

AN ACT

To amend sections 907.01, 907.09, and 4959.11 of the Revised Code to exempt certain non-commercial seed sharing activities from the laws governing seed labeling, inspection, and advertising and to alter the requirements specifying which noxious weeds must be destroyed on a toll road, railroad, or electric railway.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 907.01, 907.09, and 4959.11 of the Revised Code be amended to read as follows:

Sec. 907.01. As used in sections 907.01 to 907.17 of the Revised Code:

(A) "Advertisement" means any representation, other than that on a label, disseminated in any manner or by any means.

(B) "Agricultural seed" means the seed of grass, native grass, forage, cereal, field and fiber crops, any other kinds of seed commonly recognized in this state as agricultural or field seed, lawn seed, and mixtures or blends of such seed.

(C) "Certifying agency" means an agency authorized by the laws of a state or a foreign country to certify officially seed, tubers for seeding purposes, or plants for varietal identification or for other factors and, in the case of seed, an agency determined by the United States secretary of agriculture to follow procedures and standards of seed certification comparable to those generally followed by seed certifying agencies that are members of the association of official seed certifying agencies.

(D) "Germination" means the emergence and development from seed embryos of those structures that indicate the capability of producing normal seedlings under ordinarily favorable conditions as determined by methods prescribed by rules of the association of official seed analysts.

(E) "Hard seed" means seed that, because of impermeability, does not absorb moisture or germinate, but remains hard during the period of germination prescribed for that particular kind of seed.

(F) "Hermetically sealed" means that the container used does not allow water vapor penetration through any wall, including the seals, greater than five one-hundredths grams of water per twenty-four hours per one hundred square inches of surface at one hundred degrees Fahrenheit with a relative humidity on one side of ninety per cent and on the other side of zero per cent.

(G) "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining:

- (1) Two or more inbred lines;
- (2) One inbred or a single cross with an open-pollinated variety;
- (3) Two 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.

(H) "In bulk" or "bulk" means loose in vehicles or bins.

(I) "Inert matter" means all matter not seeds, including broken seeds, sterile florets, chaff, fungus bodies, and stones.

(J) "Kind," in reference to seed, means one or more related species or subspecies that, singly or collectively, are known by one common name, for example, soybeans, oats, alfalfa, or timothy.

(K) "Label" means a tag or other device that is attached to or written, stamped, or printed on any container of seed or that accompanies any lot of bulk seed and that describes the kind of seed together with any other information required by law. "Label" includes an invoice under which any seed is imported into the state.

(L) "Lot of seed" means a definite quantity of seed identified by a lot number, every portion or bag of which is uniform, within permitted tolerances, as to the factors that appear on the label.

(M) "Mixture" means seed consisting of more than one kind, each of which is present in excess of five per cent of the whole.

(N) "Origin" means a state, the District of Columbia, Puerto Rico, a possession of the United States, or a foreign country, or designated portion thereof, where grown.

(O) "Other crop seed" means agricultural seed commingled with the kind, or kind and variety, of seed under consideration, but less than five per cent by weight of the lot.

(P) "Person" means any individual, partnership, corporation, company, society, association, public agency, receiver, trustee, or agent.

(Q) "Place of business" means any location, including any vehicle, where seed is sold, processed, conditioned, or stored.

(R) "Prohibited noxious weeds" means weeds that reproduce by seed, spread by roots, underground stems, or other reproductive parts, and, when established, are highly destructive and difficult to control.

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

(T) "Pure seed" means agricultural, vegetable, or flower seed free of inert matter and free of other seed distinguishable by appearance or by test.

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

(V) "Screenings" means chaff, sterile florets, immature seed, inert matter, weed seed, or any other matter removed from seed in any kind of processing and that contains less than twenty-five per cent by weight of live agricultural, vegetable, or flower seed.

(W) "Restricted noxious weeds" means weeds that are objectionable in fields, lawns, or gardens, but that can be controlled by good cultural practices.

(X) "Sell" or "sold" includes:

(1) Transferring ownership, offering or exposing for sale, exchanging, distributing, giving away, or transporting in this state;

(2) Storing, carrying, or handling in aid of traffic in this state, whether in person or through an agent, employee, or others;

(3) Receiving, accepting, or holding on consignment for sale.

(Y) "Germination standard," as applied to vegetable or flower seed, means the minimum percentage of germination established by the director of agriculture for any kind or variety of seed.

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

(AA) "Type" means either a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions or, when used with a variety name, seed of that variety that may be mixed with seed of other varieties of the same kind and of similar character. In either case, ninety per cent of the pure seed shall be of the variety or group of varieties named or, upon growth, shall produce plants having characteristics similar to the variety or group of varieties named.

(BB) "Variety" means a subdivision of a kind that is characterized by growth, plant, fruit, seed, or other characteristics by which it can be differentiated from other sorts of the same kind.

(CC) "Vegetable seed" means the seed of any crop that is grown in gardens or on truck farms and is generally known and sold in this state under the name of vegetable seed or herb seed.

(DD) "Weed seed" means the seed and bulblets of all plants generally recognized in this state as weeds, including prohibited noxious weeds and restricted noxious weeds.

