

16 SECTION 11. 94.38 (20) of the statutes is repealed.

1 SECTION 12. 94.38 (22) of the statutes is repealed.

2 SECTION 13. 94.38 (23) of the statutes is repealed.

3 SECTION 14. 94.38 (24) of the statutes is repealed.

4 SECTION 15. 94.385 of the statutes is amended to read:

5 **94.385 Seed label locations requirements.** (1) ~~Each~~ No person may sell,
6 distribute, or offer or expose for sale in this state a container of agricultural seed or
7 vegetable seed which is ~~sold, distributed or offered or exposed for sale within this~~
8 ~~state~~ for seeding or sprouting purposes ~~shall bear or have~~ unless the container bears
9 or has attached to it in a conspicuous place a label containing the information
10 ~~specified in s. 94.39~~ required by the department by rule.

11 (2) Except as provided under s. 94.43 (2), ~~each~~ no person may sell in this state
12 a bulk lot of agricultural or vegetable seed sold within this state for seeding or
13 sprouting purposes ~~shall include~~ unless the person includes with the invoice or
14 shipping document furnished the purchaser at time of delivery a label containing the
15 information ~~specified in s. 94.39~~ required by the department by rule.

History: 1985 a. 138.

16 SECTION 16. 94.39 of the statutes is repealed.

17 SECTION 17. 94.40 (1) of the statutes is repealed.

18 SECTION 18. 94.40 (2) of the statutes is amended to read:

19 94.40 (2) The Wisconsin Crop Improvement Association, a nonprofit
20 organization incorporated under the laws of this state, in cooperation with the
21 University of Wisconsin-Madison College of Agricultural and Life Sciences and the
22 department, shall be the seed certifying agency for the certification of agricultural
23 seed and vegetable seed in the state.

History: 1973 c. 335 s. 12; 1977 c. 29 s. 1650m (4); 1985 a. 138.

24 SECTION 19. 94.40 (3) of the statutes is amended to read:

1 94.40 (3) The Wisconsin Crop Improvement Association, in cooperation with
2 the University of Wisconsin-Madison College of Agricultural and Life Sciences and
3 the department, shall establish standards and procedures for the certification of
4 agricultural seed and vegetable seed, subject to approval of the department.
5 Standards and procedures established under this subsection shall comply with rules
6 promulgated by the department and be no less stringent than those prescribed by the
7 ~~association of official seed certifying agencies~~ Association of Official Seed Certifying
8 Agencies.

History: 1973 c. 335 s. 12; 1977 c. 29 s. 1650m (4); 1985 a. 138.

9 **SECTION 20.** 94.40 (4) of the statutes is created to read:

10 94.40 (4) The Wisconsin Crop Improvement Association, in cooperation with
11 the University of Wisconsin-Madison College of Agricultural and Life Sciences and
12 the department, shall be the certifying agency for the certification of weed free
13 mulch, hay, and straw, and shall base its certifications on the standards of the North
14 American Weed Management Association.

15 **SECTION 21.** 94.41 (1) (a) of the statutes is amended to read:

16 94.41 (1) (a) Unless the test to determine the percentage of germination
17 required under ~~s. 94.39~~ by the department by rule is completed within a 12-month
18 period immediately prior to the ~~date it~~ end of the month in which the seed is sold,
19 distributed or offered or exposed for sale, ~~as shown by records, exclusive of the~~
20 ~~calendar month in which the test is completed~~, except that seeds seed packaged in
21 hermetically sealed containers may be sold, distributed or offered or exposed for sale
22 under such any conditions as ~~that~~ the department ~~may prescribe~~ prescribes by rule,
23 for a period of 36 months following the month end of the month in which the seeds
24 ~~are seed is~~ tested. No ~~seeds~~ seed in hermetically sealed containers shall may be sold,

1 distributed or offered or exposed for sale beyond such that 36-month period unless
 2 it is retested within the preceding 9-month period, ~~exclusive of the calendar month~~
 3 ~~in which the retest is completed.~~ Seed, for which the germination test date has
 4 expired, shall be relabeled by a licensed labeler prior to its being sold, distributed or
 5 offered or exposed for sale immediately prior to the end of the month in which it is
 6 sold, distributed, or offered or exposed for sale and the retested seed is labeled with
 7 the extended expiration date.

