

House Bill 2159

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for State Department of Agriculture)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Expands coverage of seed production or purchase contract laws to include additional forms of contract and additional kinds and varieties of seeds. Makes wholesaler contracting for production of agricultural, flower or vegetable seed subject to licensing by State Department of Agriculture. Includes flower seeds as mandatory subject of rules regarding differences between container contents and labeling.

A BILL FOR AN ACT

1
2 Relating to seeds; creating new provisions; and amending ORS 576.725, 576.727, 633.511, 633.680 and
3 633.700.

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

5 **SECTION 1.** ORS 576.725 is amended to read:

6 576.725. As used in this section and ORS 576.727:

7 (1) "Final payment date" means a date specified in a seed production or purchase contract by
8 which the wholesale seed dealer must complete payment to the seed grower or, if a date is not
9 specified in the contract, May 1 of the year following production and harvesting of the [*grass or*
10 *clover*] seed.

11 (2) "Seed delivery" means the date on which the seed grower delivers [*grass or clover*] seed to
12 the wholesale seed dealer pursuant to a notice from the dealer.

13 (3) "Seed production or purchase contract" means a written agreement that must include:

14 (a) The estimated date for seed delivery;

15 (b) The terms and estimated dates for the wholesale seed dealer to pay the seed grower;

16 (c) The number of acres [*of grass or clover seed to be grown*] **or pounds of seed to be produced**
17 **or purchased**; [*and*]

18 (d) The [*species, cultivars and quality standards of the grass or clover seed*] **kinds and varieties**
19 **of seed** to be produced or purchased[.]; **and**

20 (e) **The quality standards for the seed to be produced or purchased.**

21 **SECTION 2.** ORS 576.727 is amended to read:

22 576.727. (1) A seed production or purchase contract must require the wholesale seed dealer to
23 make payment to the seed grower within 30 days after seed delivery. Upon written mutual agree-
24 ment of the seed grower and the wholesale seed dealer, the grower may extend the period available
25 for the dealer to make payment.

26 (2) If a licensed wholesale seed dealer fails to pay a seed grower as required pursuant to sub-
27 section (1) of this section, the grower may notify the State Department of Agriculture. Upon notifi-
28 cation by a grower, the department shall determine whether payment has been made in accordance
29 with terms of the contract. If the department determines that payment has not been made, the de-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 partment shall notify the wholesale seed dealer in writing that the dealer has 30 days to pay the
 2 seed grower all delinquent amounts plus interest on each delinquent amount at the rate of one
 3 percent per month simple interest from the final payment date for that delinquent amount.

4 (3) A seed production or purchase contract may not vary the terms of the remedy provided by
 5 subsection (2) of this section. A wholesale seed dealer may appeal the notice given by the depart-
 6 ment under subsection (2) of this section as provided in ORS chapter 183. Subsection (2) of this
 7 section does not prevent a seed grower from filing a notice of lien against a wholesale seed dealer.

8 (4) If a wholesale seed dealer fails to make payment as required by a notice given by the de-
 9 partment under subsection (2) of this section, the department shall suspend the license of the dealer
 10 until the dealer demonstrates to the satisfaction of the department that the dealer is current on all
 11 payments due to seed growers.

12 (5) A wholesale seed dealer who fails to make payment as required by a notice given by the
 13 department under subsection (2) of this section is considered to have authorized the seed grower to
 14 sell any seed from the contract that is still in the possession of the grower and to use the variety
 15 as provided under the federal Plant Variety Protection Act, 7 U.S.C. 2541(b), subject to a right of
 16 first refusal by the owner of a protected variety. This subsection does not prevent a wholesale seed
 17 dealer from giving consent to the seed grower by other means and does not supersede the terms of
 18 a consent given by other means.

19 **(6) The Director of Agriculture may adopt rules for carrying out this section and ORS**
 20 **576.725. The rules may include, but need not be limited to, rules that list seed kinds and va-**
 21 **rieties for which seed production or purchase contracts are subject to this section and ORS**
 22 **576.725.**

23 **SECTION 3.** ORS 633.511 is amended to read:

24 633.511. As used in ORS 633.511 to 633.750:

25 (1) "Agricultural seed" means fiber, forage and grass crop seed and any other kind of seed or
 26 bulblet commonly recognized in this state as agricultural seed or as lawn or turf seed, and mixtures
 27 of any of such seeds, as may be determined by the Director of Agriculture.

28 (2) "Certified," as applied to bulblets, tubers or horticultural plants or to agricultural, cereal
 29 grain, flower or vegetable seed, means inspected and labeled by and in accordance with the stan-
 30 dards and rules and regulations adopted by the dean under ORS 633.620 or in accordance with
 31 similar standards established by some similar regularly constituted authority in another state or
 32 country.

33 (3) "Conditioner" means any person who cleans, blends, bags or stores seed.