(EE) "Coated agricultural seed" means an agricultural seed with a film or layer applied to the seed that is greater than one per cent of the net weight, for purposes of, including, but not limited to, accurate seeding, nitrogen fixation, nutrient improvement, or protection from insects and pathogens. "Coated agricultural seed" does not include seeds treated with dusts or liquids that are virtually unmeasurable using association of official seed analysts rules.

(FF) "Combination seed-mulch product" means any product containing both seeds and a natural or artificial substance that is applied to the soil surface for the purpose of promoting seed germination through moisture retention, maintaining soil temperature, or preventing erosion, and may contain fertilizer.

(GG) "Blend" means seed that consists of more than one variety of a kind, with each variety representing more than five per cent by weight of the whole.

(HH) "Flower seed" means the seed of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and commonly known as and sold under the name of flower seed.

(II) "Pure live seed" means the sum of seed's percentage of germination plus the percentage of hard seed or dormant seed, multiplied by the percentage of pure seed, the product of which is divided by one hundred. The result is expressed as a whole number. Expressed as an equation, the definition of "pure live seed" is as follows: (percentage of germination plus percentage of hard seed or dormant seed) multiplied by the percentage of pure seed equals (product) divided by one hundred equals pure live seed.

(JJ) "Cool season grass seed" means the agricultural seed of Kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall fescue, perennial ryegrass, intermediate ryegrass, annual ryegrass, colonial bentgrass, creeping bentgrass, and mixtures or blends containing only those grass seeds.

(KK) "Native grass" has the meaning established in rules adopted under section 907.10 of the Revised Code.

(LL) "Class of seed" means a classification of seed that is established using the standards and procedures established by the association of official seed certifying agencies and that designates seed as breeder, foundation, registered, or certified seed.

(MM) "Container" means a packet, bag, box, tape, tube, envelope, pre-planted device, mat, or other device used to contain seed, except that "container" does not include a vehicle or bin used to contain bulk seed.

(NN) "Dormant seed" means viable seed, excluding hard seed, that fails to germinate when provided with the specified germination conditions for that kind of seed.

(OO) "Non-commercial seed sharing" means the distribution or transfer of ownership of seeds with no compensation or remuneration. "Non-commercial seed sharing" does not include the distribution or transfer of seeds to which any of the following apply:

(1) The seeds are given as compensation for work or services rendered.

(2) The seeds are collected outside of this state.

(3) The seeds are patented, treated, or contain noxious weed species or invasive plants.

(PP) "Seed library" means a non-profit, governmental, or cooperative organization or association to which both of the following apply:

(1) It is established for the purpose of facilitating the donation, exchange, preservation, and dissemination of seeds among the seed library's members or the general public.

(2) The use, exchange, transfer, or possession of seeds acquired by or from the non-profit,

governmental, or cooperative organization or association are obtained free of charge.

Sec. 907.09. (A) Sections 907.03, 907.07, and 907.08 of the Revised Code do not apply to:

(1) Agricultural, vegetable, or flower seed not intended for sowing purposes;

(2) Unprocessed agricultural, vegetable, or flower seed in storage or being transported to or consigned to a seed processing establishment, provided that the label accompanying a shipment of the seed shall bear the statement "seed for processing" and provided further that any label or other representation that is made with respect to the unprocessed seed shall be subject to sections 907.01 to 907.17 of the Revised Code;

(3) Agricultural, vegetable, or flower seed that is in interstate transport and that is governed by 7 C.F.R. 201.33;

(4) Non-commercial seed sharing that supports any of the following activities:

(a) Conservation of pollinators and threatened or endangered species;

(b) Planting and creation of native plant habitats;

(c) Propagation of native plants for their specific conservation;

(d) Operation of a seed library, provided that the seed library ensures that any seeds exchanged among the seed library's members or the general public are open-pollinated, public domain varieties.

(B) In the case of agricultural, vegetable, or flower seed that is being exported in bulk or containers directly to a foreign country and that is in quantities of twenty thousand pounds or more regardless of the number of lots included, the labeling requirements established under section 907.03 of the Revised Code do not apply, provided that all of the following requirements are satisfied:

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

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

(3) The invoice or other records accompanying and pertaining to the seed bear the information concerning the respective seeds that is required under section 907.03 of the Revised Code.

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

Sec. 4959.11. (A) As used in this section, "noxious weed" has the same meaning as in section 5579.04 of the Revised Code.

(B) The superintendent or manager of a toll road, railroad, or electric railway shall destroy all brush, briars, burrs, vines, ~~Russian thistle, Canadian thistle, common thistle, wild lettuce, wild mustard, wild parsnip, ragweed, milkweed, ironweed, and all other~~ noxious weeds growing or being cut within the limits of such toll road, railroad, or railway, or within the limits of any right of way belonging to the company owning such toll road, railroad, or railway, whether or not it is in actual

operation on such right of way, between such days as are specified in section 5579.04 of the Revised Code.

In default of such destruction, and for five days thereafter, the board of township trustees of a township through which such toll road, railroad, or railway passes, shall cause it to be done, and shall have a right of action against such company for the amount of such work, with one hundred per cent penalty and costs of action, to be recovered before any judge or a county court or judge of a municipal court having jurisdiction in the area in which the work was done.

SECTION 2. That existing sections 907.01, 907.09, and 4959.11 of the Revised Code are hereby repealed.

H. B. No. 364

135th G.A.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor:

H. B. No. 364

135th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____