History: 1973 c. 194, 195; 1985 a. 138; 1993 a. 492.

8 **SECTION 22.** 94.41 (1) (b) of the statutes is amended to read:

9 94.41 (1) (b) Not labeled in accordance with s. 94.39 ^{plain} rules promulgated by the
 10 department, or containing any labeling statements which modify or deny label
 11 information required under s. 94.39 rules promulgated by the department, or having
 12 any other false or misleading labeling.

History: 1973 c. 194, 195; 1985 a. 138; 1993 a. 492.

13 **SECTION 23.** 94.41 (1) (e) of the statutes is repealed.

14 **SECTION 24.** 94.41 (1) (f) of the statutes is repealed.

15 **SECTION 25.** 94.41 (1) (g) of the statutes is repealed.

16 **SECTION 26.** 94.41 (2) (a) of the statutes is amended to read:

17 94.41 (2) (a) To detach, alter, deface or destroy any label attached to or
 18 accompanying seed, or to alter or substitute seed in a manner which would defeat the
 19 purposes of s. 94.39 the rules of the department relating to the labeling of seed or
 20 result in the sale or distribution of seed in violation of ss. 94.38 to 94.46 or rules
 21 thereunder promulgated under those sections.

History: 1973 c. 194, 195; 1985 a. 138; 1993 a. 492.

22 **SECTION 27.** 94.41 (2) (e) of the statutes is amended to read:

1 94.41 (2) (e) To use the word "trace" as a substitute for any labeling required
 2 under s. ~~94.39~~ rules of the department relating to the composition of seeds or seed
 3 mixtures.

History: 1973 c. 194, 195; 1985 a. 138; 1993 a. 492.

4 **SECTION 28.** 94.43 (1) of the statutes is amended to read:

5 94.43 (1) Every person whose name and address are required to appear on the
 6 label of any seed as the labeler or person responsible for the labeling thereof of the
 7 seed under s. ~~94.39~~, or the rules of the department relating to the labeling of seed,
 8 and every person who opens any bag or container of seed and sells any part of the seed
 9 contained therein, shall obtain a seed labeler's license from the department before
 10 selling, distributing or offering or exposing, ~~such~~ the seed for sale in this state.

History: 1985 a. 138; 1989 a. 31; 1991 a. 269; 1999 a. 83.

11 **SECTION 29.** 94.43 (3) (intro.) of the statutes is amended to read:

12 94.43 (3) (intro.) Application for a seed labeler's license shall be submitted on
 13 a form prescribed by the department and shall be accompanied by a fee based on the
 14 gross sales of seed within the state by the applicant under his or her own label during
 15 the previous 12 months prior to filing the application. Fees for a labeler's license
 16 shall be computed on gross sales according to the following schedule, except that the
 17 department may specify different fees by rule:

History: 1985 a. 138; 1989 a. 31; 1991 a. 269; 1999 a. 83.

18 **SECTION 30.** 94.43 (3) (b) of the statutes is amended to read:

19 94.43 (3) (b) For gross sales that are \$10,000 or more but less than \$25,000
 20 \$50,000: \$50.

History: 1985 a. 138; 1989 a. 31; 1991 a. 269; 1999 a. 83.

21 **SECTION 31.** 94.43 (3) (c) of the statutes is amended to read:

22 94.43 (3) (c) For gross sales that are \$25,000 \$50,000 or more but less than
 23 \$75,000 \$100,000: \$100.

History: 1985 a. 138; 1989 a. 31; 1991 a. 269; 1999 a. 83.

1 SECTION 32. 94.43 (3) (d) of the statutes is amended to read:

2 94.43 (3) (d) For gross sales that are \$75,000 \$100,000 or more but less than
3 \$200,000 \$250,000: \$150 \$300.

4 History: 1985 a. 138; 1989 a. 31; 1991 a. 269; 1999 a. 83.

4 SECTION 33. 94.43 (3) (e) of the statutes is amended to read:

5 94.43 (3) (e) For gross sales that are \$200,000 \$250,000 or more but less than
6 \$500,000: \$200 \$500.

