

1985 Assembly Bill 15

Date of enactment: **March 19, 1986**  
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## 1985 Wisconsin Act 138

AN ACT to repeal 94.38 (17) and 94.39 (2); to amend 94.38 (5), 94.38 (7), 94.38 (12) (b), 94.39 (intro.) and (1) (intro.), 94.39 (1) (i), (3) (c) and (4) (d), 94.39 (7) (a) and (b), 94.40, 94.41 (1) (intro.) and (a), 94.42 (1) and (4), 94.43 (1) and (2) and 94.72 (3) and (4); to repeal and recreate 94.39 (1) (e), 94.39 (5) (c), 94.41 (1) (e) 1 to 5 and 94.46 (4); and to create 20.115 (2) (gm), 94.38 (4m), 94.385, 94.39 (1) (am), 94.39 (8), 94.41 (1) (e) 6 to 8 and 94.43 (4m) of the statutes, relating to agricultural and vegetable seeds, making an appropriation and imposing a penalty.

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

SECTION 1. 20.115 (2) (gm) of the statutes is created to read:

20.115 (2) (gm) *Seed testing and labeling.* All monies received from the fees imposed under s. 94.43 (3) and (4), to provide additional support for the department of agriculture, trade and consumer protection's seed testing and labeling activities under ch. 94.

SECTION 1m. 94.38 (4m) of the statutes is created to read:

94.38 (4m) "Coated seed" means seed, other than treated seed, which is covered with any substance that changes the size, shape or weight of the seed.

SECTION 2. 94.38 (5) of the statutes is amended to read:

94.38 (5) "Hybrid seed" means, for a kind or variety of seed, the first generation seed progeny of a cross produced by controlling the controlled pollination and by combining (a) 2 or more which combines 2 inbred lines; (b) one inbred or line and 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 vari-

ety names; 2 single crosses; one inbred line or a single cross with an open pollinated variety; or 2 selected clones, seed lines, varieties or species. "Hybrid seed" does not include seeds incidentally produced as a result of incomplete control over pollination.

SECTION 3. 94.38 (7) of the statutes is amended to read:

94.38 (7) "Label" means the display of written, printed or graphic matter upon or attached to the container of seed or accompanying, for seed sold in bulk quantities, included with the invoice or shipping document furnished the purchaser at time of delivery.

SECTION 3m. 94.38 (12) (b) of the statutes is amended to read:

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

(*Bromus tectorum*) and white cockle (~~*Lychnis*~~ *Silene alba*).

SECTION 4. 94.38 (17) of the statutes is repealed.

SECTION 5. 94.385 of the statutes is created to read:

**94.385 Seed label locations.** (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.

(2) Except as provided under s. 94.43 (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 time of delivery a label containing the information specified in s. 94.39.

SECTION 6. 94.39 (intro.) and (1) (intro.) of the statutes are amended to read:

**94.39 Seed labeling requirements.** (intro.) Each ~~container or bulk lot of label for~~ 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, required under s. 94.385 shall be~~ a plainly written or printed label in the English language, giving the following information:

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

SECTION 7. 94.39 (1) (am) of the statutes is created to read:

94.39 (1) (am) The percentage of hybrid seed included in the pure seed contents of the container or bulk lot, if the percentage is less than 96%. No kind or variety of seed may be labeled as hybrid seed unless the pure seed consists of at least 75% hybrid seed. Designations of hybrid seed shall be treated in the same manner as are names of varieties under par. (a).

SECTION 8. 94.39 (1) (e) of the statutes is repealed and recreated to read:

94.39 (1) (e) The name and rate of occurrence per pound of each kind of restricted noxious weed seed present singly or collectively in excess of:

1. One seed in 2.5 grams of redtop, bent grass and seeds of similar size and weight and mixtures of those seeds.

2. One seed in 5 grams of rough bluegrass (*Poa trivialis*) and seeds of similar size and weight and mixtures of those seeds.

