**South Carolina General Assembly**

118th Session, 2009-2010

**A238, R275, H3964**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Duncan, Ott, Vick, Loftis and Bales

Document Path: l:\council\bills\ms\7330zw09.docx

Introduced in the House on April 23, 2009

Introduced in the Senate on March 2, 2010

Last Amended on May 12, 2010

Passed by the General Assembly on May 20, 2010

Became law without Governor's signature, June 8, 2010

Summary: Seed arbitration

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 4/23/2009 House Introduced and read first time [HJ](file:///h%3A%5CHJ%20Archive%5C2009%5C04-23-09.docx)‑276

 4/23/2009 House Referred to Committee on **Agriculture, Natural Resources and Environmental Affairs** [HJ](file:///h%3A%5CHJ%20Archive%5C2009%5C04-23-09.docx)‑276

 1/20/2010 House Member(s) request name removed as sponsor: Forrester

 2/4/2010 House Committee report: Favorable **Agriculture, Natural Resources and Environmental Affairs** [HJ](file:///h%3A%5CHJ%20Archive%5C2010%5C02-04-10.docx)‑12

 2/24/2010 House Member(s) request name added as sponsor: Loftis

 2/25/2010 House Member(s) request name added as sponsor: Bales

 2/25/2010 House Read second time [HJ](file:///h%3A%5CHJ%20Archive%5C2010%5C02-25-10.docx)‑50

 2/25/2010 House Unanimous consent for third reading on next legislative day [HJ](file:///h%3A%5CHJ%20Archive%5C2010%5C02-25-10.docx)‑52

 2/26/2010 House Read third time and sent to Senate [HJ](file:///h%3A%5CHJ%20Archive%5C2010%5C02-26-10.docx)‑3

 3/2/2010 Senate Introduced and read first time [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C03-02-10.docx)‑16

 3/2/2010 Senate Referred to Committee on **Agriculture and Natural Resources** [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C03-02-10.docx)‑16

 4/15/2010 Senate Committee report: Favorable with amendment **Agriculture and Natural Resources** [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C04-15-10.docx)‑8

 5/5/2010 Senate Committee Amendment Adopted [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C05-05-10.docx)‑21

 5/6/2010 Senate Amended [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C05-06-10.docx)‑21

 5/6/2010 Senate Read second time [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C05-06-10.docx)‑15

 5/12/2010 Senate Amended [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C05-12-10.docx)‑16

 5/12/2010 Senate Read third time and returned to House with amendments [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C05-12-10.docx)‑16

 5/20/2010 House Concurred in Senate amendment and enrolled [HJ](file:///h%3A%5CHJ%20Archive%5C2010%5C05-20-10.docx)‑43

 5/20/2010 House Roll call Yeas‑93 Nays‑0 [HJ](file:///h%3A%5CHJ%20Archive%5C2010%5C05-20-10.docx)‑43

 6/1/2010 Ratified R 275

 6/8/2010 Became law without Governor's signature

 6/28/2010 Effective date See Act for Effective Date

 7/6/2010 Act No. 238

**VERSIONS OF THIS BILL**

[4/23/2009](file:///p%3A%5Cpprever%5C2009-10%5C3964_20090423.docx)

[2/4/2010](file:///p%3A%5Cpprever%5C2009-10%5C3964_20100204.docx)

[4/15/2010](file:///p%3A%5Cpprever%5C2009-10%5C3964_20100415.docx)

[5/5/2010](file:///p%3A%5Cpprever%5C2009-10%5C3964_20100505.docx)

[5/12/2010](file:///p%3A%5Cpprever%5C2009-10%5C3964_20100512.docx)

(A238, R275, H3964)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 13 TO CHAPTER 21, TITLE 46 SO AS TO UPDATE AND CLARIFY SEED ARBITRATION PROCEDURES; TO AMEND ARTICLE 1, CHAPTER 21, TITLE 46, RELATING TO GENERAL PROVISIONS OF SEED AND PLANT CERTIFICATION, SO AS TO REPLACE OBSOLETE DEFINITIONS, TO REVISE ENFORCEMENT MECHANISMS, TO CLARIFY LICENSING PROCEDURES, AND TO PROVIDE EXEMPTIONS; TO AMEND ARTICLE 3, CHAPTER 21, TITLE 46, RELATING TO LABELS AND TAGS REGARDING SEEDS AND PLANTS, SO AS TO REVISE THE LABELING REQUIREMENTS FOR SEED PRODUCTS, AND TO IMPOSE ADDITIONAL PROHIBITIONS; TO AMEND ARTICLE 5, CHAPTER 21, TITLE 46, RELATING TO ANALYSES AND TESTS REGARDING SEEDS AND PLANTS, SO AS TO DELETE REDUNDANT PROVISIONS, TO PROVIDE THAT DEPARTMENT OF AGRICULTURE OFFICIALS SHALL HAVE ACCESS TO SEED RECORDS AND SAMPLES, TO PROVIDE THAT SEED RECORDS SHALL BE MAINTAINED FOR TWO YEARS, AND TO CLARIFY WHO IS ENTITLED TO FREE SEED TESTING AT THE STATE SEED LABORATORY; TO AMEND ARTICLE 7, CHAPTER 21, TITLE 46, RELATING TO WITHDRAWAL, CONFISCATION, AND SALE OF SEEDS REGARDING SEEDS AND PLANTS, SO AS TO INCREASE PENALTIES FOR VIOLATIONS FROM A MAXIMUM OF ONE HUNDRED DOLLARS FOR EACH VIOLATION TO ONE THOUSAND DOLLARS FOR EACH VIOLATION, TO CLARIFY THE ROLE OF THE ATTORNEY GENERAL IN PROSECUTING VIOLATIONS, AND TO PROVIDE FOR INJUNCTIVE RELIEF TO PREVENT VIOLATIONS; TO AMEND ARTICLE 9, CHAPTER 21, TITLE 46, RELATING TO SEED AND PLANT CERTIFICATION, SO AS TO CLARIFY CLEMSON UNIVERSITY’S SEED AND PLANT CERTIFICATION AUTHORITY; AND TO REPEAL ARTICLE 11, CHAPTER 21, TITLE 46 RELATING TO SEED IRISH POTATOES IN CHARLESTON COUNTY.**