7 History: 1985 a. 138; 1989 a. 31; 1991 a. 269; 1999 a. 83.

7 SECTION 34. 94.43 (3) (f) of the statutes is created to read:

8 94.43 (3) (f) For gross sales that are \$500,000 or more, but less than \$1,000,000:
9 \$750.

10 SECTION 35. 94.43 (3) (g) of the statutes is created to read:

11 94.43 (3) (g) For gross sales that are \$1,000,000 or more, but less than
12 \$10,000,000: \$1,000.

13 SECTION 36. 94.43 (3) (h) of the statutes is created to read:

14 94.43 (3) (h) For gross sales that are \$10,00,000 or more, but less than
15 \$100,000,000: \$1,500.

16 SECTION 37. 94.43 (3) (i) of the statutes is created to read:

17 94.43 (3) (i) For gross sales that are \$100,00,000 or more: \$2,500.

18 SECTION 38. 94.44 of the statutes is amended to read:

19 **94.44 Records.** Each person whose name is required to appear on the label
20 as the labeler of agricultural or vegetable seeds pursuant to s. ~~94.39~~ under rules of
21 the department shall maintain complete records of each lot of seed sold or labeled for
22 a period of 2 years after final sale or disposition thereof of the seed, except that a file
23 sample of such the seed need be kept for only one year. This and except that this
24 section shall not be construed as requiring does not require a record of the sale or

1 disposal of each portion of a lot sold at retail in quantities of less than 40 pounds.
2 All records and samples pertaining to any lot of seed shall be accessible for inspection
3 by the department during customary business hours.

4 **SECTION 39.** 94.45 (intro.) and (1) to (5) of the statutes are renumbered 94.45
5 (1) (intro.) and (a) to (e).

6 **SECTION 40.** 94.45 (6) of the statutes is repealed and recreated to read:

7 94.45 (6) The department shall promulgate rules that do all of the following:

8 (a) Prescribe standards for the labeling, distribution, and sale of agricultural
9 seed and vegetable seed.

10 (b) Govern methods of sampling, inspecting, analyzing, testing, and examining
11 agricultural seed and vegetable seed.

12 (c) Prescribe tolerances for purity and rate of germination of agricultural seed
13 and vegetable seed.

14 (d) Prescribe tolerances for the occurrence of noxious weed seeds in agricultural
15 seed and vegetable seed.

16 (e) Identify noxious weeds and prohibited noxious weeds.

17 (f) Govern the issuance of seed labeler licenses.

18 (g) Govern the administration and enforcement of ss. 94.38 to 94.46.

19 **SECTION 9103. Nonstatutory provisions; Agriculture, Trade and**
20 **Consumer Protection.**

21 (1) AGRICULTURAL AND VEGETABLE SEED RULES. The department of agriculture,
22 trade and consumer protection may use the procedure under section 227.24 of the
23 statutes, to promulgate the rules required under section 94.45 (6) of the statutes, as
24 affected by this act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes,
25 emergency rules promulgated under this subsection remain in effect until the first

1 day of the 24th month beginning after the effective date of this subsection, or the date
 2 on which permanent rules are promulgated, whichever is sooner. Notwithstanding
 3 section 227.24 (1) (a) and (3) of the statutes, the department is not required to
 4 determine that promulgating a rule under this subsection as an emergency rule is
 5 necessary for the preservation of the public peace, health, safety, or welfare and is
 6 not required to provide a finding of emergency for a rule promulgated under this
 7 subsection.

8 **SECTION 9403. Effective dates; Agriculture, Trade and Consumer**
 9 **Protection.**

10 (1) AGRICULTURAL AND VEGETABLE SEEDS. The treatment of sections 94.38 (3), (4),
 11 (4m), (5), (8), (9), (12), (13), (15), (19), (20), (22), (23), and (24), 94.385, 94.39, 94.41
 12 (1) (a), (b), (e), (f), (g) and (2) (a) and (e), 94.43 (1), and 94.44 of the statutes takes effect
 13 on the first day of the 19th month beginning after publication.

