

CHAPTER 175

AGRICULTURE

HOUSE BILL 07-1307

BY REPRESENTATIVE(S) Gallegos, Buescher, Curry, Gardner C., Hodge, Kerr J., Looper, McFadyen, and Sonnenberg;
also SENATOR(S) Tochtrop, Brophy, Isgar, Schwartz, and Taylor.

AN ACT**CONCERNING THE "COLORADO SEED ACT".**

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

SECTION 1. 35-27-103 (11), Colorado Revised Statutes, is amended, and the said 35-27-103 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

35-27-103. Definitions. As used in this article, unless the context otherwise requires:

(9.5) "DORMANT SEEDS" MEANS VIABLE SEEDS, OTHER THAN HARD SEEDS, THAT FAIL TO GERMINATE WHEN PROVIDED THE SPECIFIC GERMINATION CONDITIONS FOR THE KIND OF SEED IN QUESTION.

(11) "Germination" means the emergence and development from the seed embryo of those essential structures ~~which~~ THAT, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions. ~~and includes live ungerminated seeds which are designated as dormant or hard.~~

(11.5) "HARD SEEDS" MEANS SEEDS THAT REMAIN HARD AT THE END OF THE PRESCRIBED TEST PERIOD BECAUSE THEY HAVE NOT ABSORBED WATER DUE TO AN IMPERMEABLE SEED COAT.

SECTION 2. 35-27-104 (1) (e), Colorado Revised Statutes, is amended to read:

35-27-104. Scope of article. (1) The provisions of this article shall not apply to:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(e) Seed brought into the state by the Colorado agricultural experiment station for experimental purposes or for storage in the ~~national seed storage laboratory~~ USDA-ARS NATIONAL CENTER FOR GENETIC RESOURCES PRESERVATION;

SECTION 3. 35-27-113 (1) (a) and (1) (g), Colorado Revised Statutes, are amended to read:

35-27-113. Prohibitions. (1) It is unlawful and a violation of this article for any person to sell, offer or expose for sale, barter, or distribute any seed within this state, if such seed:

(a) Has not been tested to determine the percentage of germination of such seed within the previous thirteen months, EXCEPT FOR CERTAIN COOL SEASON GRASSES AS DETERMINED BY THE COMMISSIONER BY RULE, IF SUCH SEED HAS NOT BEEN TESTED WITHIN THE PREVIOUS SIXTEEN MONTHS, AND except that, for seed stored in hermetically sealed containers, if such seed has not been tested within the previous twenty-four months. FOR LABELING PURPOSES, A TETRAZOLIUM TEST MAY NOT BE USED IN PLACE OF A GERMINATION TEST EXCEPT AS SPECIFICALLY AUTHORIZED BY THE COMMISSIONER BY RULE.

(g) (I) Is sold by a variety name BUT IS not certified by ~~a~~ AN OFFICIAL SEED certifying agency ~~and~~ if such seed is of a variety for which a certificate or application for certificate of plant variety protection under the federal "Plant Variety Protection Act", 7 U.S.C. secs. 2321 to 2582, as amended, requires sale only as a class of certified seed.

(II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH (g), SEED FROM A CERTIFIED LOT MAY BE LABELED AS TO VARIETY NAME WHEN USED IN A MIXTURE BY, OR WITH THE APPROVAL OF, THE OWNER OF THE VARIETY. ~~or~~

SECTION 4. Repeal. 35-27-114 (2) (d) (II) and (2) (f), Colorado Revised Statutes, are repealed as follows:

35-27-114. Powers and duties of commissioner. (2) In addition to any other powers conferred in this article, the commissioner may:

(d) (II) ~~Delegate to the arbitration council created in section 35-27-122 the power to conduct such hearings; or~~

(f) ~~Request, pursuant to section 35-27-122 (1) (d), that the arbitration council assist in determining civil penalties assessed pursuant to section 35-27-118.~~

SECTION 5. 35-27-115 (1), Colorado Revised Statutes, is amended to read:

35-27-115. Inspections - access - investigations - subpoena. (1) The commissioner, upon the commissioner's own motion or upon the complaint of any person, may make an investigation necessary to determine compliance with this article OR TO INVESTIGATE A COMPLAINT FOR ARBITRATION.

