

Assembly Bill 487

Published
July 14, 1966.

Chapter 589

AN ACT to repeal and recreate 94.38 to 94.46 of the statutes, relating to revision of the state's seed law, the rule-making authority of the state department of agriculture, making an appropriation and providing penalties.

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

SECTION 1. 94.38 to 94.46 of the statutes are repealed and recreated to read:

94.38 AGRICULTURAL AND VEGETABLE SEEDS; DEFINITIONS. When used in ss. 94.38 to 94.46 unless the context requires otherwise:

(1) "Person" includes any individual, firm, partnership, corporation, company, society or association.

(2) "Agricultural seed" includes the seeds of grass, forage, cereal, fiber crops and lawn seeds and any other kinds of seeds commonly recognized and sold within this state for sowing purposes as agricultural seeds or mixtures thereof, and may include noxious weed seeds if used as agricultural seed.

(3) "Lawn seed" means the seed of grasses, clovers or other agricultural seeds or mixtures thereof commonly used or sold for seeding lawns, parks or turf areas in this state.

(4) "Vegetable seed" includes the seeds of crops which are grown commercially and in home gardens as vegetables for human consumption and are commonly known and sold in this state as vegetable seeds.

(5) "Weed seeds" includes the seeds of all plants generally recognized as weeds within this state, and includes noxious weed seeds.

(6) "Noxious weed seeds" are divided into 2 classes, "prohibited noxious weed seeds" and "restricted noxious weed seeds" and are defined as follows:

(a) "Prohibited noxious weed seeds" include the seeds of field bindweed (*Convolvulus arvensis*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*) and quack grass (*Agropyron repens*).

(b) "Restricted noxious weed seeds" include the seeds of dodder (*Cuscuta* sp.), wild mustard (*Brassica kaber*), Indian mustard (*Brassica juncea*), buckhorn (*Plantago lanceolata*), ox-eye daisy (*Chrysanthemum leucanthemum*), perennial sow thistle (*Sonchus arvensis*), wild radish (*Raphanus raphanistrum*), yellow rocket (*Barbarea vulgaris*), wild oats (*Avena fatua*), giant foxtail (*Setaria faberii*), hoary alyssum (*Berteroa incana*), downy brome (*Bromus tectorum*) and white cockle (*Lychnis alba*).

(7) "Label" means the display of written, printed or graphic matter upon or attached to the container of seed or accompanying seed sold in bulk quantities.

(8) "Labeling" includes all labels and other written, printed or graphic representations, in any form whatsoever, accompanying or pertaining to any seed whether in bulk or in containers and includes representations on invoices.

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

(10) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means relating to seed within the scope of ss. 94.38 to 94.46.

(11) "Record" means all information relating to lot, identification, source, origin, variety, amount, processing, blending, testing, labeling, sale and distribution of seed and includes a file sample of each lot.

(12) "Stop sale" means a department order restraining the sale, use, disposition or movement of seed.

(13) "Seizure" means the taking of legal custody over seed by court order.

(14) "Kind" means one or more related species or subspecies which singly or collectively is known by one common name, such as corn, oats, alfalfa or timothy.

(15) "Variety" means a subdivision of a kind based on growth, yield, plant, fruit, seed, disease resistance or other characteristics by which it can be differentiated from other plants of the same kind.

(16) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(17) "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining (a) 2 or more inbred lines; (b) one inbred or a single cross with an open-pollinated variety; or (c) 2 varieties or species, except open-pollinated varieties of corn (*Zea mays*). The second generation and subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

(18) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear in the labeling.

(19) "Pure seed", "germination", "hard seed" and other terms commonly used in labeling and testing seeds are as defined in the rules for testing seed published by the association of official seed analysts, effective July 1, 1960, and as subsequently amended.

(20) "Treated seed" means seed which has received an application of a substance, or has been subjected to a process in such a way as to reduce, control or repel certain disease organisms, insects or other pests attacking seeds or seedlings growing therefrom.