14 (END)

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Insert 2 = 1

10457/P1

✓

Section #. 20.115 (7) (gm) of the statutes is amended to read:

20.115 (7) (gm) *Seed testing and labeling.* All moneys received from fees under ss. 94.43 (3) and (4) and 94.45 ^{✓ (1)(c)} ~~(3)~~ for seed testing and labeling activities.

History: 1971 c. 125, 215; 1973 c. 90, 299, 333; 1975 c. 39 ss. 78m, 79, 79m, 79n, 732 (1); 1975 c. 224; 1975 c. 394 ss. 1, 27; 1977 c. 29 ss. 112 to 115v, 1650m (1), (4), 1654 (1); 1977 c. 87, 106, 181, 418; 1979 c. 34, 129, 221, 289, 335; 1981 c. 20, 66, 93, 283, 346, 357; 1983 a. 27, 132, 368; 1983 a. 410 ss. 5, 2202 (2); 1985 a. 7, 8, 29, 138, 153, 313; 1987 a. 27, 281, 354; 1987 a. 399 ss. 34 to 38, 38u; 1987 a. 403 s. 256; 1989 a. 31, 219, 227, 282, 284, 335, 336; 1991 a. 39, 269, 309, 315; 1993 a. 16, 166, 243, 437, 456, 497; 1995 a. 27, 42, 79, 460; 1997 a. 27, 192, 252, 264; 1999 a. 5, 9, 55, 185; 2001 a. 16, 38, 56, 103, 109; 2003 a. 33, 38, 133, 326, 327; 2005 a. 25; 2007 a. 20, 125, 223.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0457/P1dn

RCT...*kf*

Date

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FROM THE
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LRB-0457/P1dn
RCT:kjf:rs

October 10, 2008

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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0457/P1 2

RCT:kjf:js

/mr

SOON
(in 10/14)

DOA:.....Miner, BB0143 - Seed license program revisions

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

AGRICULTURE

This bill makes several changes in the laws related to agricultural and vegetable seed.

Currently, the statutes include detailed requirements for the labeling of agricultural and vegetable seed, including information about the presence of noxious weed seeds in excess of stated amounts. The statutes prohibit the sale of seed with more than specified amounts of certain noxious weed seeds. The statutes list certain weeds as noxious weeds, but also authorize DATCP to add or remove types of weeds from the list of noxious weeds.

This bill repeals the statutory requirements for labeling agricultural and vegetable seed, the prohibitions on the sale of seed containing more than specified amounts of certain noxious weed seeds, and the list of noxious weeds. The bill requires DATCP to promulgate rules on the subjects of seed labeling, the amount of noxious weed seeds in agricultural and vegetable seed, and the designation of weeds as noxious weeds.

Current law requires persons who are required to label agricultural or vegetable seed (such as growers or distributors) to obtain a seed labeler's license from DATCP and specifies license fees that are based on gross sales of agricultural and vegetable seed. This bill lowers the fees for seed labeler's licenses for some persons with annual gross sales of less than \$100,000 and increases the fees for persons with higher annual gross sales. The bill also authorizes DATCP to change the fees by rule.

Current law prohibits the sale of certain seed unless the seed is certified by an official seed certifying agency. Under current law, the Wisconsin Crop Improvement Association, a nonprofit organization, is the official seed certifying agency for this state. Under this bill, the Wisconsin Crop Improvement Association is also the agency for certifying that mulch, hay, and straw is weed free.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.115 (7) (gm) of the statutes is amended to read:

2 20.115 (7) (gm) *Seed testing and labeling.* All moneys received from fees under
3 ss. 94.43 (3) and (4) and 94.45 (~~3~~) (1) (c) for seed testing and labeling activities.

4 **SECTION 2.** 94.38 (3) of the statutes is repealed.

 ****NOTE: The term "certified seed" is still used in s. 94.41 (1) (h) and (k). Is there
any problem with the term not being defined?

5 **SECTION 3.** 94.38 (4) of the statutes is repealed.

6 **SECTION 4.** 94.38 (4m) of the statutes is repealed.

7 **SECTION 5.** 94.38 (5) of the statutes is repealed.