Be it enacted by the General Assembly of the State of South Carolina:

**Seed arbitration**

SECTION 1. Chapter 21, Title 46 of the 1976 Code is amended by adding:

“Article 13

Seed Arbitration

 Section 46‑21‑1010. (A) When a buyer claims to have been damaged by the failure of seed for planting to produce or perform as represented by the label required to be attached to seed pursuant to Section 46‑21‑215, or by warranty, or as a result of negligence, as a prerequisite to the buyer’s right to maintain a legal action against the dealer or another seller of the seed, the buyer shall first submit the claim to arbitration as provided in Section 46‑21‑1010(C)(2). The applicable period of limitations with respect to the claim must be tolled until ten days after the filing of the report of arbitration with the Commissioner as provided in Section 46‑21‑1020.

 No claim may be asserted as a counterclaim or defense in an action brought by a seller against a buyer, until the buyer has submitted a claim to arbitration as provided in this section and in Section 46‑21‑1020. Upon the buyer’s filing of a written notice of intention to assert the claim as a counterclaim or defense in the action, accompanied by a copy of the buyer’s complaint in arbitration filed pursuant to Section 46‑21‑1020(B)(1), the action must be stayed, and the applicable statute of limitations must be suspended with respect to the claim, until ten days after the filing of the report of arbitration with the Commissioner as provided in Section 46‑21‑1020.

 (B) The following notice or calling attention to the requirement for arbitration pursuant to this section must be included on the analysis label required pursuant to Section 46‑21‑215, or attached to or printed on the seed bag or package. Arbitration is not required unless this notice is included:

‘NOTICE

ARBITRATION/CONCILIATION/MEDIATION REQUIRED BY

SEVERAL STATES

 Pursuant to the seed law of several states arbitration, mediation, or conciliation is required as a prerequisite to maintaining a legal action based upon the failure of seed to which this notice is attached to produce as represented. The consumer shall file a complaint along with the required filing fee, if applicable, with the Commissioner of Agriculture, Seed Commissioner, or Chief Agricultural Officer within that time as to permit inspection of the crops, plants, or trees by the designated agency and the seedsman from whom the seed was purchased. A copy of the complaint must be sent to the seller by certified or registered mail or as otherwise provided by state statute.’

 (C) Effect of arbitration.

 (1) The report of arbitration is binding upon all parties who have agreed to binding arbitration in a contract governing the sale of the seed.

 (2) In the absence of an agreement to be bound by arbitration, a buyer may commence legal proceedings against a seller or assert the claim as a counterclaim or defense in an action brought by the seller, at any time after the receipt of the report of arbitration.

 (3) In litigation involving a complaint which has been the subject of arbitration pursuant to this section, a party may offer into evidence the facts of the arbitration report. The court may give weight to the committee’s findings and recommendations as to damages and costs as the court may see fit based upon all the evidence before the court. The court also may consider the findings of the committee with respect to the failure of a party to cooperate in the arbitration proceedings, including the findings as to the effect of delay in filing the arbitration claim upon the committee’s ability to determine the facts of the case.

 Section 46‑21‑1020. (A) The Commissioner shall appoint an arbitration committee composed of five members and five alternate members. One member and one alternate must be appointed upon the recommendation of each of the following:

 (1) the Dean of Extension, College of Agriculture, Clemson University;

 (2) the Dean of Research, College of Agriculture, Clemson University;

 (3) the President of the Seedsman’s Association of South Carolina, or if there is no association, then a seedsman residing in this State who is designated by the President of the American Seed Trade Association;

 (4) the president of a farmer organization of South Carolina as the Commissioner may determine to be appropriate; and

 (5) the Commissioner.

 Each alternate member shall serve only in the absence of the member for whom the person is an alternate. The committee shall elect a chairman and a secretary from its membership. The chairman shall conduct meetings and deliberations of the committee and direct all other activities. The secretary shall keep accurate records of all meetings and deliberations and perform other duties for the committee as the chairman may direct. All hearings must be taped with an audio recorder for the purpose of establishing a record. The purpose of the committee is to conduct arbitration as provided in this section. The committee may be called into session by or at the direction of the Commissioner or upon direction of its chairman to consider matters referred to it by the Commissioner or the chairman in accordance with this section.

 (B) Procedures.

 (1) A buyer may invoke arbitration by filing a sworn complaint with the Commissioner together with a filing fee of fifty dollars. The buyer shall serve a copy of the complaint upon the seller by certified mail. Except in the case of seed which has not been planted, the claim must be filed in time to permit effective inspection of the plants under field conditions. The statute of limitations for filing a claim with the seed arbitration committee is one year from the date of planting. Failure to file a timely claim will preclude the seed arbitration committee from hearing the complaint.

 (2) Within fifteen days after receipt of a copy of the complaint, the seller shall file with the Commissioner an answer to the complaint and serve a copy of the answer upon the buyer by certified mail.

 (3) The Commissioner shall refer the complaint and answer to the committee for investigation, findings, and recommendations.

