

AGRICULTURE CODE

TITLE 5. PRODUCTION, PROCESSING, AND SALE OF HORTICULTURAL PRODUCTS

SUBTITLE A. SEED AND FERTILIZER

CHAPTER 61. INSPECTION, LABELING, AND SALE OF AGRICULTURAL AND
VEGETABLE SEED

§ 61.001. DEFINITIONS. In this chapter:

- (1) "Agricultural seed" includes the seed of any grass, forage, cereal, or fiber crop, any other kind of seed commonly recognized in this state as agricultural or field seed, and any mixture of those seeds.
- (2) "Vegetable seed" includes the seed of any crop that is grown in a garden or on a truck farm and is generally known and sold in this state under the name of vegetable seed.
- (3) "Advertisement" means a representation, other than that on a label, disseminated in any manner or by any means and relating to seed within the scope of this chapter.
- (4) "Labeling" includes any written, printed, or graphic representation in any form, including a label or an invoice, accompanying and pertaining to seed in bulk or containers.

Acts 1981, 67th Leg., p. 1126, ch. 388, § 1, eff. Sept. 1, 1981.

§ 61.002. ADMINISTRATION; RULES. (a) The department shall administer and enforce this chapter and may employ qualified persons and incur expenses as necessary in performing those duties. The number of persons employed shall be set in the General Appropriations Act.

(b) The department may adopt rules as necessary for the efficient enforcement of this chapter. Before adopting rules under this chapter, the department shall conduct a public hearing on the proposed rule or amendment.

(c) The department may establish and maintain or provide for seed testing facilities as necessary to administer this chapter.

(d) Repealed by Acts 1993, 73rd Leg., ch. 978, § 3, eff. Aug. 30, 1993.

(e) The department may cooperate with the United States Department of Agriculture in the enforcement of seed law.

Acts 1981, 67th Leg., p. 1127, ch. 388, § 1, eff. Sept. 1, 1981.

Amended by Acts 1993, 73rd Leg., ch. 978, § 1, 3, eff. Aug. 30, 1993.

§ 61.003. CLASSIFICATION OF SEEDS. The department by rule may classify and define types, kinds, classes, genera, species, subspecies, hybrids, and varieties of agricultural, vegetable, and weed seeds for the purposes of this chapter.

Acts 1981, 67th Leg., p. 1127, ch. 388, § 1, eff. Sept. 1, 1981.

§ 61.004. LABELING OF AGRICULTURAL SEED. (a) Except as otherwise provided by this section, each container of agricultural seed that is sold or offered or exposed for sale in this state shall bear or have attached in a conspicuous place a plainly written or printed label in English that contains the following information relating to the contents of the container:

- (1) the name of the kind or the kind and variety of each agricultural seed component present in excess of five percent of the whole, and the percentage by weight of each;
 - (2) the lot number or other lot identification;
 - (3) for each named agricultural seed:
 - (A) the percentage of germination, exclusive of hard seed, as determined by rule of the department;
 - (B) the percentage of hard seed, if present; and
 - (C) the calendar month and year that the test was completed to determine the percentage of germination and hard seed;
 - (4) The percentage by weight of agricultural seeds other than those named on the label;
 - (5) the origin, if known, of all agricultural seeds;
 - (6) the percentage by weight of all weed seeds;
 - (7) the name and number per pound of each noxious weed seed;
 - (8) The percentage by weight of inert matter;
 - (9) the net weight; and
 - (10) the name and address of the person who labeled the seed or who sells or offers or exposes the seed for sale.
- (b) If in accordance with the rules of the department the kind of seed in a container is generally labeled by variety but the label does not state the variety, the label shall show the name of the kind and be printed with: "Variety Not Stated." The label on hybrid seed shall state that the seed is hybrid. A person may not use the word "type" in any labeling in connection with the name of an agricultural seed variety.
- (c) If the origin of the seed is unknown, the label shall state that the origin is unknown.
- (d) The noxious weed content shall be determined according to the method prescribed under Section 61.008 of this code and the stated content is subject to the tolerances established under that section.