8 **SECTION 6.** 94.38 (8) of the statutes is amended to read:

9 94.38 (8) "Labeler" means any person who as grower, processor, jobber,
10 distributor or seller labels seed or accepts responsibility for labeling information
11 pertaining to any container or lot of agricultural seed or vegetable seed and whose
12 name and address is are required by the department by rule to appear on the label
13 under s. 94.39.

14 **SECTION 7.** 94.38 (9) of the statutes is repealed.

15 **SECTION 8.** 94.38 (12) of the statutes is repealed.

16 **SECTION 9.** 94.38 (13) of the statutes is repealed.

17 **SECTION 10.** 94.38 (15) of the statutes is repealed.

1 **SECTION 11.** 94.38 (19) of the statutes is repealed.

2 **SECTION 12.** 94.38 (20) of the statutes is repealed.

3 **SECTION 13.** 94.38 (22) of the statutes is repealed.

4 **SECTION 14.** 94.38 (23) of the statutes is repealed.

5 **SECTION 15.** 94.38 (24) of the statutes is repealed.

6 **SECTION 16.** 94.385 of the statutes is amended to read:

7 **94.385 Seed label locations requirements.** (1) ~~Each~~ No person may sell,
8 distribute, or offer or expose for sale in this state a container of agricultural seed or
9 vegetable seed which is sold, distributed or offered or exposed for sale within this
10 state for seeding or sprouting purposes shall bear or have unless the container bears
11 or has attached to it in a conspicuous place a label containing the information
12 specified in s. 94.39 required by the department by rule.

13 (2) Except as provided under s. 94.43 (2), ~~each~~ no person may sell in this state
14 a bulk lot of agricultural or vegetable seed sold within this state for seeding or
15 sprouting purposes shall include unless the person includes with the invoice or
16 shipping document furnished the purchaser at time of delivery a label containing the
17 information specified in s. 94.39 required by the department by rule.

18 **SECTION 17.** 94.39 of the statutes is repealed.

19 **SECTION 18.** 94.40 (1) of the statutes is repealed.

20 **SECTION 19.** 94.40 (2) of the statutes is amended to read:

21 94.40 (2) The Wisconsin Crop Improvement Association, a nonprofit
22 organization incorporated under the laws of this state, in cooperation with the
23 University of Wisconsin-Madison College of Agricultural and Life Sciences and the
24 department, shall be the seed certifying agency for the certification of agricultural
25 seed and vegetable seed in the state.

1 **SECTION 20.** 94.40 (3) of the statutes is amended to read:

2 94.40 (3) The Wisconsin Crop Improvement Association, in cooperation with
3 the University of Wisconsin-Madison College of Agricultural and Life Sciences and
4 the department, shall establish standards and procedures for the certification of
5 agricultural seed and vegetable seed, subject to approval of the department.
6 Standards and procedures established under this subsection shall comply with rules
7 promulgated by the department and be no less stringent than those prescribed by the
8 ~~association of official seed certifying agencies~~ Association of Official Seed Certifying
9 Agencies.

10 **SECTION 21.** 94.40 (4) of the statutes is created to read:

11 94.40 (4) The Wisconsin Crop Improvement Association, in cooperation with
12 the University of Wisconsin-Madison College of Agricultural and Life Sciences and
13 the department, shall be the certifying agency for the certification of weed free
14 mulch, hay, and straw, and shall base its certifications on the standards of the North
15 American Weed Management Association.

16 **SECTION 22.** 94.41 (1) (a) of the statutes is amended to read:

17 94.41 (1) (a) Unless the test to determine the percentage of germination
18 required ~~under s. 94.39 by the department by rule~~ is completed within a 12-month
19 period immediately prior to the ~~date it~~ end of the month in which the seed is sold,
20 distributed or offered or exposed for sale, ~~as shown by records, exclusive of the~~
21 ~~calendar month in which the test is completed~~, except that seeds seed packaged in
22 hermetically sealed containers may be sold, distributed or offered or exposed for sale
23 under such any conditions as that the department ~~may prescribe~~ prescribes by rule,
24 for a period of 36 months following the end of the month in which the seeds are seed
25 is tested. No seeds seed in hermetically sealed containers ~~shall~~ may be sold,

1 distributed or offered or exposed for sale beyond such that 36-month period unless
2 it is retested within the preceeding 9-month period, exclusive of the calendar month
3 in which the retest is completed. Seed, for which the germination test date has
4 expired, shall be relabeled by a licensed labeler prior to its being sold, distributed or
5 offered or exposed for sale immediately prior to the end of the month in which it is
6 sold, distributed, or offered or exposed for sale and the retested seed is labeled with
7 the extended expiration date.

