

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-210
HOUSE BILL 1055

AN ACT TO PROVIDE FOR THE INVESTIGATION AND RESOLUTION OF
CLAIMS RESULTING FROM DEFECTIVE SEED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-277.2 reads as rewritten:

"§ 106-277.2. Definitions.

As used in this Article, unless the context clearly requires otherwise:

- (1) The term 'advertisement' means all representations, other than those required on the label, disseminated in any manner or by any means, relating to seed within the scope of this Article.
- (2) The term 'agricultural seeds' shall include the seed of grass, forage, cereal, fiber crops and any other kinds of seeds commonly recognized within this State as agricultural or field seeds, lawn seeds and mixtures of such seeds, and may include noxious-weed seeds when the Commissioner determines that such seed is being used as agricultural seed.
- (3) The term 'blend' means a mechanical combination of varieties identified by a blend designation in which each component variety is equal to or above the minimum standard germination for its class; which is always present in the same percentage in each lot identified by the same 'blend' designation; and for which research data supports an advantage of the 'blend' over the singular use of either component variety. 'Blend' designations shall be treated as variety names.
- ~~(3)~~(3a) The term 'Board' means the North Carolina Board of Agriculture as established under G.S. 106-2.
- (3b) The term 'brand' means an identifying numeral, letter, word, or any combination of these, used with the word 'brand' to designate source of seeds.
- (3c) The term 'buyer' means a person who buys agricultural or vegetable seed for the purpose of planting and growing the seed.
- (4) The terms 'certified seeds,' 'registered seeds' or 'foundation seeds' mean seed that has been produced and labeled in accordance with the procedures and in compliance with the requirements of an official seed-certifying agency.

- (5) The term 'clone' means all the individuals derived by vegetative propagation from a single, original individual.
- (6) The term 'code designation' means a series of numbers or letters approved by the United States Department of Agriculture and used in lieu of the full name and address of the person who labels seeds, as required in this Article in G.S. 106-277.5(10).
- (7) The term 'Commissioner' means the Commissioner of Agriculture of North Carolina or his designated agent or agents.
- (8) The term 'date of test' means the month and year the percentage of germination appearing on the label was obtained by laboratory test.
- (9) The term 'dealer' or 'vendor' shall mean any person, not classified as a grower, who buys, sells or offers for sale any seed for seeding purposes and shall include any person who has seed grown under contract for resale for seeding purposes.
- (9a) The term 'Department' means the Department of Agriculture and Consumer Services as established in G.S. 106-2.
- ~~(9a)~~(9b) The term 'distribute' means to provide seed for seeding purposes to more than five persons, but shall not include seed provided for educational purposes.
- (10) The term 'germination' means the percentages by count of seeds under consideration, determined to be capable of producing normal seedlings in a given period of time and under normal conditions.
- (11) The term 'grower' shall mean any person who produces seed, directly as a landlord, tenant, sharecropper or lessee, which are offered or exposed for sale.
- (12) The term 'hard seeds' means seeds which, because of hardness or impermeability, do not absorb moisture and germinate but remain hard during the normal period of germination.
- (13) The term 'hybrid' means the first generation seed of a cross produced by controlling cross-fertilization within prescribed limits and combining (i) two or more inbred lines or clones, or (ii) one or more inbred lines or clones with an open-pollinated variety, or (iii) two or more varieties or species, clonal or otherwise, except open-pollinated varieties of normally cross-fertilized species. The second-generation or subsequent-generation seed from such crosses shall not be designated as hybrids. Hybrid designations shall be treated as variety names. The Board of Agriculture shall prescribe minimum limits of pollination control (percent hybridity) for each hybridized species which will qualify to be labeled 'hybrid'.
- (14) The term 'inbred line' means a relatively stable and pure breeding strain resulting from not less than four successive generations of controlled self-pollination or four successive generations of backcrossing in the case of male sterile lines or their genetic equivalent.