(e) Following the statement of germination and hard seed, a label may show a statement of total germination and hard seed.

(f) If, in accordance with rules of the department, a container of seed is sold on a pure live seed basis, the label on the container must contain the information required by Subsection (a) of this section, except:

(1) the label need not show:

(A) the percentage by weight of each agricultural seed component, as required by Subdivision (1) of Subsection (a) of this section; or

(B) the percentage by weight of inert matter, as required by Subdivision (8) of Subsection (a) of this section; and

(2) the label must show for each named agricultural seed, instead of the information required by Subdivision (3) of Subsection (a) of this section:

(A) the percentage of pure live seed, determined in accordance with rules of the department; and

(B) the calendar month and year in which the test determining the percentage of pure live seed was completed.

(g) The department by rule may provide that a label show an expiration date in lieu of the calendar month and year of a germination or pure live seed test.

Acts 1981, 67th Leg., p. 1127, ch. 388, § 1, eff. Sept. 1, 1981.

Amended by Acts 1985, 69th Leg., ch. 151, § 1, eff. May 24, 1985.

§ 61.005. LABELING OF VEGETABLE SEED. (a) Each container of vegetable seed that is sold or offered or exposed for sale in this state shall bear or have attached in a conspicuous place a plainly written or printed label in English that provides the information relating to the contents of the container required by this section.

(b) If the container weighs one pound or more, the label shall show:

(1) the name of each kind and variety of vegetable seed component present in excess of five percent of the whole and the percentage by weight of each in order of predominance;

(2) the kind and variety of seed;

(3) the lot number or other lot identification;

(4) the germination and the date of the test to determine germination;

(5) the name and number of noxious weed seeds per pound; and

(6) the name and address of the person who labeled the seed.

(c) If the container weighs less than one pound, the label shall show:

(1) the kind and variety of seed;

(2) the calendar month and year of the germination test or the year for which the seed was packaged;

(3) if the percentage of germination is less than the standard prescribed by rule:

(A) the percentage of germination, exclusive of hard seed;

(B) the percentage of hard seed; and

(C) the words "Below Standard" printed in a size not smaller than eight-point type; and

(4) the name and address of the person who labeled the seed.

(d) The labeling requirements of this section are met if the seed is weighed from a properly labeled container in the presence of the purchaser.

(e) The department by rule may provide that a label show an expiration date in lieu of:

(1) the calendar month and year of a germination test; or

(2) the year for which the seed was packaged.

Acts 1981, 67th Leg., p. 1128, ch. 388, § 1, eff. Sept. 1, 1981.

Amended by Acts 1985, 69th Leg., ch. 151, § 2, eff. May 24, 1985.

§ 61.006. LABELING OF TREATED SEED. (a) Seed that has been subjected to a treatment, or to which a substance has been applied, for the purpose of reducing, controlling, or repelling disease organisms, insects, or other pests that attack seeds or seedlings shall be labeled in accordance with rules of the department.

(b) The public hearing required by Section 61.002 of this code for rulemaking under this section shall be conducted in Austin.

Acts 1981, 67th Leg., p. 1128, ch. 388, § 1, eff. Sept. 1, 1981.

§ 61.007. CERTIFIED SEED. (a) A person may not sell or offer, expose, or transport for sale agricultural or vegetable seed that is represented by labeling or an advertisement to be certified seed unless:

(1) a seed certifying agency has determined that the seed conforms to standards of purity and identity as to kind, species, subspecies, or variety in accordance with the rules of the certifying agency; and

(2) the seed bears an official label issued by a seed certifying agency certifying that the seed is of a specific class, kind, species, subspecies, or variety.

(b) A person may not sell or offer, expose, or transport for sale seed labeled by variety name but not certified by an official seed certifying agency if it is a variety required by federal law to be sold only as a class of certified seed, except that seed from a certified lot may be labeled by variety name if used in a mixture by, or with the approval of, the owner of the variety.

Acts 1981, 67th Leg., p. 1129, ch. 388, § 1, eff. Sept. 1, 1981.