8 **SECTION 23.** 94.41 (1) (b) of the statutes is amended to read:

9 94.41 (1) (b) Not labeled in accordance with s. 94.39 rules promulgated by the
10 department, or containing any labeling statements which modify or deny label
11 information required under s. 94.39 rules promulgated by the department, or having
12 any other false or misleading labeling.

13 **SECTION 24.** 94.41 (1) (e) of the statutes is repealed.

14 **SECTION 25.** 94.41 (1) (f) of the statutes is repealed.

15 **SECTION 26.** 94.41 (1) (g) of the statutes is repealed.

16 **SECTION 27.** 94.41 (2) (a) of the statutes is amended to read:

17 94.41 (2) (a) To detach, alter, deface or destroy any label attached to or
18 accompanying seed, or to alter or substitute seed in a manner which would defeat the
19 purposes of s. 94.39 the rules of the department relating to the labeling of seed or
20 result in the sale or distribution of seed in violation of ss. 94.38 to 94.46 or rules
21 thereunder promulgated under those sections.

22 **SECTION 28.** 94.41 (2) (e) of the statutes is amended to read:

23 94.41 (2) (e) To use the word "trace" as a substitute for any labeling required
24 under s. 94.39 rules of the department relating to the composition of seeds or seed
25 mixtures.

1 SECTION 29. 94.43 (1) of the statutes is amended to read:

2 94.43 (1) Every person whose name and address are required to appear on the
3 label of any seed as the labeler or person responsible for the labeling thereof of the
4 seed under s. ~~94.39~~, or the rules of the department relating to the labeling of seed,
5 and every person who opens any bag or container of seed and sells any part of the seed
6 contained therein, shall obtain a seed labeler's license from the department before
7 selling, distributing or offering or exposing, such the seed for sale in this state.

8 SECTION 30. 94.43 (3) (intro.) of the statutes is amended to read:

9 94.43 (3) (intro.) Application for a seed labeler's license shall be submitted on
10 a form prescribed by the department and shall be accompanied by a fee based on the
11 gross sales of seed within the state by the applicant under his or her own label during
12 the previous 12 months prior to filing the application. Fees for a labeler's license
13 shall be computed on gross sales according to the following schedule, except that the
14 department may specify different fees by rule:

15 SECTION 31. 94.43 (3) (b) of the statutes is amended to read:

16 94.43 (3) (b) For gross sales that are \$10,000 or more but less than \$25,000
17 \$50,000: \$50.

18 SECTION 32. 94.43 (3) (c) of the statutes is amended to read:

19 94.43 (3) (c) For gross sales that are ~~\$25,000~~ \$50,000 or more but less than
20 \$75,000 ~~\$100,000~~: \$100.

21 SECTION 33. 94.43 (3) (d) of the statutes is amended to read:

22 94.43 (3) (d) For gross sales that are ~~\$75,000~~ \$100,000 or more but less than
23 \$200,000 ~~\$250,000~~ \$150 ~~\$300~~. \$250,000:

24 SECTION 34. 94.43 (3) (e) of the statutes is amended to read:

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1 94.43 (3) (e) For gross sales that are \$200,000 \$250,000 or more, but less than
2 \$500,000; \$200 \$500.

3 SECTION 35. 94.43 (3) (f) of the statutes is created to read:

4 94.43 (3) (f) For gross sales that are \$500,000 or more but less than \$1,000,000:
5 \$750.

6 SECTION 36. 94.43 (3) (g) of the statutes is created to read:

7 94.43 (3) (g) For gross sales that are \$1,000,000 or more but less than
8 \$10,000,000: \$1,000.

9 SECTION 37. 94.43 (3) (h) of the statutes is created to read:

10 94.43 (3) (h) For gross sales that are \$10,00,000 or more but less than
11 \$100,000,000: \$1,500.