- (15) The term 'in bulk' refers to loose seed in bins, or open containers, and not to seed in bags or packets.
- (16) The term 'inert matter' means all matter not seeds, including broken seeds, sterile florets, chaff, fungus bodies, stones and other substances found not to be seed when examined according to procedures prescribed by rules and regulations promulgated pursuant to the provisions of this Article.
- (17) The term 'kind' means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, wheat, striate lespedeza, alfalfa, tall fescue.
- (18) The term 'labeling' includes all labels and other written, printed or graphic representations in any manner whatsoever accompanying and pertaining to any seed whether in bulk or in containers and includes representations on invoices.
- (19) The term 'lot' means a definite quantity of seed, identified by a lot number or other identification, which shall be uniform throughout for the factors which appear on the label.
- (20) The term 'mixture' means seeds consisting of more than one kind or kind and variety, each present in excess of five per centum (5%) of the whole.
- (21) The term 'North Carolina seed analysis tag' shall mean the tag designed and prescribed by the Commissioner as the official North Carolina seed analysis tag, said tag to be purchased from the Commissioner.
- (22) 'Noxious-weed seeds' shall be divided into two classes:
 - a. 'Prohibited noxious-weed seeds' are the seeds of weeds which, when established on the land, are highly destructive and are not controlled in this State by cultural practices commonly used, and shall include any crop seed found to be harmful when fed to poultry or livestock.
 - b. 'Restricted noxious-weed seeds' are the seeds of weeds which are very objectionable in fields, lawns and gardens in this State and are difficult to control by cultural practices commonly used.
- (23) The term 'official certifying agency' means
 - a. An agency authorized under the laws of a state, territory, or possession to officially certify seed 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 a.

- (24) The term 'origin' means the state, District of Columbia, Puerto Rico, possession of the United States or the foreign country where the seed was grown.
- (25) The term 'other crop seeds' means seeds of kinds or varieties of agricultural or vegetable crops other than those shown on the label as the primary kind or kind and variety.
- (26) The term 'person' shall include any individual, partnership, corporation, company, society or association.
- (27) The term 'processing' means cleaning, scarifying or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind or kind and variety without cleaning, or preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.
- (28) The term 'pure seed' means agricultural or vegetable seeds, exclusive of inert matter, weed seeds and all other seeds distinguishable from the kind or kind and variety being considered when examined according to procedures prescribed by rules and regulations promulgated pursuant to the provisions of this Article.
- (29) The term 'purity' means the name or names of the kind, type or variety and the percentage or percentages thereof, the percentage of other crop seed; the percentage of weed seeds, including noxious-weed seeds; the percentage of inert matter; and the name and rate of occurrence of each noxious-weed seed.
- (30) The terms 'recognized variety name' and 'recognized hybrid designation' mean the name or designation which was first assigned the variety or hybrid by the person who developed it or the person who first introduced it for production or sale after legal acquisition. Such terms shall be used only to designate the varieties or hybrids to which they were first assigned.
- (31) The term 'screenings' includes seed, inert matter and other materials removed from agricultural or vegetable seed by cleaning or processing.
- (32) The term 'seed offered for sale' means any seed or grain, whether in bags, packets, bins or other containers, exposed in salesrooms, storerooms, warehouses or other places where seed is sold or delivered for seeding purposes, and shall be subject to the provisions of the seed law, unless clearly labeled 'not for sale as seed.'
- (33) The term 'seizure' means a legal process carried out by court order against a definite amount of seed.
- (34) The term 'stop-sale' means an administrative order provided by law restraining the sale, use, disposition and movement of a definite amount of seed.