 (4) Upon referral of a complaint for investigation, the committee shall make a prompt and full investigation of the matters complained of and report its findings of fact and recommendations to the Commissioner within sixty days of referral or if a grow out is being conducted, at a later date as parties may determine. But in no instance shall a report be issued more than eighteen months after the day of filing.

 (5) The report of the committee shall include findings of fact and recommendations as to cost damages, if any.

 (6) In the course of its investigation, the committee or its members may examine the buyer and the seller on all matters which the committee may:

 (a) consider relevant;

 (b) grow to production a representative sample of the seed through the facilities of the Commissioner or designated university under the Commissioner’s supervision if considered necessary; and (c) hold informal hearings at a time and place as the committee chairman may direct upon reasonable notice to all parties.

 (7) The committee may delegate all or part of an investigation to one or more of its members. A delegated investigation must be summarized in writing and considered by the committee in its report.

 (8) The members of the committee shall receive no compensation for the performance of their duties but will be reimbursed for travel expenses.

 (9) After the committee has made its report, the Commissioner promptly shall transmit the report by certified mail to all parties.”

**Department of Agriculture**

SECTION 2. Article 1, Chapter 21, Title 46 of the 1976 Code is amended to read:

“Article 1

General Provisions

 Section 46‑21‑15. As used in this chapter, except for Article 9:

 (1) ‘Advertisement’ means all representations, other than those on the label, relating to seed within the scope of this chapter.

 (2) ‘Agricultural seed’ means grass, forage, cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this State as agriculture seeds, lawn seeds, and combinations of these seeds and may include noxious weed seeds when the Commissioner determines that the seed is being used as agricultural seed.

 (3) ‘Blend’ means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.

 (4) ‘Brand’ means a word, name, symbol, number, or design used to identify seed of one person to distinguish it from seed of another person.

 (5) ‘Bulk’ means a volume of seed in a container larger than a typical individual packing unit for that kind, such as bulk bags and boxes, bins, trucks, railcars, or barges.

 (6) ‘Certified seed’, ‘registered seed’, or ‘foundation seed’ means seed that has been produced and labeled in accordance with the procedures and in compliance with the regulations of an agency authorized by the laws of this State or the laws of another state.

 (7) ‘Certifying agency’ means:

 (a) an agency authorized under the laws of a state, territory or possession to officially certify seed and which has standards and procedures approved by the U.S. Secretary of Agriculture to assure the genetic purity and identity of the seed certified; or

 (b) an agency of a foreign country determined by the U.S. Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under subitem (a).

 (8) ‘Coated seed’ or ‘encrusted seed’ means seed that has been covered, by at least one layer of material that obscures the original shape and size of the seed resulting in a substantial weight increase. The coating or encrusting may contain biologicals, identifying colorants or dyes, pesticides, polymers, or other ingredients.

 (9) ‘Complete record’ means all information that relates to the origin, treatment, germination, purity, kind, and variety of each lot of agriculture seed sold in this State, or which relates to the treatment, germ, kind, and variety of each lot of vegetable and flower seed sold in this State. This information includes seed samples and records of declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests, and examinations.

 (10) ‘Conditioning’ means drying, cleaning, scarifying, and other operations which could change the purity or germination of the seed and require the seed lot to be retested to determine the label information.

 (11) ‘Cost damages’ means actual expenditures by the grower for the cost of seed, labor, equipment, fertilizer, insecticide, herbicide, land rent and other directly related costs, less the value received from the crop actually grown and sold.

 (12) ‘Date of test’ means the month and year the percentage of germination appearing on the label was obtained by laboratory test.

 (13) ‘Dormant’ means viable seed, excluding hard seed, which fail to germinate when provided the specified germination conditions for the kind of seed in question.

 (14) ‘Film‑coated seed’ means seed that retains its shape and general size with minimal weight gain. The film coating may contain biologicals, identifying colorants, dyes, pesticides, polymers, or other ingredients. The coating shall result in a continuous covering.

 (15) ‘Flower seeds’ includes seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower or wildflower seeds in this State.

 (16) ‘Genuine grower declaration’ means a statement signed by the grower which gives for each lot of seed the lot number, kind, variety (if known), origin, weight, year of production, date of shipment, and to whom the shipment was made.

 (17) ‘Germination’ means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, or indicative of the ability to produce a normal plant under favorable conditions.

 (18) ‘Hermetically sealed seed’ means seed packed in a moisture‑proof container when the container and the seed in the container meet the requirements specified by regulation.

 (19) ‘Hard seeds’ means seeds which remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

 (20) ‘Hybrid’ means the first generation seed of a cross produced by controlling the pollination and by combining:

 (a) two or more inbred lines;

 (b) one inbred or a single cross with an open pollinated variety; or

 (c) two varieties or species, except open‑pollinated varieties of corn (Zea mays). The second generation or subsequent generations from these crosses are not regarded as hybrids. Hybrid designations are treated as variety names.

 (21) ‘Inert matter’ means all matter not seed, which includes broken seed, sterile florets, chaff, fungus bodies, and stones as determined by methods defined by regulation.

 (22) ‘Inoculated seed’ means seed which has received a coating of a preparation containing a microbial production.

 (23) ‘Kind’ means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, oats, alfalfa, and timothy.

 (24) ‘Labeling’ means a tag or other device attached to or written, stamped, or printed on a container or accompanying a lot of bulk seed purporting to set forth the information required on the seed label by this act, and it may include other information relating to the labeled seed.

 (25) ‘Lawn and turf’ means seeds of the grass family (Poaceae) that are used within the industry for lawn and turf applications.

 (26) ‘Lot’ means a definite quantity of seed identified by a unique lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear in the labeling.