§ 61.008. NOXIOUS WEED CONTENT. The department by rule may classify noxious weeds and establish the rate allowed or prohibit the inclusion of a noxious weed in a container of agricultural or vegetable seed.

Acts 1981, 67th Leg., p. 1129, ch. 388, § 1, eff. Sept. 1, 1981.

§ 61.009. GERMINATION AND PURITY TESTING. (a) All agricultural or vegetable seed sold or offered, exposed, or transported for sale in this state shall be tested to determine the percentage of germination.

(b) Except as otherwise provided by this subsection, the germination test shall be performed within nine months, not including the calendar month in which the test was completed, immediately prior to being sold or offered, exposed, or transported for sale. The department by rule may designate a period of time longer than nine months if the department finds that the seed is packaged in a container or under conditions that will maintain the viability of the seed under ordinary conditions of handling during the longer period of time.

(c) At the request of a farmer or dealer, the department may conduct or provide for the testing of seed for purity and germination. The department may fix by rule and collect fees for tests made under this subsection.

Acts 1981, 67th Leg., p. 1129, ch. 388, § 1, eff. Sept. 1, 1981.

§ 61.010. INSPECTION OF SEED. (a) At the time, place, and to the extent the department considers necessary, the department shall sample, inspect, analyze, and test agricultural and vegetable seed transported, sold, or offered or exposed for sale in this state for sowing purposes in order to determine if the seed is in compliance with this chapter. The department shall promptly notify of any violation the person who transported, sold, or offered or exposed the seed for sale.

(b) The department shall adopt rules governing the methods of sampling, inspection, analysis, and testing and the tolerances to be allowed in the administration of this chapter. The rules adopted shall be in general accord with officially prescribed practice in interstate commerce.

(c) In order to gain access to seed or to records from authorized personnel, the department is entitled to enter any public or private premises during regular business hours or any land, water, or air conveyance at any time when the conveyance is accessible.

Acts 1981, 67th Leg., p. 1129, ch. 388, § 1, eff. Sept. 1, 1981.

§ 61.011. AGRICULTURAL SEED INSPECTION FEE AND PERMIT. (a) A person who sells, or offers, exposes, or otherwise distributes for sale agricultural seed within this state for planting purposes shall pay an inspection fee in the manner provided by Subsection (b) or (c) of this section. A person may not use both procedures for fee payment. The person shall pay the fee during each germination period that the seed remains offered or exposed for sale. If the germination test has expired on any seed, the custodian of the seed is responsible for payment of the fee.

(b) In order to pay the fee, a person may purchase from the department a label known as the "Texas Tested Seed Label." The department by rule may prescribe the form of the label and the manner of showing the information required by Section 61.004 of this code. The purchaser shall attach the label to each container of seed sold or offered or otherwise distributed for sale. If the seed is in bulk, the person selling or offering, exposing, or otherwise distributing the seed for sale shall furnish the purchaser one Texas Tested Seed Label for each 100 pounds or fraction of 100 pounds of seed.

(c) Instead of purchasing a Texas Tested Seed Label, a person may pay the fee on the total number of pounds of seed sold or offered, exposed, or otherwise distributed for sale in this state. In order to pay the fee on this basis, the person must apply to the department for a permit. The department shall issue to each applicant a permit bearing an assigned number. The holder of the permit shall:

- (1) maintain records, as required by the department, that accurately reflect the total pounds of seed subject to the fee that are handled, sold, or offered or distributed for sale;
- (2) file with the department quarterly sworn reports covering the total pounds of all sales of seed subject to the fee sold during the preceding quarter; and
- (3) affix to each container of seed subject to the fee or to the invoice of subject seed sold in bulk a plainly written statement of the information required under Section 61.004 of this code.

(d) Quarterly reports filed under Subsection (c)(2) of this section are due within 30 days after the last day of November, February, May, and August. Unless filed in accordance with prior written approval of the department for late filing, a person who does not file the report within the allotted time shall pay to the department a penalty fee, as provided by department rule.