34 (4) "Dean" means the dean of the College of Agricultural Sciences of Oregon State University,
 35 or agent.

36 (5) "Director" means the Director of Agriculture, or agent.

37 (6) "Flower seed" means seeds of herbaceous plants grown for their blooms, ornamental foliage
 38 or other ornamental parts, and commonly known and sold in this state under the name of flower or
 39 wildflower seeds.

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

41 (8) "Labeling" includes all labels and other printed, written or graphic representations in any
 42 form on the container of any seeds or accompanying or pertaining to any seeds, whether in bulk or
 43 in containers, and includes representations on invoices.

44 (9) "Mixed seed" and "mixture" mean any lot of seed that contains in excess of five percent by
 45 weight of each of two or more kinds or varieties of agricultural, flower or vegetable seed.

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

3 (11) "Percentage of germination" means the percentage of pure seed of a lot or sample that
4 produces satisfactory sprouts before the close of a standard germination test as prescribed pursuant
5 to ORS 633.580.

6 (12) "Percentage of hard seed" means the percentage of pure seed of any lot or sample that re-
7 mains in its normal hard condition at the close of a standard germination test as prescribed pursu-
8 ant to ORS 633.580.

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

11 (14) "Pure seed" means the agricultural, flower or vegetable seed of which there is the largest
12 percentage by weight in any unmixed lot or sample and, in the case of mixtures, includes any agri-
13 cultural, flower or vegetable seed consisting of not less than five percent by weight of the kind or
14 kinds of seed under consideration, as distinguished from other crop seed, weed seed and inert mat-
15 ter.

16 (15) "Restricted noxious weed seed" means the seed of such weeds as are very objectionable in
17 fields, lawns and gardens but can be controlled by good cultural practice.

18 (16) "Retailer" means any person who sells, offers or holds for sale, agricultural, flower or veg-
19 etable seed to ultimate consumers or users for planting purposes.

20 (17) "Vegetable seed" means the seed of those crops usually grown in Oregon in gardens or on
21 truck farms or for canning and freezing purposes and generally known and sold under the name of
22 vegetable seed.

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

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

28 **SECTION 4.** ORS 633.680 is amended to read:

29 633.680. (1) The Director of Agriculture shall establish standards of germination for vegetable
30 seed, and shall make reasonable rules and regulations necessary to effectuate the purpose of ORS
31 633.511 to 633.750 and 633.996, covering:

32 (a) Licensing, suspension, reinstatement and revocation of licenses, which rules and regulations
33 shall conform to the law governing suspension, refusal or revocation of licenses by the State De-
34 partment of Agriculture.

35 (b) Regulatory and official sampling.

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

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

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

41 (f) Seizure of seeds.

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

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

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

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

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

5 (L) The use and labeling of hermetically sealed or other types of containers or conveyances in-
6 volving seeds.

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

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

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

17 **SECTION 5.** ORS 633.700 is amended to read:

18 633.700. (1) A person may not sell, offer or expose for sale in this state, **or contract to have**
19 **produced in this state**, any agricultural, **flower** or vegetable seeds unless the person holds an
20 unsuspended license issued by the State Department of Agriculture. A person selling, offering or
21 exposing for sale only flower seeds at retail must hold an unsuspended license issued by the de-
22 partment. However, any person selling seeds of the person's own production exclusively, and persons
23 selling only flower or vegetable seeds at retail, in packages weighing not in excess of one-half pound,
24 as prepared for such trade by other seed companies, if the seed company preparing such packaged
25 seed for sale, has a license in force for the sale of such seed in this state, is not required to secure
26 such license. For the purposes of this section, persons operating more than one branch, plant or
27 warehouse where seeds are sold, offered or exposed for sale shall secure a separate license for each
28 such branch, plant or warehouse.

29 (2) Any person desiring to sell, offer or expose for sale in this state any agricultural, flower or
30 vegetable seeds, for planting purposes, except as provided in this section, shall make application to
31 the Director **of Agriculture** for a license for this purpose. The application shall be signed by the
32 applicant or the authorized agent of the applicant and shall be in a form approved by the director.
33 Upon presentation of such signed application for a license and the tendering of the license fee es-
34 tablished by the department pursuant to subsection (3) of this section, the department shall issue the
35 license to the applicant. The license shall expire on June 30 next following the date of issuance or
36 on such date as may be specified by department rule.

37 (3) The department shall establish annual license fees, not to exceed \$40 for a retailer's license
38 and not to exceed \$400 for a wholesaler's license. Only one license shall be required for one person's
39 operation at one location.

40 **SECTION 6. The amendments to ORS 576.725, 633.511 and 633.700 by sections 1, 3 and 5**
41 **of this 2011 Act apply to contracts entered into on or after the effective date of this 2011**
42 **Act.**