3. One seed in 10 grams of Kentucky bluegrass, timothy and seeds of similar size and weight and mixtures of those seeds.

4. One seed in 20 grams of alsike clover, white clover, reed canary grass and seeds of similar size and weight and mixtures of those seeds.

5. One seed in 30 grams of orchard grass, chewings fescue, red fescue, birds-foot trefoil and seeds of similar size and weight and mixtures of those seeds.

6. One seed in 50 grams of alfalfa, red clover, sweet clover, ryegrass, tall fescue, foxtail millet and seeds of similar size and weight and mixtures of those seeds.

7. One seed in 70 grams of smooth brome, rape and seeds of similar size and weight and mixtures of those seeds.

8. One seed in 90 grams of Japanese millet and seeds of similar size and weight and mixtures of those seeds.

9. One seed in 100 grams of crown vetch and seeds of similar size and weight and mixtures of those seeds.

10. One seed in 150 grams of proso millet, flax and seeds of similar size and weight and mixtures of those seeds.

11. One seed in 250 grams of Sudan grass and seeds of similar size and weight and mixtures of those seeds.

12. One seed in 500 grams of oats, rye, barley, wheat, sorghum, buckwheat, sunflower and seeds of similar size and weight and mixtures of those seeds.

13. One seed in 500 grams of field beans, peas, corn, soybeans and seeds of similar size and weight and mixtures of those seeds.

SECTION 9. 94.39 (1) (i), (3) (c) and (4) (d) of the statutes are amended to read:

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

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

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

SECTION 10. 94.39 (2) of the statutes is repealed.

SECTION 11. 94.39 (5) (c) of the statutes is repealed and recreated to read:

94.39 (5) (c) If the substance applied to the seed is harmful to human or other vertebrate animals:

1. The caution statement "Do not use for food, feed or oil purposes" or a similar statement;

2. Words and symbol or a single word indicating the toxicity of the substance used to treat the seed, such as "Danger — Poison" and the skull and crossbones symbol, "Warning" or "Caution"; and

3. A statement setting forth the antidote, if any, and the first aid treatment directions for poisoning by the specific substance.

SECTION 12. 94.39 (7) (a) and (b) of the statutes are amended to read:

94.39 (7) (a) ~~Variety~~ The commonly accepted name of the variety or, if none, descriptive name.

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

SECTION 14. 94.39 (8) of the statutes is created to read:

94.39 (8) For all coated seeds, in addition to other labeling requirements under this section, a word or statement indicating that the seed has been coated.

SECTION 15. 94.40 of the statutes is amended to read:

**94.40 Seed certification.** (1) No alfalfa seed ~~shall~~ may be sold, ~~or offered, exposed or distributed or offered or exposed~~ for sale within this state if it is labeled, advertised or represented as the ~~ranger or~~ vernal variety, unless ~~such~~ the 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 cooperation with the university of Wisconsin-Madison college of ~~agriculture~~ agricultural and life sciences and the department of ~~agriculture, trade and consumer protection~~, 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~~ cooperation with the university of Wisconsin ~~Wisconsin~~ Wisconsin-Madison college of ~~agriculture~~ agricultural and life sciences, shall establish standards and procedures for the certification of seed, subject to approval of the department, ~~not lower~~. Standards and procedures established under this subsection shall be no less stringent than those prescribed by the international crop improvement association of official seed certifying agencies.

SECTION 16. 94.41 (1) (intro.) and (a) of the statutes are amended to read:

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

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

SECTION 17. 94.41 (1) (e) 1 to 5 of the statutes are repealed and recreated to read:

94.41 (1) (e) 1. One seed in one gram of the agricultural seeds named in s. 94.39 (1) (e) 1 and 2.