(21) "Preinoculated seed" means legume seed which has received an application, prior to sale, of a culture of bacteria which will effectively inoculate the legume as shown by nodulation of the roots, growth of the plants and accumulation of nitrogen in the plants.

(22) "Certifying agency" means an agency designated by any state, territory, possession or foreign country to certify seed.

(23) "Certified seed" means seed produced in compliance with the standards and procedures of a certifying agency and that bears an official label issued for such seed by a seed certifying agency stating that the seed is certified. The 4 classes of certified seed are: breeders, foundation, registered and certified.

(24) "Relative maturity", as applied to field corn, means the relative time required from emergence of the seedling from the soil to the production of mature ears of corn as determined by rules of the department.

94.39 SEED LABELING REQUIREMENTS. Each container or bulk lot of agricultural or vegetable seed which is sold, or offered, exposed or distributed for sale within this state for seeding purposes shall bear thereon or have attached thereto in a conspicuous place, or in the case of bulk sales be accompanied by, a plainly written or printed label in the English language, giving the following information:

(1) For agricultural seeds, excluding lawn seed mixtures under sub. (2):

(a) The commonly accepted name of the kind or kind and variety of each agricultural seed component in excess of 5 per cent of the whole and the percentage by weight of each in order of its predominance. When more than one component is required to be named, the word "mixture" or "mixed" shall be shown conspicuously on the label. Seed components of 5 per cent or less may be named, if desired.

(b) Lot number or other identification.

(c) Origin by state or foreign country of alfalfa, red clover, white clover or field corn, except hybrid field corn. If the origin of these crop seeds is unknown, that fact shall be stated.

(d) Percentage by weight of all weed seeds.

(e) The name and rate of occurrence per pound, printed in bold face capital type of each kind of restricted noxious weed seed present singly or collectively in excess of:

1. One seed in 25 grams of redtop, Canada bluegrass, Kentucky bluegrass and seeds of similar or smaller size and weight and mixtures of such seeds.

2. One seed in 30 grams of timothy, alsike clover, orchard grass, reed canary grass, white clover and seeds of similar size and weight and mixtures of such seeds.

3. One seed in 50 grams of smooth brome grass, red clover, rape, alfalfa, sweetclover, rye grass, millet, flax and seeds of similar size and weight and mixtures of such seeds.

4. One seed in 150 grams of Sudan grass, proso and seeds of similar size and weight and mixtures of such seeds.

5. One seed in 300 grams of sorghums, buckwheat and seeds of similar size and weight and mixtures of such seeds.

6. One seed in 500 grams of vetches, cereals, field corn, beans, field and canning peas, soybeans and seeds of similar size and weight and mixtures of such seeds.

(f) Percentage by weight of all other crop seeds.

(g) Percentage by weight of inert matter.

(h) For each agricultural seed named under par. (a) :

1. Percentage of germination, exclusive of hard seed.

2. Percentage of hard seeds, if present.

3. The calendar month and year the test was completed to determine such percentages.

(i) Name and address of the person who labeled the seed, or who sells, offers, exposes or distributes it for sale within this state.

(2) For lawn seed mixtures in containers of 50 pounds or less :

(a) The word "mixed" or "mixture".

(b) In tabular form under separate headings for "Fine-Textured Grasses" and "Coarse Kinds":

1. The commonly accepted name, in order of its predominance, of the kind or kind and variety of each agricultural seed present in excess of 5 per cent of the whole and determined to be a "fine-textured grass" or a "coarse kind" in accordance with the rules of the department.

2. Percentage by weight of pure seed for each agricultural seed named.

3. For each agricultural seed named: a) percentage of germination, exclusive of hard seed; b) percentage of hard seeds, if present; c) the calendar month and year the test was completed to determine such percentages.

(c) Under the heading "Other Ingredients":

1. Percentage by weight of all weed seeds.

2. Percentage by weight of all crop seeds other than those stated under par. (b) 1.

3. Percentage by weight of inert matter.

(d) Lot number or other identification.