(e) The department is entitled to examine the records of a permittee under Subsection (c) of this section during regular business hours. If the permittee is located outside of this state, the permittee shall maintain the records and information required by Subsection (c) of this section in this state or pay all costs incurred in the auditing of records at another location. The department shall promptly furnish to the permittee an itemized statement of any costs incurred in an out-of-

state audit and the permittee shall pay the costs not later than the 30th day following the date of the statement.

(f) The department may set the fee, prescribe and furnish forms, and require the filing of reports necessary for the payment of the inspection fee.

Acts 1981, 67th Leg., p. 1130, ch. 388, § 1, eff. Sept. 1, 1981. Amended by Acts 1993, 73rd Leg., ch. 978, § 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 419, § 2.22, eff. Sept. 1, 1995.

§ 61.012. CANCELLATION OR REVOCATION OF AGRICULTURAL SEED PERMIT. (a) The department may cancel an agricultural seed permit issued under Section 61.011(c) of this code if the permittee fails to observe the rules adopted, to file a report required, or to pay a fee required under that section.

(b) The department shall revoke the permit of any person who fails either to maintain records in this state or to pay for an out-of-state audit under Section 61.011(e) of this code.

Acts 1981, 67th Leg., p. 1131, ch. 388, § 1, eff. Sept. 1, 1981.

§ 61.013. VEGETABLE SEED LICENSE. (a) A person may not sell or offer, expose, or otherwise distribute for sale vegetable seed for planting purposes in this state unless the person possesses a valid vegetable seed license issued under this section.

(b) The department may fix by rule and collect a fee for the issuance of a vegetable seed license.

(c) An applicant for a vegetable seed license shall apply for the license on forms prescribed by the department.

(d) A vegetable seed license expires on August 31 of each year.

(e) A person who sells or offers, exposes, or otherwise distributes for sale vegetable seed in containers bearing the name and address of a licensee under this section is not required to be licensed under this section.

Acts 1981, 67th Leg., p. 1131, ch. 388, § 1, eff. Sept. 1, 1981.

§ 61.0135. REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE. (a) The department shall revoke, modify, or suspend a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this chapter or a rule adopted by the department under this chapter.

(b) If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) If the department proposes to revoke, modify, or suspend a person's license, the person is entitled to a hearing conducted under Section 12.032. The decision of the department is appealable in the same manner as provided for contested cases under Chapter 2001, Government Code.

Added by Acts 1989, 71st Leg., ch. 230, § 38, eff. Sept. 1, 1989.

Amended by Acts 1995, 74th Leg., ch. 76, § 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, § 3.08, eff. Sept. 1, 1995.

§ 61.014. STOP-SALE ORDER. (a) If the department has reason to believe that agricultural or vegetable seed is in violation of any provision of this chapter, the department may issue and enforce a written or printed order to stop the sale of the seed. The department shall present the order to the owner or custodian of the lot of seed. The person who receives the order may not sell the seed until the seed is discharged by a court under Subsection (b) of this section or until the department finds that the seed is in compliance with this chapter.

(b) The owner or custodian of seed prohibited from sale by an order of the department is entitled to sue in a court of competent jurisdiction where the seed is found for a judgment as to the justification of the order and for the discharge of the seed in accordance with the findings of the court.

(c) This section does not limit the right of the department to proceed as authorized by another section of this chapter.

Acts 1981, 67th Leg., p. 1131, ch. 388, § 1, eff. Sept. 1, 1981.

§ 61.015. SEIZURE OF SEED NOT IN COMPLIANCE. (a) The department may sue in a court of competent jurisdiction in the area in which the seed is located for the seizure of any lot of agricultural or vegetable seed that is not in compliance with this chapter.

(b) If the court finds that the seed is not in compliance with this chapter, the court may condemn the seed. Condemned seed shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in accordance with the law of this state.

(c) The court may not condemn the seed unless the owner or custodian of the seed is given the opportunity to apply to the court for the release of the seed or for permission to condition or relabel the seed to bring it into compliance with this chapter.

Acts 1981, 67th Leg., p. 1131, ch. 388, § 1, eff. Sept. 1, 1981.

