

VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

CHAPTER 297

An Act to amend and reenact §§ 3.2-4000, 3.2-4008, and 3.2-4015 of the Code of Virginia, relating to cool-season lawn and turf seed.

[H 301]

Approved March 21, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-4000, 3.2-4008, and 3.2-4015 of the Code of Virginia are amended and reenacted as follows:

§ 3.2-4000. Definitions.

As used in this chapter, unless the context requires another meaning:

"Advertisement" means any representation relating to seed within the scope of this article that is not also required labeling.

"Agricultural seed" means seeds of grass, forage, cereal, and fiber crops; any other seed commonly recognized as agricultural seed; and any lawn seed, turf seed, and mixtures thereof (including any noxious-weed seeds that may be present).

"Bag" or "packet" means a container in the form of a sack or pouch.

"Blend" means a mechanical combination of varieties of the same kind that is identified by a blend designation and is always present in the same percentages in each lot so designated.

"Brand" means the name, term, design, or trademark of seed offered for sale.

"Bulk" or "in bulk" means loose seed in bins or other containers, but not bags or packets.

"Certified seed," "registered seed," or "foundation seed" means seed produced and labeled in compliance with the procedures and requirements of an official certifying agency of a state, the United States, a province of Canada, or the government of a foreign country where the seed was produced.

"Code designation" means an identification assigned by the U.S. Department of Agriculture.

"Conditioning" means any process of cleaning, scarifying, treating, or blending seed that changes the purity or germination of the seed.

"Controlled conditions" means minimum seed stock standards established by regulation.

"Cool-season lawn and turf seed" means the seed of any lawn and turf grass identified in the section of the most current Recommended Uniform State Seed Law, as established by the Association of American Seed Control Officials, pertaining to label requirements for agricultural, vegetable, and flower seeds.

"Distribute" means to import, consign, produce, mix, blend, condition, sell, offer for sale, barter, warehouse, or supply seeds in the Commonwealth.

"Dormant seed" means viable seed other than hard seed that fails to germinate when provided the specified germination conditions.

"Flower seed" means any seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts; any other seeds commonly recognized as flower seeds; and any seeds designated as flower seeds by regulations.

"Germination" means the percentage, by count, of seeds under consideration capable of producing normal seedlings in a given period of time and under conditions specified by regulations.

"Guarantor" means the person whose name appears on the label.

"Hard seed" means seeds that do not absorb moisture and germinate, thus remaining hard during the period prescribed for germination by regulations.

"Hybrid" means the first generation seed of a cross produced by controlling pollination or using sterile lines and combining: (i) two, three, or four inbred lines; (ii) one inbred line, or a single cross, with an open-pollinated variety; or (iii) two varieties or species, except open-pollinated varieties of corn.

"Inbred line" means a relatively stable and pure breeding strain resulting from: (i) four or more successive generations of controlled self-pollination; or (ii) four successive generations of backcrossing male sterile lines.

"Inert matter" means all matter not seeds and includes broken seeds, sterile florets, chaff, fungus bodies, and stones as determined by methods prescribed by regulations.

"Kind" means related species or subspecies known by a common name including wheat, oats, hairy vetch, white sweet clover, cabbage, and cauliflower.

"Labeling" means all labels, tags, and any other written, printed, or graphic statements or representations (including representations on invoices) in any form pertaining to any seed.

"Lawn and turf seed" means seeds of grasses commonly recognized and sold for lawns or other areas where turf is grown for beautification or erosion control.

"Lawn or turf seed mixture" means two or more kinds of agricultural seeds that are combined and

sold for lawns or other areas where turf is grown for beautification or erosion control.

"Lot" means a definite quantity of seed that is identified by a number or other identification and is uniform throughout for the factors appearing on the label.

"Mixture" means seeds consisting of more than one kind or variety, when claimed or present, in excess of five percent of the whole.

"Name of mixture" means the name or term designating a specific lawn or turf seed mixture.

"Noxious-weed seed" means prohibited noxious-weed seeds and restricted noxious weed seeds.

"Origin" means the state, territory, foreign country, or designated portion thereof, where the seed was grown.

"Prohibited noxious-weed seed" means seeds of weeds that are highly destructive and not controllable by common practices.

"Pure seed" means agricultural or vegetable seed exclusive of inert matter and other seeds distinguishable from the kind, or kind and variety, being considered. Pure seed shall be determined by methods prescribed by regulations.