(e) Name and rate of occurrence per pound of each kind of restricted noxious weed seed present singly or collectively in excess of the limits prescribed by sub. (1) (e).

(f) Name and address of the person who labeled the seed, or who sells, offers, exposes or distributes it for sale within this state.

(3) For vegetable seeds in containers of one pound or less :

(a) Name of kind and variety.

(b) For seeds which germinate less than the standard established by department rule:

1. Percentage of germination, exclusive of hard seed.

2. Percentage of hard seeds, if present.

3. The calendar month and year the test was completed to determine such percentages.

4. The words "Below Standard" in not less than 8-point type.

(c) Name and address of the person who labeled the seed, or who sells, offers, exposes or distributes it for sale within this state.

(4) For vegetable seeds in containers of more than one pound:

(a) The name of each kind and variety present in excess of 5 per cent of the whole and the percentage by weight of each, in order of its predominance.

(b) Lot number or other identification.

(c) For each vegetable seed named:

1. Percentage of germination, exclusive of hard seed.

2. Percentage of hard seeds, if present.

3. The calendar month and year the test was completed to determine such percentages.

(d) Name and address of the person who labeled the seed, or who sells, offers, exposes or distributes it for sale within this state.

(5) For all treated seeds, in addition to other labeling requirements under this section (for which a separate label may be used) :

(a) A word or statement indicating that the seed has been treated.

(b) The commonly accepted coined, chemical (generic) or abbreviated chemical name of the substance applied or a description of the process used.

(c) If the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement such as "Do not use for food or feed or oil purposes." The caution for mercurials and similar toxic substances shall be a poison statement and a skull and cross-bones symbol.

(6) For all preinoculated seeds, in addition to other labeling requirements under this section (for which a separate label may be used) :

(a) A word or statement indicating that the seed has been preinoculated.

(b) The date beyond which the inoculant is not to be considered effective.

(7) For field corn seed, in addition to other labeling requirements under this section:

(a) Variety or descriptive name.

(b) The relative maturity according to the schedule of relative maturities established by rules of the department.

94.40 SEED CERTIFICATION. (1) No alfalfa seed shall be sold, or offered, exposed or distributed for sale within this state if it is labeled, advertised or represented as the ranger or vernal variety unless such seed has been certified by a seed certifying agency.

(2) The Wisconsin crop improvement association, a nonprofit organization incorporated under the laws of this state, in co-operation with the university of Wisconsin college of agriculture and the state department of agriculture, shall be the seed certifying agency for the certification of agricultural and vegetable seed in the state.

(3) The Wisconsin crop improvement association, in co-operation with the university of Wisconsin college of agriculture, shall establish standards and procedures for the certification of seed, subject to approval of the department, not lower than those prescribed by the international crop improvement association.

94.41 PROHIBITIONS. (1) It is unlawful for any person to sell, or offer, expose or distribute for sale any agricultural or vegetable seed:

(a) Unless the test to determine the percentage of germination required under s. 94.39 shall have been completed within a 12-month period immediately prior to date it is sold, offered or exposed for sale, as shown by records, exclusive of the calendar month in which the test was completed. Seed, for which the germination test date has expired, shall be relabeled by a licensed labeler prior to its being sold, or offered, exposed or distributed for sale.

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

(c) Pertaining to which there has been a false or misleading advertisement, claim or representation.

(d) Containing prohibited noxious weed seeds in excess of tolerances established by rules of the department.

(e) Containing restricted noxious weed seeds singly or collectively in excess of:

1. One seed in 5 grams of the agricultural seeds named in s. 94.39

(1) (e) 1.