 (27) ‘Mix’, ‘mixed’, or ‘mixture’ means seed consisting of more than one kind, each in excess of five percent by weight of the whole.

 (28) ‘Noxious weed seeds’ are divided into the following two classes:

 (a) ‘Prohibited noxious weed seeds’ means those seeds that are prohibited from being present in agricultural, vegetable, or flower seed and are the seeds of weeds that are highly destructive and difficult to control by good cultural practices and the use of herbicides.

 (b) ‘Restricted noxious weed seeds’ means those weed seeds that are objectionable in agricultural crops, lawns, and gardens of this State and may be controlled by good cultural practices or the use of herbicides.

 (29) ‘Official sample’ means a sample taken from a lot of seed by a representative of a seed regulatory official of a state or federal government agency following prescribed methods.

 (30) ‘Origin’ means the state, District of Columbia, Puerto Rico, possession of the United States or the foreign country where the seed was grown. Regional distinctions also may be included.

 (31) ‘Other crop seed’ means seeds of plants grown as crops, other than the kind or variety included in the pure seed, as determined by methods defined by regulation.

 (32) ‘Pelleted seed’ means coated or encrusted seed that also improves plantability or singulation of the seed.

 (33) ‘Person’ means an individual, partnership, corporation, company, association, receiver, trustee, or agent.

 (34) ‘Private hearing’ means a discussion of facts between the person charged and the enforcement officer.

 (35) ‘Pure seed’ means seed exclusive of inert matter and all other seeds not of the seed being considered as determined by methods defined by regulation.

 (36) ‘Seizure’ means a legal process carried out by court order against a definite amount of seed.

 (37) ‘Stop sale’ means an administrative order provided by law restraining the sale, use, disposition, and movement of a definite amount of seed.

 (38) ‘Submitted sample’ means a nonofficial sample that does not guarantee chain of custody.

 (39) ‘Treated’ means that the seed has received an application of a substance or that it has been subjected to a process for which a claim is made.

 (40) ‘Treated seed’ means seed with a minimal covering of material whose objective is to reduce or control disease organisms, insects, or other pests attacking the seed or seedlings growing and may contain identifying colorants or dyes.

 (41) ‘Type’ means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

 (42) ‘Variety’ means a subdivision of a kind which is distinct, uniform, and stable.

 (a) ‘Distinct’ means the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge.

 (b) ‘Uniform’ means that the variations in essential and distinctive characteristics are describable.

 (c) ‘Stable’ means the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

 (43) ‘Vegetable seeds’ means the seeds of those crops which are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this State.

 (44) ‘Weed seed’ means the seeds of all plants generally recognized as weeds within this State, as determined by methods defined by regulation, and includes the prohibited and restricted noxious weed seeds.

 Section 46‑21‑25. (A) The Commissioner of Agriculture or his authorized agents shall enforce this chapter and execute its provisions and requirements. The Commissioner or his authorized agents shall:

 (1) sample, inspect, make analysis of, and test seeds subject to the provisions of this chapter that are transported, sold or offered or exposed for sale within the State for sowing purposes, at such time and place and to the extent as he may deem necessary to determine whether the seeds are in compliance with provisions of this chapter, and promptly to notify the person who sold, offered, or exposed the seed for sale and, if appropriate, the person who labeled or transported the seed, of a violation, stop sale order, or seizure; and

 (2) prescribe, amend, adopt, and publish after following due public notice:

 (a) regulations governing the method of sampling, inspecting, analyzing, testing, and examining seeds subject to provisions of this chapter and the tolerances to be used and other regulations necessary to secure efficient enforcement of this chapter;

 (b) a prohibited and restricted noxious weed list;

 (c) regulations establishing reasonable standards of germination for agriculture, vegetable seeds, and flower seeds;

 (d) regulations for labeling flower seeds in respect to kind and variety or type and performance characteristics as required by Section 46‑21‑215;

 (e) a list of the flower seeds subject to the flower seed germination labeling requirements of Section 46‑21‑215; and

 (f) a list of the vegetable seeds subject to the vegetable seed germination labeling requirements of Section 46‑21‑215.

 (B) For the purpose of carrying out the provisions of this chapter, state seed law enforcement officers are authorized to:

 (1) enter upon a public or private premises during regular business hours in order to have access to seeds and the records subject to this chapter and regulations under them, a truck or other conveyor by land, water, or air at any time when the conveyor is accessible, for the same purpose;

 (2) issue and enforce a written or printed ‘stop sale’ order to the owner or custodian of a lot of seed subject to the provisions of this chapter when the enforcement officer finds a violation of the provisions of this chapter or regulations promulgated pursuant to this chapter, which order prohibits further sale, conditioning, and movement of the seed, except on approval of the enforcing officer, until the officer has evidence that the law has been complied with, and he has issued a release from the ‘stop sale’ order of the seed, provided that in respect to seed which has been denied sale, conditioning, and movement as provided in this item, the owner or custodian of the seed shall have the right to appeal from the order to a court of competent jurisdiction in the locality in which the seeds are found, seeking a judgment as to the justification of the order and for the discharge of the seeds from the order prohibiting the sale, condition, and movement in accordance with the findings of the court. The provisions of this item must not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this chapter;

 (3) establish and maintain a seed testing laboratory, to employ qualified persons, and to incur expenses as may be necessary to comply with the provisions of this chapter;

 (4) make or provide for purity and germination tests of seed for farmers and dealers on request; to promulgate regulations governing the testing; and to fix and collect charges, where applicable, for the tests made. Fees collected for these purposes must be set by regulation, and the fees must be retained by the Department of Agriculture to cover the costs of administering this chapter; and

 (5) cooperate with the United States Department of Agriculture and other agencies in seed law enforcement.