"Quantity statement" means the net weight (mass), net volume (liquid or dry), count, or other form of measurement of a commodity.

"Recognized variety name" and "recognized hybrid designation" mean the name or designation first assigned to the variety or hybrid by the person who developed and introduced it for production or sale.

"Registrant" means the person registering a lawn or turf seed mixture pursuant to this article.

"Restricted noxious-weed seed" means weed seeds that are very objectionable in fields, lawns, and gardens and are difficult to control by common practices.

"Sale" means the transfer of ownership of seed as evidenced by the exchange of payment or seed, in whole or in part.

"Screenings" means seed, inert matter, and other materials removed from agricultural seed or vegetable seed by cleaning or conditioning.

"Stop sale, use, removal, or seizure order" means an order that prohibits the distributor from selling, relocating, using, or disposing of seed until the Commissioner or the court gives written permission.

"Tolerance" means the allowable deviation from any figure used on a label to designate the percentage of any fraction or rate of occurrence in the lot and is based on the law of normal variation from a mean.

"Transgenic" means any plant material or seed that has undergone the transfer of a gene from one genera to another.

"Treated" means seed that has received an effective application of: (i) a generally approved substance; (ii) a process designed to control or repel certain disease organisms, insects, or other pests; or (iii) any other treatment to improve its planting value.

"Tree and shrub seed" means seeds of woody plants commonly recognized as trees and shrubs and designated by regulations.

"Turf" means the same as that term is defined in § 3.2-3600.

"Variety" means a subdivision of a kind characterized by growth, plant, fruit, seed, or other characteristics that distinguish it from other plants of the same kind.

"Vegetable seed" means seeds of crops grown in gardens and on truck farms commonly recognized as vegetable seed and designated by regulations.

"Weed seed" means seeds, bulblets, or tubers of plants commonly recognized as weeds, including noxious-weed seeds.

§ 3.2-4008. Labeling and advertising requirements.

A. All seed sold, offered for sale, transported, or advertised for planting purposes and all screenings shall bear or have attached in a conspicuous place a plainly written or printed label in the English language that provides the following information without further modification or denial in the labeling or advertisement.

B. For treated seed:

1. A word or statement indicating that the seed has been treated;
2. The commonly accepted chemical or generic name of the applied substance or treatment; and
3. A caution statement such as "Do not use for food or feed or oil purposes" if any substance in the amount present is harmful to human or other vertebrate animals. The caution for mercurials and similar toxic substances shall be a poison statement or symbol.

C. For agricultural seeds:

1. The recognized name of each kind (or kind and variety if that kind has been adopted by the Board pursuant to subdivision 6 of § 3.2-4001) of agricultural seed component in excess of five percent of the whole and the percentage by weight in order of predominance. Mixtures and agricultural seed may be sold by kind name if the seed is not for the production of an agricultural crop and the label clearly indicates "NOT FOR AGRICULTURAL PRODUCTION";
2. The word "mixture" or "mixed" shall appear conspicuously on the label if the guarantor is required to name more than one agricultural seed component;
3. The lot number or other lot identification;