§ 61.016. EXCEPTIONS. (a) Sections 61.001, 61.003-61.005, and 61.008 of this code do not apply to:

- (1) seed or grain not intended for sowing purposes;
- (2) seed in storage for cleaning or conditioning, if the label or other records pertaining to the seed bear the phrase "seed for conditioning"; or
- (3) seed being transported or consigned to a seed cleaning or conditioning establishment for cleaning or conditioning, if the invoice or labeling accompanying the seed bears the phrase "seed for conditioning."

(b) The exceptions provided by Subsection (a) of this section do not affect the criminal liability of a person for false or misleading labeling or advertising of unclean seed under Section 61.018 of this code.

(c) This chapter does not prevent one farmer from selling to another farmer seed grown on his or her own farm without having the seed tested or labeled as required by this chapter if the seed:

- (1) is not advertised in the public communications media outside the vendor's home county;
- (2) is not sold or offered or exposed for sale by an individual or organization for the farmer; and
- (3) is not shipped by a common carrier.

Acts 1981, 67th Leg., p. 1132, ch. 388, § 1, eff. Sept. 1, 1981.

§ 61.017. PROSECUTIONS. (a) If the department has reason to believe that a person has violated any provision of this chapter, the department shall conduct a private hearing on the alleged violation, giving the accused the opportunity to appear and, either in person or by agent or attorney, present evidence. After the hearing, or without a hearing if the accused or the agent or attorney of the accused fails or refuses to appear, the department may file with the appropriate district or county attorney the evidence of the violation or take other steps necessary to institute the prosecution of the violation. Venue for the prosecution is in the area in which the violation occurred.

(b) The county or district attorney or the attorney general, as applicable, shall institute proceedings at once against the person charged with the violation, if in his or her judgment the information submitted warrants the action.

(c) After judgment by a court in any case arising under this chapter, the department may publish any information pertinent to the issuance of the judgment in any media that it considers appropriate.

Acts 1981, 67th Leg., p. 1132, ch. 388, § 1, eff. Sept. 1, 1981.

§ 61.018. PENALTIES. (a) A person commits an offense if the person sells or offers, exposes, or transports for sale agricultural or vegetable seed within this state that:

- (1) has not been tested for germination in accordance with Section 61.009 of this code;
- (2) is not labeled in accordance with Section 61.004, 61.005, or 61.006 of this code, as applicable;
- (3) has false or misleading labeling;
- (4) is represented by a false or misleading advertisement;
- (5) contains noxious weed seeds in excess of the limitations per pound, allowing for tolerances, prescribed under Section 61.008 of this code;
- (6) has labeling or advertising subject to this chapter that represents the seed to be certified in violation of Section 61.007 of this code; or
- (7) is labeled by variety name in violation of Section 61.007(b) of this code.

(b) A person commits an offense if the person:

- (1) detaches, alters, defaces, or destroys any label provided for in this chapter or the rules adopted under this chapter;
- (2) alters or substitutes seed in a manner that may defeat the purposes of this chapter;
- (3) disseminates a false or misleading advertisement concerning agricultural or vegetable seed;
- (4) fails to comply with a stop-sale order issued under Section 61.014 of this code;
- (5) hinders or obstructs an authorized person in the performance of duties under this chapter;
- (6) uses the word "type" in violation of Section 61.004(b) of this code; or
- (7) violates any other provision of this chapter.

(c) An offense under this section is a Class C misdemeanor.

(d) If a person is prosecuted under this section for selling or offering or exposing for sale in this state agricultural or vegetable seed that is incorrectly labeled or represented as to kind, variety, type, treatment, or origin and that cannot be identified by examination, it is a defense to prosecution that the defendant obtained an invoice or grower's declaration giving kind, kind and variety, or kind and type, treatment, and origin, if required.

Acts 1981, 67th Leg., p. 1132, ch. 388, § 1, eff. Sept. 1, 1981.

Amended by Acts 1989, 71st Leg., ch. 230, § 39, eff. Sept. 1, 1989.