 (C) All authority vested in the Commissioner by virtue of the provisions of this chapter may with like force and effect be executed by Department of Agriculture employees as the Commissioner may designate.

 (D) This chapter and its provisions are of statewide concern and occupy the whole field of regulation regarding the registration, licensing, labeling, sale, storage, transportation, distribution, notification of use, and use of seeds to the exclusion of all local regulations. Except as otherwise specifically provided in this chapter, no ordinance or regulation of another political subdivision may prohibit or in any way attempt to regulate a matter relating to the registration, certification, licensing, labeling, sale, storage, transportation, distribution, notification of use or use of seeds, if any of these ordinances, laws, or regulations are in conflict with this chapter.

 Section 46‑21‑35. The Department of Agriculture shall maintain a seed laboratory with necessary equipment for carrying out the provisions of this chapter.

 Section 46‑21‑45. (A) A person, except as provided in subsection (D), before selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of agricultural, vegetable, or flower seed, or mixture thereof, shall first register each place of business in this State with the Department of Agriculture. The application for a seed license shall include the name and location of each place of business at which the seed is sold, distributed for sale, offered for sale, exposed for sale, or handled for sale. The application for a seed license must be accompanied by an annual license fee for each place of business based on the gross receipts from the sale of seed for the last preceding license year. The fees must be set forth in the regulations promulgated pursuant to this chapter. For places of business not previously in operation, the fee will be based on anticipated receipts for the first license year.

 (B) Payment of the licensing fee and a written receipt from the department for the fee shall constitute a sufficient permit for the dealer to engage in or continue in the business of selling, distributing for sale, offering or exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, or flower seed within the State.

 (C) A person selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, or flower seed in the State, is subject to the requirements of this section.

 (D) The provisions of this chapter shall not apply to on‑farm sales by farmers who sell uncleaned, unprocessed, unpackaged, and unlabeled seed.

 Section 46‑21‑55. (A) The provisions of Sections 46‑21‑215 and 46‑21‑217 do not apply to:

 (1) seed or grain not intended for sowing purposes;

 (2) seed in storage in, or being transported or consigned to a cleaning or conditioning establishment for cleaning or conditioning, provided, that the invoice or label accompanying a shipment of said seed bears the statement ‘seeds for conditioning’; and provided that any labeling or other representation which may be made with respect to the uncleaned or unconditioned seed shall be subject to this chapter; or

 (3) a carrier in respect to seeds transported or delivered for transport in the ordinary course of its business as a carrier; provided, that the carrier is not engaged in producing, conditioning, or marketing seeds subject to the provisions of this chapter.

 (B) A person is not subject to the penalties of this chapter for having sold or offered for sale seed subject to provisions of this chapter which were incorrectly labeled or represented as to kind, species, and subspecies, if appropriate, variety, type, or origin, if required, which seeds cannot be identified by examination, unless he has failed to obtain an invoice, genuine growers declaration, or other labeling information and to take precautions as may be reasonable to insure the identity to be that stated. A genuine grower’s declaration of variety shall affirm that the grower holds records of proof concerning parent seed.

 Section 46‑21‑65. Clemson University shall cooperate with the South Carolina Foundation Seed Association in a foundation seed program responsible for the fostering of the production, processing, and distribution of pure varieties of crop seeds and plants as Clemson University recommends for increase in this State. The South Carolina Department of Agriculture will assist in these efforts as directed by the Commissioner or his designee.”

**Labels and tags**

SECTION 3. Article 3, Chapter 21, Title 46 of the 1976 Code is amended to read:

“Article 3

Labels and Tags

 Section 46‑21‑215. Each container of agricultural, vegetable, and flower seeds were sold, offered for sale, or exposed for sale, or transported within this State for sowing purposes shall state or have affixed in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information, which statement may not be modified or denied in the labeling or on another label attached to the container.

 (A) For all agricultural, vegetable, and flower seeds treated as defined in this chapter for which a separate label may be used:

 (1) a word or statement indicating that the seed has been treated;

 (2) the commonly accepted coined, chemical, abbreviated chemical, or generic name of the applied substance or description of the process used;

 (3) if the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement such as ‘do not use for food, feed, or oil purposes’. The caution for mercurials and similarly toxic substances must be a poison statement or symbol; and

 (4) if the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective, date of expiration.

 (B) For agricultural seeds, except for cool season lawn and turf grass seeds and mixtures as provided in item (C) and for hybrids which contain less than ninety‑five percent hybrid seed as provided in item (I):

 (1) the name of the kind and variety for each agricultural seed component present in excess of five percent of the whole and the percentage by weight of each; in order of its predominance where more than one component is required to be named the word ‘mixture’ or the word ‘mixed’ must be shown conspicuously on the label. Hybrids must be labeled as hybrids;

 (2) lot number or other lot identification;

 (3) origin, state or foreign country, if known; if unknown, the fact must be stated;

 (4) percentage by weight of all weed seeds;

 (5) the name and rate of occurrence per pound of each kind of restricted noxious weed seed present;

 (6) percentage by weight of other crop seed;

 (7) percentage by weight of inert matter;

 (8) the total of subitems (1), (4), (6), and (7) must equal one hundred percent;

 (9) for each named agricultural seed:

 (a) percentage of germination, exclusive of hard seed;

 (b) percentage of hard seeds, if present; and

 (c) the calendar month and year the test was completed to determine the percentages. Following subitems (a) and (b) the ‘total germination and hard seed’ may be stated, if desired; and

 (10) name and address of the person who labeled the seed, or who sells, offers or exposes the seed for sale within this State.