2. One seed in 10 grams of the agricultural seeds named in s. 94.39
- (1) (e) 2 and 3.
3. One seed in 25 grams of the agricultural seeds named in s. 94.39
- (1) (e) 4.
4. One seed in 50 grams of the agricultural seeds named in s. 94.39
- (1) (e) 5.
5. One seed in 100 grams of the agricultural seeds named in s. 94.39
- (1) (e) 6.
 - (f) Containing weed seeds in excess of one per cent by weight.
 - (g) Consisting in part or in whole of prohibited or restricted noxious weed seeds in excess of quantities prescribed herein.
 - (h) Represented to be certified seed by means of any labeling, advertisement or other representations unless it is certified and bears an official certification label.
 - (i) Having attached thereto a blue label, unless such label is an official certification label authorized for use on such seed by a seed certifying agency.
 - (j) When the inoculum applied to preinoculated seed is ineffective as determined by standards established by rules of the department.
- (2) It is unlawful for any person:
 - (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 result in the sale or distribution of seed in violation of ss. 94.38 to 94.46 or rules thereunder.
 - (b) To disseminate any false or misleading advertisements, or make any false or misleading claims concerning agricultural or vegetable seeds in any manner or by any means.
 - (c) To hinder or obstruct in any way, any authorized person in the performance of his duties under ss. 94.38 to 94.46.
 - (d) To fail to comply with a "stop sale" order or to make any other disposition of any lot of seed contrary to the provisions of such order.
 - (e) To use the word "trace" as a substitute for any labeling required under s. 94.39 relating to the composition of seeds or seed mixtures.
 - (f) To use the word "type" in any labeling in connection with the name of any agricultural seed variety.
 - (g) To make a false declaration of gross annual sales on any application for a seed labeler's license or to fail to keep available for inspection by the department accurate records of gross annual sales of seeds sold in this state as a labeler.

94.42 EXEMPTIONS. The provisions of ss. 94.38 to 94.46 do not apply to:

- (1) Seed or grain not intended for sowing purposes, except where it is made to appear by labeling, advertising or other representations that it is available for purchase or is being offered or distributed for sale as seed; or where it is represented as being suitable for use as seed by such terms as cleaned, processed, treated, tested, certified or terms of similar import.
- (2) To seed in storage in, or being transported or consigned to, a cleaning or processing establishment for cleaning or processing; but any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to ss. 94.38 to 94.46.
- (3) Any carrier in respect to any seed delivered or consigned to it by others for transportation in the ordinary course of its business as a carrier.
- (4) Any person in respect to any seed sold, or offered, exposed or distributed for sale which was incorrectly labeled or represented as to kind, variety or origin, provided that the seeds cannot be identified by examina-

tion thereof, unless he has failed to obtain an invoice, genuine grower's declaration or other labeling information reasonably necessary to insure the seed is as represented.

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

(2) No person shall sell, or offer, expose or distribute for sale in the state, any seed not labeled by the holder of a seed labeler's license whose name and address are on the label, except that no license shall be required to sell seed of one's own production if it is delivered to the purchaser only on the farm premises where grown.

(3) 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 sales of seed within the state by the applicant under his 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: Less than \$10,000, \$10; \$10,000 or more but less than \$25,000, \$25; \$25,000 or more but less than \$75,000, \$50; \$75,000 or more but less than \$200,000, \$75; and \$200,000 or more, \$100.

(4) The license fee for a new applicant or for a person who did not sell seed under his own label during the previous 12 months shall be the minimum fee of \$10 for the first year or any part thereof.

(5) The licenses shall expire on December 31 of each year. Licenses shall not be transferable and no fee or any portion thereof shall be refunded after the license has been issued.

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

94.45 POWERS AND AUTHORITY OF THE DEPARTMENT. The department is authorized:

(1) To enter during regular business hours all places of business, warehouses, freight depots, cars, trucks and all other places where seed is stored, transported, sold or exposed for sale. The department is empowered to sample any container of seed, analyze and test the samples and inspect all records relating to any lot of seed in order to secure evidence of violation of ss. 94.38 to 94.46.

(2) To establish and maintain a seed laboratory for the testing and analysis of seed.