12 SECTION 38. 94.43 (3) (i) of the statutes is created to read:

13 94.43 (3) (i) For gross sales that are \$100,000,000 or more: \$2,500.

14 SECTION 39. 94.44 of the statutes is amended to read:

15 **94.44 Records.** Each person whose name is required to appear on the label
16 as the labeler of agricultural or vegetable seeds pursuant to s. ~~94.39~~ under rules of
17 the department shall maintain complete records of each lot of seed sold or labeled for
18 a period of 2 years after final sale or disposition thereof of the seed, except that a file
19 sample of such the seed need be kept for only one year. ~~This and except that this~~
20 section shall not be construed as requiring does not require a record of the sale or
21 disposal of each portion of a lot sold at retail in quantities of less than 40 pounds.
22 All records and samples pertaining to any lot of seed shall be accessible for inspection
23 by the department during customary business hours.

24 SECTION 40. 94.45 (intro.) and (1) to (5) of the statutes are renumbered 94.45
25 (1) (intro.) and (a) to (e).

1 **SECTION 41.** 94.45 (6) of the statutes is repealed and recreated to read:

2 **94.45 (6)** The department shall promulgate rules that do all of the following:

3 (a) Prescribe standards for the labeling, distribution, and sale of agricultural
4 seed and vegetable seed.

5 (b) Govern methods of sampling, inspecting, analyzing, testing, and examining
6 agricultural seed and vegetable seed.

7 (c) Prescribe tolerances for purity and rate of germination of agricultural seed
8 and vegetable seed.

9 (d) Prescribe tolerances for the occurrence of noxious weed seeds in agricultural
10 seed and vegetable seed.

11 (e) Identify noxious weeds and prohibited noxious weeds.

12 (f) Govern the issuance of seed labeler licenses.

13 (g) Govern the administration and enforcement of ss. 94.38 to 94.46.

14 **SECTION 9103. Nonstatutory provisions; Agriculture, Trade and**
15 **Consumer Protection.**

16 (1) **AGRICULTURAL AND VEGETABLE SEED RULES.** The department of agriculture,
17 trade and consumer protection may use the procedure under section 227.24 of the
18 statutes, to promulgate the rules required under section 94.45 (6) of the statutes, as
19 affected by this act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes,
20 emergency rules promulgated under this subsection remain in effect until the first
21 day of the 24th month beginning after the effective date of this subsection, or the date
22 on which permanent rules are promulgated, whichever is sooner. Notwithstanding
23 section 227.24 (1) (a) and (3) of the statutes, the department is not required to
24 determine that promulgating a rule under this subsection as an emergency rule is
25 necessary for the preservation of the public peace, health, safety, or welfare and is

1 not required to provide a finding of emergency for a rule promulgated under this
2 subsection.

3 **SECTION 9403. Effective dates; Agriculture, Trade and Consumer**
4 **Protection.**

5 (1) AGRICULTURAL AND VEGETABLE SEEDS. The treatment of sections 94.38 (3), (4),
6 (4m), (5), (8), (9), (12), (13), (15), (19), (20), (22), (23), and (24), 94.385, 94.39, 94.41
7 (1) (a), (b), (e), (f), ^{and} (g) and (2) (a) and (e), 94.43 (1), and 94.44 of the statutes takes effect
8 on the first day of the 19th month beginning after publication.

9 (END)

ONote

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0457/P1dn
RCT:kjfr

October 10, 2008

Date

Please
update
date

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LRB-0457/P2dn
RCT:kjf:rs

October 14, 2008

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The definition of "type" should probably be repealed because the only remaining use of the word in the seed statutes, in s. 94.41 (2) (f), does not seem to depend at all on the definition.

The proposed language included a definition of "department." There is a definition of "department" in s. 93.01 (3). The definitions in s. 93.01 apply in chs. 93 to 100. Because of the definition in s. 93.01 (3), because the term is used in many places in ch. 94 without additional definition (although there is a definition in s. 94.72), and because there does not seem to be any risk of confusion without adding a definition, I did not include the proposed definition in this draft.

The seed laws sometimes use the phrase "agricultural or vegetable seed." "Agricultural seed" is a defined term, so the correct phrase is "agricultural seed or vegetable seed." I made the changes in the statutes that are treated in this draft.