 (C) For cool season lawn and turf grasses including Kentucky bluegrass, red fescue, chewing fescue, hard fescue, tall fescue, perennial ryegrass, intermediate ryegrass, annual ryegrass, colonial bentgrass, creeping bentgrass, and mixtures of them:

 (1) for single kinds, the name of the kind or kind and variety;

 (2) for mixtures:

 (a) the terms ‘mix’, ‘mixed’, or ‘mixture’ or ‘blend’ must be stated with the name of the mixture;

 (b) the heading ‘Pure Seed’ and ‘Germination’ or ‘Germ’ must be used in the proper places;

 (c) commonly accepted name of kind and variety of each agricultural seed component in excess of five percent of the whole, and the percentage by weights of pure seed in order of its predominance;

 (3) lot number or other lot identification;

 (4) origin, state or foreign country, if known; if unknown, it must be stated;

 (5) percentage by weight of all weed seeds;

 (6) the name and rate of occurrence per pound of each kind of restricted noxious weed seed present;

 (7) percentage by weight of other crop seed;

 (8) percentage by weight of inert matter;

 (9) the total of subitems (1), (2), (5), (7), and (8) must be one hundred percent; and

 (10) for each agricultural seed named under subitem (1) or (2):

 (a) percentage of germination, exclusive of hard seed;

 (b) percentage of hard seed, if present;

 (c) calendar month and year the test was completed to determine percentages. Oldest test date must be used;

 (d) the statement ‘Sell by \_\_\_\_\_\_\_\_\_’, which may be no more than fifteen months from the date of test exclusive of the month of test; and

 (e) name and address of the person who labeled the seed, or who sells, offers or exposes said seed for sale within the State.

 (D) For agricultural seeds that are coated:

 (1) percentage by weight of pure seeds with coating material removed;

 (2) percentage by weight of coating material;

 (3) percentage by weight of inert material exclusive of coating material; and

 (4) in addition to the provisions of this subsection, labeling of coated seed must comply with the requirements of subsections (A), (B), and (C).

 (E) For vegetable seeds in packets as prepared for use in home gardens or household plantings or vegetable seeds in preplanted containers, mats, tapes, or other plant devices:

 (1) name of kind and variety of seed;

 (2) lot identification, such as by lot number or other means;

 (3)(a) the calendar month and year the germination test was completed and the statement ‘Sell by \_\_\_\_\_\_\_\_\_’, which may be no more than twelve months from the date of test exclusive of the month of test;

 (b) the year for which the seed was packaged for sale as ‘Packed for \_\_\_\_\_\_\_\_\_’ and the statement ‘Sell by\_\_\_\_\_\_\_\_\_’ which, must be for a calendar year; or

 (c) the percentage of germination and the calendar month the test was completed to determine the percentage, provided that the germination test must have been completed within twelve months exclusive of the month of test;

 (4) name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this State; and

 (5) for seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.

 (F) For vegetable seeds in containers other than packets prepared for use in home gardens or household planting and other than preplanted containers, mats, tapes, or other planting devices:

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

 (2) lot number or other lot identification;

 (3) for each named vegetable seed:

 (a) percentage of germination exclusive of hard seed;

 (b) percentage of hard seed, if present;

 (c) the calendar month and year the test was completed to determine the percentages; and

 (d) germination test must have been completed within twelve months exclusive of the month of test.

Following subitems (a) and (b) the ‘total germination and hard seed’ may be stated, if desired;

 (4) name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within this State; and

 (5) the labeling requirements for vegetable seeds in containers of more than one pound is deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.

 (G) For flower seeds in packets prepared for use in home gardens or household plantings or flower seeds in preplanted containers, mat, tapes, or other planting devices:

 (1) for all kinds of flower seeds:

 (a) the name of the kind and variety or a statement of type and performance characteristics as prescribed in regulations promulgated pursuant to the provisions of this chapter;

 (b)(i) the calendar month and year the germination test was completed and the statement ‘Sell by \_\_\_\_\_\_\_\_\_’, which may be no more than twelve months from the date of test exclusive of the month of test;

 (ii) the year the seed was packed for sale as ‘Packed for \_\_\_\_\_\_\_\_\_’ and the statement ‘Sell by \_\_\_\_\_\_\_\_\_’, which must be for a calendar year; or

 (iii) the percentage of germination and the calendar month and year the test was completed to determine the percentage provided that the germination test must have been completed within twelve months exclusive of the month of test;

 (c) the name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within the State; and

 (2) for seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.

 (H) For flower seeds in containers other than packets and other than preplanted containers, mats, tapes, or other planting devices and not prepared for use in home flower gardens or household plantings:

 (1) the name of the kind and variety or a statement of type and performance characteristics as prescribed by regulations promulgated pursuant to the provisions of this chapter, and for wildflowers, the genus and species and subspecies, if appropriate;

 (2) the lot number or other lot identification;

 (3) for wildflower seed only with a pure seed percentage of less than ninety percent:

 (a) the percentage, by weight, of each component listed in order of their predominance;

 (b) the percentage by weight of weed seed if present; and

 (c) the percentage by weight of inert matter;

 (4) for seeds for which standard testing procedures are prescribed:

 (a) percentage of germination exclusive of hard or dormant seed;

 (b) percentage of hard or dormant seed, if present;

 (c) the calendar month and year that the test was completed to determine the percentages; germination test must have been completed within twelve months exclusive of the month of test; and

 (5) name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this State.

 (I) For agricultural and vegetable hybrid seed which contain less than ninety‑five percent hybrid seed:

 (a) kind or variety must be labeled as ‘hybrid’;

 (b) the percent which is hybrid must be labeled parenthetically in direct association following named variety; such as, ‘Comet (85% hybrid)’; and

 (c) varieties in which the pure seed contain less than seventy‑five percent hybrid seed may not be labeled hybrids.