2. One seed in 5 grams of the agricultural seeds named in s. 94.39 (1) (e) 3.

3. One seed in 10 grams of the agricultural seeds named in s. 94.39 (1) (e) 4 to 6.

4. One seed in 15 grams of the agricultural seeds named in s. 94.39 (1) (e) 7.

5. One seed in 20 grams of the agricultural seeds named in s. 94.39 (1) (e) 8 and 9.

SECTION 18. 94.41 (1) (e) 6 to 8 of the statutes are created to read:

94.41 (1) (e) 6. One seed in 30 grams of the agricultural seeds named in s. 94.39 (1) (e) 10.

7. One seed in 50 grams of the agricultural seeds named in s. 94.39 (1) (e) 11.

8. One seed in 100 grams of the agricultural seeds named in s. 94.39 (1) (e) 12 and 13.

SECTION 19. 94.42 (1) and (4) of the statutes are amended to read:

94.42 (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 sold, distributed or offered or ~~distributed~~ exposed 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.

(4) Any person in respect to any seed sold, ~~or offered, exposed or distributed or offered or exposed~~ for sale which was incorrectly labeled or represented as to kind, variety or origin, provided that the seeds cannot be identified by examination thereof, unless ~~he~~ the person has failed to obtain an invoice, genuine grower's declaration or other labeling information reasonably necessary to insure the seed is as represented.

SECTION 20. 94.43 (1) and (2) of the statutes are amended to read:

94.43 (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 or offering or exposing~~, such seed for sale in this state.

(2) No person ~~shall~~ may sell, ~~or offer, expose or~~ distribute or offer or expose for sale in ~~the~~ this 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 or to sell seed only in bags or other closed containers labeled by the holder of a seed labeler's license. Labels ~~shall~~ are not ~~be~~ required for seed packaged at time of sale at retail

by the holder of a seed labeler's license if the bin or other container from which the seed is sold bears a label and the seed with its labeling may be readily examined by the purchaser prior to sale. Seed sold by a licensed labeler under this exception shall be considered as having been sold under his ~~own~~ or her label for purposes of computing license fees under sub. (3).

SECTION 20m. 94.43 (4m) of the statutes is created to read:

94.43 (4m) The fees imposed under subs. (3) and (4) shall be credited to the appropriation under s. 20.115 (2) (gm).

SECTION 21. 94.46 (4) of the statutes is repealed and recreated to read:

94.46 (4) (a) Any person violating ss. 94.38 to 94.46 or rules promulgated thereunder shall forfeit not less than \$100 nor more than \$500 for the first offense. For any subsequent offense occurring within 5 years of a previous offense, the person shall forfeit, for each offense, not less than \$200 nor more than \$1,000. The 5-year period shall be measured from the dates of the violations which resulted in convictions.

(b) Any person who knowingly violates ss. 94.38 to 94.46 or rules promulgated thereunder may be fined not more than \$500 or imprisoned not more than 6 months or both.

SECTION 22. 94.72 (3) and (4) of the statutes are amended to read:

94.72 (3) WEED SEEDS. No commercial feed or unmixed meal shall be sold, distributed or offered or exposed for sale ~~or distributed~~ which contains germinative noxious weed seeds or other germinative weed seed excepting wild buckwheat seeds, in excess of such quantities as are unavoidably present with the most improved commercial practice of manufacture of such commercial feed or unmixed meal, provided that such germinative noxious weed seeds shall not be greater than one one-hundredths of one ~~per cent~~ percent, or other germinative weed seeds excepting wild buckwheat seed shall not be greater than one-fourth of one ~~per cent~~ percent, unless such presence is clearly and permanently indicated on the label. The term "noxious weed seeds" as used in this section shall mean the seeds of Canadian thistle, wild mustard and quack grass, either single or combined.

(4) MATERIALS PROHIBITED. No compounded commercial feed shall be sold, distributed or offered or exposed for sale ~~or distributed~~ which contains humus, peat, sphagnum moss, sawdust or other material of an organic nature having little or no feeding value.

SECTION 23. **Initial applicability.** The treatment of section 94.43 (4m) of the statutes by this act first applies to licenses issued or renewed on January 1 of the year commencing after the effective date of this SECTION.