(3) To make purity and germination tests of seed for persons on request and for this purpose may prescribe rules governing such testing and fix and collect charges for tests made.

(4) To co-operate with the U.S. department of agriculture and other agencies in seed law enforcement.

(5) To publish at least once a year, in such form as the department deems proper, information concerning the inspection and sales of seed and the results of the analysis of official samples of agricultural and vegetable seeds distributed within the state.

(6) To establish rules, after public hearing:

(a) Governing the methods of sampling, inspecting, analyzing, testing and examining agricultural and vegetable seed, and to prescribe tolerances for purity and germination tests and rates of occurrence of noxious weed seeds.

(b) To add to or remove from the list of prohibited and restricted noxious weed seeds as specified in s. 94.38 (6).

(c) Governing the distribution and labeling of seed.

(d) Providing standards for relative maturities, certification of seed and the effectiveness of inoculum applied to preinoculated seed.

(e) Providing reasonable standards of germination for vegetable seeds.

(f) Providing a list of "fine-textured grasses" and "coarse kinds".

(g) Governing the issuance of seed labeler's licenses.

(h) For the administration and enforcement of ss. 94.38 to 94.46.

94.46 STOP SALE; PENALTIES; ENFORCEMENT. (1) The department may issue a written or printed "stop sale" order to the owner or custodian of any lot of agricultural or vegetable seed not conforming with ss. 94.38 to 94.46, or rules thereunder. The order shall specify the sections of the law or rules violated and shall prohibit the sale or other disposition of the seed except as the department authorizes or directs. Unless the seed is brought into compliance with the law or rules and is released from the "stop sale" order, or other disposition is agreed upon in writing within 30 days after service of the order, the seed shall be disposed of as the department by notice in writing may direct. This shall not preclude the voluntary signing of a disposal agreement without the issuance of a "stop sale" order. Any notice or order hereunder may be served personally or by mail and shall have the effect of a special order under s. 93.18 subject to review under ch. 227 if within 10 days after service of any notice or order, the owner or custodian files with the department a written request for a hearing. Final disposition of the seed shall be stayed during pendency of the hearing but the "stop sale" order shall remain in effect.

(2) Any lot of agricultural or vegetable seed not in compliance with ss. 94.38 to 94.46, or rules thereunder, or not disposed of in accordance with any disposal agreement or order under sub. (1), shall be subject to seizure on complaint of the department to a court of competent jurisdiction. If the court finds the seed to be in violation of law and orders the condemnation of said seed, it shall be denatured, processed, destroyed, relabeled or otherwise disposed of as the court directs.

(3) In addition to or in lieu of other remedies provided for enforcement of ss. 94.38 to 94.46, the department may apply to the circuit court for a temporary or permanent injunction to prevent, restrain, or enjoin any person from violating ss. 94.38 to 94.46 or any rules or orders issued thereunder.

(4) Any person violating ss. 94.38 to 94.46 or rules thereunder, may be fined not less than \$50 nor more than \$200 or imprisoned not more than 90 days or both, for the first offense. For any subsequent offense, the fine shall be not less than \$200 nor more than \$500 or imprisonment in the county jail not to exceed 6 months or both.

SECTION 2. All persons holding a permit under section 94.42, statutes of 1963, for the license year ending June 30, 1966, shall be given a credit of \$5 toward the payment of the seed labeler's license fee under section 94.43 (3), as created by SECTION 1 of this act, for the license year ending December 31, 1966.

SECTION 3. The appropriation in section 20.140 (1) of the statutes, as affected by the laws of 1965, is increased by adding the following amounts:

| | 1965-66 | 1966-67 |
|---|----------|----------|
| Dept. of agriculture 20.140 | | |
| General administration (1) | \$12,500 | \$25,000 |
| to provide funds for administration of sections 94.38 to 94.46. | | |

SECTION 4. SECTIONS 1 and 2 of this act shall take effect January 1, 1966.

Approved June 24, 1966.