 Section 46‑21‑217. (A) It is unlawful for a person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seeds within this State:

 (1) if subject to the germination requirement of Section 46‑21‑215, unless otherwise stipulated in the section, the test to determine the percentage of germination required by Section 46‑21‑215 must have been completed within a nine month period exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation. This prohibition does not apply to agricultural or vegetable seeds in hermetically sealed containers. Agricultural or vegetable seeds packaged in hermetically sealed containers under the conditions defined in regulations promulgated pursuant to the provisions of this chapter may be sold, exposed for sale or offered for sale or transportation for a period of thirty‑six months after the last day of the month that the seeds were tested for germination prior to packaging. If seeds in hermetically sealed containers are sold, exposed for sale, or offered for sale or transportation more than thirty‑six months after the last day of the month in which they were tested prior to packaging, they must have been retested within a nine‑month period, exclusive of the calendar month in which the retest was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation;

 (2) not labeled in accordance with the provisions of this chapter or having false or misleading labeling;

 (3) pertaining to which there has been false or misleading advertisement;

 (4) consisting of or containing prohibited noxious weed seeds, subject to recognized tolerances;

 (5) consisting of or containing restricted noxious weed seeds per pound in excess of the number prescribed by regulations promulgated pursuant to this chapter;

 (6) containing more than two percent by weight of all weed seeds;

 (7) if any labeling, advertising, or other representation subject to this chapter represents the seed to be certified seed or any class thereof unless:

 (a) it has been determined by a seed certifying agency that the seed conformed to standards of purity and identified as to kind, species and subspecies, if appropriate, or variety in compliance with the regulations of the agency pertaining to the seed; and

 (b) that the seed bears an official label issued for the seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species and subspecies, if appropriate, or variety; and

 (8) labeled with a variety name but not certified by an official seed certifying agency when it is a variety of which a U.S. certificate of plant variety protection under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.) specifies sale only as a class of certified seed; provided, that 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.

 (B) It is unlawful for a person in this State to:

 (1) detach, alter, deface, or destroy any label provided for in this chapter or the regulations promulgated thereunder, or to alter or substitute seed in a manner that may defeat the purpose of this chapter;

 (2) use relabeling stickers without having both the calendar month and year the germination test was completed, the sell by date, as stated in Section 46‑21‑215, and the lot number that matches the existing, original lot number. A relabeling may not occur more than one time;

 (3) disseminate any false or misleading advertisements concerning seeds subject to this chapter in any manner or by any means;

 (4) hinder or obstruct in any way, an authorized person in the performance of his duties pursuant to this chapter;

 (5) fail to comply with a ‘stop sale’ order or to move or otherwise handle or dispose of any lot of seed held under a ‘stop sale’ order or attached tags, except with express permission of the enforcing officer, and for the specified purpose;

 (6) use the word ‘trace’ or the phrase ‘contains less than .01%’ as a substitute for a required statement;

 (7) use the word ‘type’ in any labeling in connection with the name of any agricultural seed variety; or

 (8) alter or falsify a seed label, seed test, laboratory report, record, or other document to create a misleading impression as to kind, kind of variety, history, quality, or origin of seed.”

**Analyses and tests of seeds**

SECTION 4. Article 5, Chapter 21, Title 46 of the 1976 Code is amended to read:

“Article 5

Analyses and Tests

 Section 46‑21‑315. Before being offered for sale or distribution, all seeds sold in this State first must be examined and tested according to the provisions of this chapter.

 Section 46‑21‑325. A person whose name appears on the label as handling agricultural, vegetable, or flower seed subject to this chapter shall keep for a period of two years complete records of each lot of agricultural, vegetable, or flower seed handled and keep for one year a file sample of each lot of seed after final disposition of the lot. All records and samples pertaining to the shipment or shipments involved must be accessible for inspection by the Commissioner or his agent during customary business hours.

 Section 46‑21‑335. The Commissioner of Agriculture may publish or cause to be published, at his discretion, the results of the examinations and tests made of samples of agricultural, vegetable, or flower seeds or mixtures of agricultural seeds drawn as provided for in Section 46‑21‑325, together with other information he may deem advisable.

 Section 46‑21‑345. A resident of this State may have samples of seeds tested for germination and purity free of charge in the State Seed Laboratory. In state firms, corporations, and other entities submitting seed samples for testing by the State Seed Laboratory must be charged at a rate established by regulation. Out‑of‑state individuals and entities will be charged at a similar rate. Charges for special tests performed by the State Seed Laboratory also must be established by regulation. All tests used must be established by the Association of Official Seed Analysts (AOSA) through the Rules for Testing Seed. The fees charged for these seed tests must be retained by the Department of Agriculture for the purposes of carrying out the provisions of this chapter.”

**Withdrawal, confiscation, and sale of seeds**

SECTION 5. Article 7, Chapter 21, Title 46 of the 1976 Code is amended to read:

“Article 7

Withdrawal, Confiscation, and Sale of Seeds; Penalties

 Section 46‑21‑415. To promote normal crop production, the Commissioner or his designee, after providing reasonable notice, may withdraw impure seed or seed that lack reasonable germination even though they may have been properly labeled.

 Section 46‑21‑425. Agricultural, vegetable, or flower seed that is sold, offered, or exposed for sale or distribution in this State without complying with the requirements of Articles 1, 3, 5, and 7 of this chapter may be seized and condemned and disposed of or destroyed at the discretion of the Commissioner of Agriculture, or his authorized representative, and the proceeds from the sale must be deposited into the state treasury for the use of the Department of Agriculture. The Commissioner may in his discretion release the seed withdrawn when the requirements of this chapter have been complied with and upon payment of all the costs or expenses incurred in a proceeding connected with seizure and withdrawal.