- (35) The term 'treated' means given an application of a substance or subjected to a process designed to reduce, control or repel disease organisms, insects or other pests which attack seeds or seedlings growing therefrom, or to improve the planting value of the seed.
- (36) The term 'variety' means a subdivision of a kind characterized by growth, plant, fruit, seed or other constant characteristics by which it can be differentiated in successive generations from other sorts of the same kind; for example, Knox Wheat, Kobe Striate Lespedeza, Ranger Alfalfa, Kentucky 31 Tall Fescue.
- (37) The term 'vegetable seeds' shall include the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seed in this State.
- (38) The term 'weed seeds' means the seeds, bulblets or tubers of all plants generally recognized as weeds within this State or which may be classified as weed seed by regulations promulgated under this Article.
- (39) The term 'wholesaler' shall mean a dealer engaged in the business of selling seed to retailers or jobbers as well as to consumers.
- (40) ~~'Blend'—A mechanical combination of varieties identified by a blend designation in which each component variety is equal to or above the minimum standard germination for its class; which is always present in the same percentage in each lot identified by the same "blend" designation; and for which research data supports an advantage of the "blend" over the singular use of either component variety. "Blend" designations shall be treated as variety names.~~
- (41) ~~'Brand'—An identifying numeral, letter, word, or any combination of these, used with the word "brand" to designate source of seeds."~~

Section 2. G.S. 106-277.29 is repealed.

Section 3. Article 31 of Chapter 106 of the General Statutes is amended by adding the following new sections:

"§ 106-277.30. Filing complaint; investigation; referral to Seed Board.

(a) Complaint by Buyer. – When a buyer believes that he or she has suffered damages due to the failure of agricultural or vegetable seed to produce or perform as labeled or as warranted, or as the result of negligence, the buyer may make a sworn complaint against the dealer from whom the seeds were purchased, alleging the damages sustained or to be sustained, and file the complaint with the Commissioner within such time as to permit inspection of the seed, crops, or plants. The buyer shall send a copy of the complaint to the dealer by registered or certified mail. A filing fee of one hundred dollars (\$100.00) shall be paid to the Department with each complaint filed. This fee may be used by the Commissioner to offset the expenses of the Seed Board incurred under G.S. 106-277.32. Within 10 days after receipt of a copy of the complaint, the dealer may file an answer to the complaint and, in that event, shall send a copy to the buyer by registered or certified mail.

(b) Investigation Requested by Dealer. – Any dealer who has received notice, either orally or in writing, that a buyer believes that he or she has suffered damage due

to the failure of agricultural or vegetable seed sold by the dealer to perform as labeled or as warranted, or as a result of negligence, may request an investigation by the Seed Board pursuant to G.S. 106-277.32. A filing fee of one hundred dollars (\$100.00) shall be paid to the Department by the party requesting the investigation. The dealer shall send a copy of the request to the buyer by registered or certified mail. The buyer may file a response to the request with the Commissioner within 10 days of receipt of the request for an investigation.

(c) Referral to Seed Board. – The Commissioner shall refer the complaint or request for investigation to the Seed Board to investigate and make findings and recommendations on the matters complained of pursuant to G.S. 106-277.32.

"§ 106-277.31. Notice required.

Dealers shall legibly print or type on each seed container or affix a label on each seed container a notice in the following form or using reasonably equivalent language:

'Notice of Claims Procedure for Defective Seed

North Carolina provides an opportunity for persons who believe that they have suffered damage from the failure of agriculture or vegetable seeds to perform as labeled or warranted, or as a result of negligence, to have the matter investigated and heard before a special seed board as an alternative to filing a court action. To take advantage of this procedure, a purchaser of seed must file a complaint with the North Carolina Commissioner of Agriculture in time for the seed, crop, or plants to be inspected. Failure to follow this procedure will limit the amount of damages you may be able to recover. Please contact the Commissioner of Agriculture for information about this claims procedure.'

"§ 106-277.32. Seed Board created; membership; duties.

(a) The Commissioner shall appoint a Seed Board composed of five members, three of whom shall be appointed upon the recommendation of the following: Director of the Agricultural Research Service, North Carolina State University; Director of the North Carolina Cooperative Extension Service, North Carolina State University; and President of the North Carolina Seedsmen's Association. The other two members shall include: one farmer who is not connected in any way to selling seeds at retail or wholesale and one employee of the Department. An alternate for each member shall also be appointed in the same manner as that member was appointed to serve whenever that member is unable or unwilling to serve. Each member of the Board shall serve a four-year term at the discretion of the Commissioner. The Board shall elect a chairperson. The chairperson shall conduct all meetings and deliberations and direct all other activities of the Board. Three members of the Board shall constitute a quorum and at least three board members must vote affirmatively for the Board to take any action.