4. The origin, if known; if not known, that fact shall be stated;
 5. The percentage by weight of all weed seeds;
 6. The name and number per ounce, pound, or metric equivalent of each kind of restricted noxious-weed seed present, subject to subdivision 1 e of § 3.2-4015;
 7. The percentage by weight of agricultural and vegetable seeds other than the kind or kind and variety named on the label. Such information may be designated as "other crop seed," "other variety," or as both;
 8. The percentage by weight of inert matter;
 9. For each named agricultural seed:
 - a. The percentage of germination, exclusive of hard or dormant seed;
 - b. The percentage of any hard or dormant seed;
 - c. The month and year the test was completed to determine such percentages;
 - d. The "total germination and hard seed" may be stated following the information required by subdivisions a and b; and
 - e. The guarantor shall state separately on the label the percent of dormant seed.
 10. The recognized hybrid designation for all hybrids;
 11. The quantity statement; and
 12. The code designation of the person who transports or delivers for transportation said seed in interstate commerce and the name and address of: (i) the person who sells, labels, or offers the seed for sale; or (ii) the person to whom the seed is sold or shipped for resale.
- D. For vegetable seeds in containers of one half pound or less:
1. The name of kind and variety of seed;
 2. The year packeted or put up, provided that the words "packed for" shall precede the year, or the percentage of germination and the month and year the test was completed to determine such percentage;
 3. The quantity statement, except as provided by appropriate regulations;
 4. The name and address of the person who labels, sells, or offers to sell the seed; and
 5. For the seeds that germinate less than the standard last established by regulations:
 - a. The percentage of germination, exclusive of hard or dormant seed;
 - b. The percentage of any hard or dormant seed;
 - c. The month and year the test was completed to determine the percentages in subdivisions a and b;
 - d. The "total germination and hard seed" may be stated following the information in subdivisions a and b;
 - e. The guarantor shall state separately on the label the percentage of dormant seed; and
 - f. The words "below standard" in not less than eight-point type.
- E. For vegetable seeds in bulk or in containers of more than one half pound:
1. The name of each kind and variety present in excess of five percent of the whole and the percentage by weight of each in order of its predominance;
 2. The lot number or other lot identification;
 3. For each named kind and variety:
 - a. The percentage of germination exclusive of hard or dormant seed;
 - b. The percentage of any hard or dormant seed;
 - c. The month and year the test was completed to determine the percentages in subdivisions a and b;
 - d. The "total germination and hard seed" may be stated; and
 - e. The guarantor shall state separately on the label the percent of dormant seed.
 4. The quantity statement, except when in bulk;
 5. The name and address of the person who labels, sells, or offers to sell the seed; and
 6. The labeling requirements of subdivisions 1 through 5 for vegetable seeds sold from open containers shall be deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.
- F. Seeds or screenings offered for sale or distribution must be plainly labeled to indicate that such seeds or screenings are not for planting purposes if containing more than: (i) two percent by weight weed seeds; or (ii) prohibited noxious-weed seeds and restricted noxious-weed seeds in excess of the amounts prescribed by regulations.
- G. For seeds in preplanted containers, mats, tapes, or other planting devices:
1. For flower seeds:
 - a. The name of the kind and variety or a statement of type and performance characteristics, as prescribed in the regulations adopted pursuant to the provisions of this article;
 - b. The month and year seed was tested or the year the seed was packaged;
 - c. The quantity statement, except as provided by regulations;
 - d. The name and address of the person who labels, sells, or offers to sell seed; and
 - e. Other special labeling requirements as determined by the Board.
 2. For seeds of those kinds with standard testing procedures that germinate less than the germination standard established by regulations:
 - a. The percentage of germination exclusive of hard seed; and

b. The words "below standard" in not less than eight-point type.

3. For seeds placed in a germination medium, mat, tape, or other device making it difficult to determine the quantity of seed without removal, a statement to indicate the minimum number of seeds in the container.

H. For flower seeds in containers other than packets prepared for use in home flower gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices:

1. The name of the kind and variety or a statement of type and performance characteristics as prescribed in regulations;

2. The lot number or other lot identification;

3. The month and year that the seed was tested or the year the seed was packaged;

4. The quantity statement, except as provided by regulations;

5. The name and address of the person who labels, sells, or offers to sell the seed; and

6. For those kinds of seed for which standard testing procedures are prescribed:

a. The percentage of germination exclusive of hard seed; and

b. The percentage of any hard or dormant seed.

I. For tree and shrub seeds:

1. The accepted common and Latin name of species;

2. The variety (if applicable);

3. The quantity statement;

4. The number;

5. The year in which seed was collected;

6. The origin indicating the specific locality where the seed was collected;

7. The month and year of the date the seed was tested;

8. The percentage by weight of pure seed;

9. The percentage by weight of inert matter;

10. The percentage by weight of other crop seeds;

11. The percentage of germination exclusive of hard or dormant seed;

12. The percentage of any hard seeds;

13. The speed of germination expressed in terms of the number of days the seeds will take to reach 90 percent of total;

14. The pregermination treatment used in test;

15. The total number of seed per pound;

16. The moisture content; and

17. The name and address of the person who labels, sells, or offers to sell the seed.

J. For lawn or turf seed mixtures in prepacked containers of 100 pounds or less the information shall include:

1. The recognized name of each kind or kind and variety of each agricultural seed component in excess of five percent of the whole, and the percentage by weight of each in order of its predominance;