 Section 46‑21‑435. A lot of seed not in compliance with the provisions of this chapter are subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the locality in which the seed is located. In the event the court finds the seed to be in violation of this chapter and orders the condemnation of the seed, it must be denatured, processed, destroyed, relabeled, or disposed of in compliance with the laws of this State, provided, that in no instance shall the court order the disposition of the seed without first having given the claimant an opportunity to apply to the court for the release of the seed or permission to condition or relabel it in compliance with this chapter.

 Section 46‑21‑445. A violation of the provisions of this chapter, other than Article 9, is deemed a misdemeanor and punishable by a fine of not more than one thousand dollars.

 Section 46‑21‑455. When the Commissioner finds that a person has violated a provision of this chapter, he or his authorized agent or agents may institute proceedings in a court of competent jurisdiction in the locality in which the violation occurred or where the seed is located; or the Commissioner may file with the Attorney General with a view toward prosecution, evidence as necessary; provided, however, that no prosecution pursuant to this chapter may be instituted without the defendant first having been given an opportunity to appear before the Commissioner or his authorized agent to introduce evidence either in person or by agent or attorney at a private hearing. If, after the hearing, or without a hearing in case the defendant or his agent or attorney fails or refuses to appear, the Commissioner is of the opinion that the evidence warrants prosecution, he shall proceed as provided in this chapter.

 The Attorney General or, in his discretion and at his direction, the attorney of the county or city in which the alleged violation has occurred, shall institute proceedings immediately against the person charged with the violation. The proceedings for violations may be instituted after exhaustion of all remedies with the Commissioner has occurred. After judgment by the court in a case arising pursuant to this chapter, the Commissioner shall publish the information pertinent to the issuance of the judgment by the court in the media as he may designate.

 Section 46‑21‑465. Prosecutions for violations of Articles 1, 3, 5, or 7 of this chapter, if the evidence of violations is based on tests or analyses, must be instituted as follows: When the Commissioner of Agriculture finds that the articles have been violated, as shown by test examination or analysis, he shall give notice to the person in possession of the seed, designating a time and place for a hearing. This hearing must be private, and the person involved shall have the right to introduce evidence, either in person, by agent or attorney. If, after the hearing, or without the hearing in case the person fails or refuses to appear, the Commissioner decides that the evidence warrants prosecution, he shall proceed as provided in Section 46‑21‑455.

 Section 46‑21‑475. When in the performance of his duties the Commissioner applies to a court for a temporary or permanent injunction restraining a person from violating or continuing to violate the provisions of this chapter or the regulations promulgated pursuant to this chapter, the injunction is to be issued without bond.”

**Seed and plant certification**

SECTION 6. Article 9, Chapter 21, Title 46 of the 1976 Code is amended to read:

“Article 9

Seed and Plant Certification

 Section 46‑21‑615. Clemson University shall maintain a program of seed and plant certification which shall have as its aim the fostering of the production and distribution of pure varieties of seeds and plants in South Carolina.

 Section 46‑21‑625. In order to carry out the program the University may employ the necessary personnel, establish and promulgate regulations, and provide other facilities necessary for the certification of seeds and plants and for aiding in the distribution and promotion of the use of certified seeds and plants.

 Section 46‑21‑635. Insofar as the State Department of Agriculture, the Clemson University Cooperative Extension Service, the Clemson University Experiment Station, and the State Crop Pest Commission have to do with the sampling, testing, breeding, production, certification, and distribution of seeds and plants, these agencies shall actively cooperate with the University in carrying out the purposes of this article.

 Section 46‑21‑645. Certification of seeds and plants in regard to germination and mechanical purity of the seed depends upon the reports of the seed laboratory of the State Department of Agriculture. Seeds may not be certified by the University unless the germination and purity test reports of the seed laboratory of the department indicate that the seeds comply with the agricultural seed laws of this State.

 Section 46‑21‑655. It is a misdemeanor, punishable by fine or imprisonment, in the discretion of the court, for a person selling seeds or plants in this State to use evidence of certification, such as a blue tag or the word ‘certified’, or both, on a package of seeds or plants unless the seeds or plants are inspected and certified as provided for in this article or by a similar legally constituted agency of another state or foreign country. The duty of enforcing the provisions of this article is vested in the Commissioner of Agriculture.

 Section 46‑21‑665. (1) The terms ‘certification’ and ‘certified’ as applied to seeds and plants pursuant to this article are defined as a guarantee that all necessary precautions have been taken to see that the seeds and plants conform to commonly recognized standards of quality for seeds and plants as established by Clemson University.

 (2) The term ‘seed’ as used in this article refers to the true seeds of all field crops, vegetables, flowers, or other plants.

 (3) The term ‘plant’ includes seedlings, nursery stock, roots, tubers, bulbs, cuttings, and other plant parts used in the propagation of field crops, vegetables, fruits, flowers, or other plants.

 (4) The term ‘variety’ means its original meaning and includes strains of varieties which are sufficiently different from the parent variety to justify special designation.”

**Repeal**

SECTION 7. Article 11, Chapter 21, Title 46 of the 1976 Code is repealed.

**Time effective**

SECTION 8. This act takes effect upon approval by the Governor and applies to all claims or actions arising after that date.

Ratified the 1st day of June, 2010.

Became law without the signature of the Governor -- 6/8/2010.

\_\_\_\_\_\_\_\_\_\_