(b) A clerk shall be appointed to serve the Board. The clerk shall be an employee of the Department. The clerk shall keep accurate and correct records of all meetings and deliberations and perform other duties for the Board as directed by the chairperson.

(c) The Department shall provide administrative support for the investigation under this section. The Board shall adopt rules to govern investigations and hearings. A copy of the rules shall be mailed to each party to a dispute upon receipt of a complaint.

(d) Members of the Board appointed by the Commissioner who are not governmental employees shall be entitled to receive reimbursement for necessary travel and subsistence expenses pursuant to G.S. 138-5. Members of the Board who are State employees shall be entitled to receive reimbursement for necessary travel and subsistence expenses pursuant to G.S. 138-6.

(e) The Attorney General shall represent the Board in any and all legal proceedings that may arise concerning or against the Board.

"§ 106-277.33. Duties of Seed Board.

(a) In conducting its investigation of claims referred by the Commissioner, the Seed Board may engage in the following activities:

- (1) Examine the buyer regarding the buyer's use of the seed of which the buyer complains and examine the dealer on the dealer's packaging, labeling, and selling of the seed alleged to be faulty.
- (2) Grow a representative sample of the alleged faulty seed to production when such action is deemed by the Board to be necessary.
- (3) Hold informal hearings at a time and place directed by the chairperson upon reasonable notice to the buyer and the dealer.
- (4) Seek evaluations from authorities in allied disciplines, when deemed necessary by the Board.
- (5) Visit and inspect the affected site and take samples, make plant counts, and take pictures of affected and unaffected areas.

(b) The Board shall keep a record of its activities and reports on file in the Department. The Department shall transmit all findings and recommendations to the buyer and to the dealer within 30 days of completion of the investigation.

(c) No investigation shall be made by less than the whole membership of the Board unless the chairperson directs such investigation in writing. Such investigation shall be summarized in writing and considered by the Board in reporting its findings and making its recommendations.

(d) The report of the investigation and the recommendations of the Seed Board shall be binding upon all parties to the extent, if any, that they have so agreed in writing subsequent to the filing of the complaint pursuant to G.S. 106-277.30.

"§ 106-277.34. Actions regarding defective seed claims; evidence.

(a) In any court action involving a complaint that has been the subject of an investigation under G.S. 106-277.32, any party may introduce evidence of seed quality, cultivation practices and procedures, and scientific opinion contained in the report of the Seed Board. Statements of the parties and recommendations of the Seed Board as resolution of the dispute are not admissible as evidence unless such evidence is otherwise discoverable.

(b) In any court action where a buyer alleges that he or she suffered damages due to the failure of agricultural or vegetable seed to produce or perform as labeled or warranted, or as the result of negligence, and the buyer failed to make a sworn complaint against the dealer as set forth in G.S. 106-277.30, the buyer's right to recover damages shall be limited to actual expenditures paid by the buyer to other persons for the cost of seed, labor, equipment, fertilizer, insecticide, herbicide, land rent, or other

expenses incurred in connection with the cultivation of the seed alleged to be defective, less any value received by the buyer arising from the sale or transfer of any crops grown from the seed in question."

Section 4. The Cooperative Extension Service shall make information about the alternative claims procedure set forth in this act available to the farmers of the State. Among the means used to disseminate information about the program, the Cooperative Extension Service may consider the publication of brochures, inclusion of the material in relevant continuing education programs, and through routine contacts with farmers by county extension agents.

Section 5. G.S. 106-277.32 and G.S. 106-277.33, as enacted in Section 3 of this act, and Section 4 of this act are effective when this act becomes law. The remainder of this act becomes effective January 1, 1999, and applies to agricultural and vegetable seed purchased on or after that date.

In the General Assembly read three times and ratified this the 21st day of October, 1998.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 8:57 a.m. this 30th day of October, 1998