The proposed language repeals s. 94.39 but also leaves a number of references to that provision in other statutes. Section 94.39 will have no legal effect once it is repealed. The statutes do not retain references to repealed statutes, except in limited circumstances that do not appear to be present here. Therefore, I have eliminated statutory references to s. 94.39.

I checked the Web site of the North American Weed Management Association and it appears that the term they use is "standards" rather than "recommendations." Consequently, I used that term in proposed s. 94.40 (4). Please let me know if that is a problem.

Current s. 94.45 authorizes, but does not require, DATCP to do various things including promulgate rules. Given the repeal of s. 94.39 and other provisions, some

aspects of the seed laws will not work unless rules are promulgated. Therefore, I changed the rule-making authorization into a requirement. Some subjects of the rule-making could be made optional. If that is desired, please let me know.

The proposed language included a provision titled "initial applicability" that specified that many of the provisions in the draft first apply 18 months after the effective date of the budget or upon the effective date of the rules DATCP is required to promulgate, whichever is later. There are problems with this provision. First, an initial applicability provision is used to specify the event in a series of events that is the first to which a change in the law applies. For example, a change in the age at which a law applies might first apply to a person who reached that age on the effective date of the change in the law. The proposed provision in this request is properly a delayed effective date, but even as a delayed effective date there is a problem.

If an effective date provision of the later of 18 months or the day when the law takes effect is used, there will be no way to tell when the statutes will change. Indeterminate effective dates prevent readers of the law from telling what the law is. See, for example, the note in the statutes following s. 97.01 (10). Indeterminate effective dates also cause problems in printing the statutes and in drafting. For example, if an indeterminate effective date is used and later in the session a drafter is asked to draft a change to one of the affected statutes, there is no way for the drafter to know what version of the statute will exist when the new draft becomes law, so the drafter does not know what version of the statute to amend.

The proposed language appears to be intended to prevent the problem that would happen if, for example, the repeal of the labeling requirements in s. 94.39 took effect before DATCP got its rules on labeling promulgated. This problem is ordinarily dealt with by giving the relevant agency emergency rule-making authority and that is the approach used in this draft. There should not be a problem with using the emergency rule-making process to get seed labeling rules in place in 18 months. This draft allows the emergency rules to stay in effect for two years. If that is not long enough, the period can be changed.

I gather that the intent is to have the fee changes go into effect without delay. Please let me know if that is incorrect.

Rebecca C. Tradewell
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Tradewell, Becky

From: Miner, Andrew - DOA [Andrew.Miner@Wisconsin.gov]
Sent: Thursday, October 16, 2008 8:53 AM
To: Tradewell, Becky
Subject: RE: LRB-0457/P1dn Seed Law

Becky,
Thanks for sharing the message. Yes, you can go ahead with the changes. Have a good day,
Andrew

From: Tradewell, Becky [mailto:Becky.Tradewell@legis.wisconsin.gov]
Sent: Thursday, October 16, 2008 8:50 AM
To: Miner, Andrew - DOA
Subject: FW: LRB-0457/P1dn Seed Law

Andrew,

It doesn't look like you were sent this message. Should I go ahead with the correction and other minor changes that Dennis mentions?

Becky

From: Fay, Dennis - DATCP [mailto:Dennis.Fay@Wisconsin.gov]
Sent: Wednesday, October 15, 2008 1:40 PM
To: Tradewell, Becky
Cc: Kuhn, Brian D - DATCP
Subject: LRB-0457/P1dn Seed Law

Becky,

I had a chance to review your draft and drafter's note and wanted to let you know that DATCP appreciates the improvements you made to our draft. We agree with the content of your draft and your drafter's note. There is a typo in SECTION 37 of the draft. A zero is missing between the commas of the \$10,000,000 on line 10 page 7. As your drafter's note suggests, we agree that the definitions of "kind and "type" should be deleted. The treatment of the deletion of those two definitions should be as provided in SECTION 9403. Effective dates. In a note under SECTION 2 of the draft you ask whether the term "certified seed" needs to be defined. I do not think it needs to be defined. If you have any questions, please call me at 224-5006. Thanks again for all your good work.

Dennis