2. The registered name of the mixture;

3. The lot number or other lot identification;

4. The percentage by weight of all weed seeds;

5. The name and number per ounce or per pound of each kind of restricted noxious-weed seeds present, subject to subdivision 1 e of § 3.2-4015;

6. The percentage by weight of other agricultural seeds not claimed in the formula;

7. The percentage by weight of inert matter;

8. For each named agricultural seed:

a. The percentage of germination, exclusive of hard seed;

b. The percentage of any hard seed; and

c. The month and year the test was completed to determine the percentages in subdivisions a and b; provided that the date of the first test of the components may be given for the entire mixture; and

d. *For cool-season lawn and turf seeds and mixtures thereof, a "sell by" statement, which may provide a date no more than 15 months from the date of the germination test exclusive of the month of the germination test.*

9. The quantity statement; and

10. The code designation of the person who transports or delivers for transportation the seed and the name and address of: (i) the person who sells, labels, or offers to sell the seed; or (ii) the person to whom the seed is sold or shipped for resale.

K. For transgenic seed, in addition to any other requirements, the guarantor shall label all seed produced from transgenic plant material pursuant to regulation.

§ 3.2-4015. Prohibitions.

It is unlawful to:

1. Transport, offer for transportation, sell, or offer for sale seed or seed mixtures:

a. Unless the germination test to determine the percentage of germination required by § 3.2-4008 is completed within nine months prior to the month of transportation, sale, or offer for sale, *except for the*

germination test for cool-season lawn and turf seeds or mixtures thereof, which must be completed within 15 months prior to the month of transportation, sale, or offer for sale;

- b. Not labeled in compliance with this article, not registered or falsely stated to be registered under § 3.2-4009, or having a false or misleading labeling or claim;
 - c. If there has been a false or misleading advertisement with regards to the seed;
 - d. Consisting of, or containing prohibited noxious-weed seeds in any amount;
 - e. Containing restricted noxious-weed seeds, except as prescribed by regulations;
 - f. Containing weed seeds in excess of one percent by weight, except as prescribed by regulations;
 - g. That have been treated and not labeled as required;
 - h. To which there is affixed names or terms that create a misleading impression as to the kind, kind and variety, history, productivity, quality, or origin of the seed;
 - i. Represented to be certified, registered, or foundation seed unless it has been produced, processed and labeled in accordance with the procedures and in compliance with regulations of an officially recognized certifying agency;
 - j. Represented to be a hybrid unless such seed conforms to the definition of a hybrid as defined in this article except those kinds named in regulations adopted by the Board as having agronomic value and flower seed generally defined as hybrids prior to the enactment of subsections G and H of § 3.2-4008 on July 1, 1966 as determined by regulations adopted by the Board;
 - k. Hybrid seed from a crop that has been inspected in the field by a duly authorized inspector and rejected because of failure to conform to the controlled conditions as specified by regulations;
 - l. Unless it conforms to the definition of a "lot"; and
 - m. Unless the variety or hybrid name or designation is the first variety or hybrid name or designation assigned to it by the owner of the variety or hybrid.
2. Transport, offer for transportation, sell, or offer for sale screenings unless labeled as provided in subsection F of § 3.2-4008.
3. Detach, alter, deface, or destroy any label required pursuant to this article or alter or substitute seed in any manner that may defeat the purpose of this article.
4. Disseminate false or misleading advertisement concerning agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, or screenings.
5. Hinder or obstruct the Commissioner in the performance of his duties.
6. Fail to comply with or supply inaccurate information in reply to a stop sale order; remove labels attached to or dispose of seed or screenings held under such order except as specified by the Commissioner.
7. Use the name of the Department or the results of tests and inspections made by the Department for advertising purposes.
8. Use the words "type" or "trace" in lieu of information required by this article.
9. Label and offer for sale seed without keeping complete records as specified in § 3.2-4006.
10. Fail to obtain a license in accordance with § 3.2-4005.
11. Fail to register a lawn and turf seed mixture in accordance with § 3.2-4009.
12. Fail to pay inspection fees in accordance with § 3.2-4010.
13. Sell, offer for sale, or advertise as noncertified a variety if a certificate of plant variety protection has been issued under the Plant Variety Protection Act specifying sale only as a class of certified seed. The guarantor may label seed from a certified lot by variety name when the guarantor uses the seed in a mixture if the guarantor is the owner of the variety or the owner of the variety gives the guarantor approval to use the variety name.