SECTION 6. The introductory portion to 35-27-122 (1) (a) and 35-27-122 (1) (a) (I), (1) (a) (V), (1) (b), (1) (c), (1) (d), and (2), Colorado Revised Statutes, are

amended to read:

35-27-122. Arbitration council - procedures. (1) (a) The commissioner shall appoint an arbitration council FOR EACH CASE composed of ~~five standing~~ THREE members, ~~and five alternate members~~. The following shall each recommend one ~~standing and one alternate~~ member:

(I) ~~The directors of the Colorado state university cooperative extension and experiment station;~~

(V) ~~The agricultural commission.~~

(b) ~~Each alternate member shall serve only in the absence of the member for whom such member is an alternate.~~

(c) The council shall elect a chair ~~and a secretary~~ from its membership. The chair shall conduct ~~meetings and~~ THE deliberations of the council and shall direct all of its other activities. The ~~secretary~~ COMMISSIONER SHALL SERVE AS STAFF TO THE COUNCIL AND shall keep accurate records of all such ~~meetings and~~ deliberations and shall perform such other duties for the council as the chair directs.

(d) The council shall conduct arbitrations. ~~The council may also be called into session by or at the direction of the commissioner or upon direction of the chair to consider matters referred to it by the commissioner or such chair.~~ THE ARBITRATION FOR THE CASE.

(2) (a) A buyer of seed shall request arbitration by filing a verified complaint with the commissioner together with a filing fee of ten dollars; except that the commissioner by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commissioner by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S. ~~Such buyer~~ THE COMMISSIONER shall serve a copy of the complaint upon the seller of such seed by certified mail or personal service. ~~If the seed has been planted, the complaint shall be filed in time to allow inspection of the plants under field conditions.~~

(b) Within five working days after receipt of a copy of the complaint, the seller shall file a verified answer to the complaint with the commissioner, ~~and~~ WHO shall serve a copy of the answer upon the buyer by certified mail.

(c) The commissioner shall ~~refer the complaint and answer to the council for investigation, findings, and recommendations~~ INVESTIGATE THE ALLEGATIONS IN THE COMPLAINT. IN CONDUCTING SUCH INVESTIGATION, THE COMMISSIONER MAY EMPLOY THE SERVICES OF ANY EXPERT THAT HE OR SHE DEEMS APPROPRIATE. UPON COMPLETION OF THE INVESTIGATION, THE COMMISSIONER SHALL REFER THE COMPLAINT TO THE COUNCIL ALONG WITH A REPORT OF THE RESULTS OF THE INVESTIGATION.

(d) Upon referral of a complaint for investigation, the council shall ~~make a~~

~~prompt and full investigation of the allegations in the complaint and~~ CONDUCT AN ARBITRATION HEARING IN ACCORDANCE WITH THE "UNIFORM ARBITRATION ACT", PART 2 OF ARTICLE 22 OF TITLE 13, C.R.S., AND shall report its findings and recommendations to the commissioner in an arbitration report. Such arbitration report shall be filed with the commissioner within sixty days after ~~such referral~~ THE CONCLUSION OF THE ARBITRATION HEARING or a later date if the parties agree.

(e) The arbitration report of the council shall include findings of fact, conclusions of law, and recommendations as to costs, if any, including but not limited to costs of any investigation conducted BY THE COMMISSIONER.

(f) In the course of ~~its~~ HIS OR HER investigation, the ~~council or any of its members~~ COMMISSIONER may:

(I) Examine the buyer, ~~and the seller, on all relevant matters~~ AND ANY OTHER PERSON WHO MAY HAVE RELEVANT INFORMATION;

(II) Grow a representative sample of the seed through the facilities of Colorado state university to production; and

(III) ~~Hold informal hearings at such time and place as the chairman may direct after reasonable notice to all parties~~ CONDUCT ANY OTHER INVESTIGATIVE ACTIVITIES THAT HE OR SHE DEEMS NECESSARY TO OBTAIN INFORMATION RELEVANT TO THE ALLEGATIONS IN THE COMPLAINT PURSUANT TO HIS OR HER AUTHORITY IN SECTION 35-27-115.

(g) ~~The council may delegate all or any part of an investigation to one or more of its members. Any such delegated investigation shall be summarized in a report by such member and shall be considered and addressed by the council in its arbitration report.~~

(h) The members of the council shall receive no compensation for the performance of their duties but shall be reimbursed for actual and necessary expenses.

(i) After the council has filed its arbitration report with the commissioner, the commissioner shall promptly transmit such arbitration report by certified mail to all parties.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 26, 2007