

Article 31.

North Carolina Seed Law.

§ 106-277. Purpose.

The purpose of this Article is to regulate the labeling, possessing for sale, sale and offering or exposing for sale or otherwise providing for planting purposes of agricultural seeds and vegetable seeds; to prevent misrepresentation thereof; and for other purposes. (1963, c. 1182; 1987 (Reg. Sess., 1988), c. 1034, s. 1; 2009-455, s. 1.)

§ 106-277.1. Short title.

This Article shall be known by the short title of "The North Carolina Seed Law of 1963." (1941, c. 114, s. 1; 1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 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.
- (2a) – (2e) Reserved.
- (2f) 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) The term "Board" means the North Carolina Board of Agriculture as established under G.S. 106-2.
- (3a) Reserved.
- (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.
- (7a) The term "conditioning" means cleaning, scarifying, or blending to obtain uniform quality and other operations that 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.
- (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.
- (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" means the tag designed and prescribed by the Commissioner as the official North Carolina seed analysis tag.
 - (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) Repealed by Session Laws 2009-455, s. 2, effective October 1, 2009.
 - (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) Repealed by Session Laws 2009-455, s. 2, effective October 1, 2009.
- (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), (41) Repealed by Session Laws 1998, c. 210, s. 1. (1941, c. 114, s. 3; 1943, c. 203, s. 1; 1945, c. 828; 1949, c. 725; 1953, c. 856, ss. 1-3; 1963, c. 1182; 1971, c. 637, s. 1; 1987 (Reg. Sess., 1988), c. 1034, ss. 2-4; 1998-210, s. 1; 2009-455, s. 2.)

§ 106-277.3. Label or tag requirements generally.

Each container of agricultural and vegetable seeds which is sold, offered or exposed for sale, or transported within or into this State for seeding purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language giving the information required under G.S. 106-277.4 through 106-277.7, which information shall

not be modified or denied in the labeling or on another label attached to the container. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182.)

§ 106-277.4: Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1034, s. 5.

§ 106-277.5. Labels for agricultural seeds.

Agricultural seeds sold, offered or exposed for sale, transported for sale, or otherwise distributed within this State shall be labeled to show the following information:

- (1) The commonly accepted name of the kind and the variety, or kind and the phrase "variety not stated" for each agricultural seed component, in excess of five percent (5%) of the whole, and the percentage by weight of each in order of its predominance. The Board of Agriculture may, pursuant to G.S. 106-277.15, require the variety to be stated on the labeling for certain kinds of agricultural seed, and the phrase "variety not stated" shall not be used on the labeling of such seed. When more than one component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label. Second generation from hybrid seeds, if sold, shall be labeled "second generation (of the parent), variety not stated." "F" designations on labels, unless used as a part of a variety name, will refer only to size and shape of corn seeds.
- (2) Lot identification.
- (3) Net weight.
- (4) Origin, if known. If the origin is unknown, the fact shall be stated.
- (5) Percentage by weight of inert matter.
- (6) Percentage by weight of agricultural seeds and/or vegetable seeds (which shall be designated as "other crop seeds") other than those named on the label. Different varieties of the same kind of seed, when in quantities of less than five percent (5%) will be considered as other crop seed.
- (7) Percentage by weight of all weed seeds, including noxious-weed seeds.
- (8) For each named agricultural seed:
 - a. Percentage of germination, exclusive of hard seed.
 - b. Percentage of hard seeds, if present.
 - c. The calendar month and year the test was completed to determine such percentages.

In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.

- (9) The name and number per pound of each kind of restricted noxious-weed seed present.
- (10) Name and address of person who labeled said seed or who sells, offers or exposes said seed for sale within this State. If the seeds are labeled by the shipper for a consignee within this State, the shipper may use his approved code designation with the name and address of the consignee.
- (11) Such other information as the Board shall prescribe by rule. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182; 1971, c. 637, s. 3; 1987 (Reg. Sess., 1988), c. 1034, s. 6; 1995, c. 47, s. 1; 2009-455, s. 3.)

§ 106-277.6. Labels for vegetable seeds in containers of one pound or less.

Labels for vegetable seeds in containers of one pound or less shall show the following information:

- (1) Name of kind and variety of seed.
- (2) Repealed by Session Laws 2009-455, s. 4, effective October 1, 2009.
- (2a) Lot identification.
- (3) Repealed by Session Laws 2009-455, s. 4, effective October 1, 2009.
- (3a) One of the following, as applicable:
 - a. The statement "Packed for (year)" or "Sell by (year)."
 - b. The statement "Sell by (month)(year)" where the month and year in which the germination test was complete is no more than 12 months from the date of the test, exclusive of the month and year of the test.
 - c. The percentage germination and the calendar month and year that the test was completed to determine the percentage, provided that the germination test was completed within 12 months, exclusive of the month and year of the test.
- (4) For seeds which germinate less than the standards last established by the Commissioner and approved by the Board of Agriculture under the Article:
 - 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 such percentage.

In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.
 - d. The words "Below Standard" in not less than eight-point type.
- (5) Name and address of person who labeled said seed or who sells, offers or exposes said seed for sale within this State. If the seeds are labeled by the shipper for a consignee within this State, the shipper may use his approved code designation with the name and address of the consignee.
- (6) Such other information as the Board shall prescribe by rule. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182; 1971, c. 637, s. 4; 1995, c. 47, s. 2; 2009-455, s. 4.)

§ 106-277.7. Labels for vegetable seeds in containers of more than one pound.

Vegetable seeds in containers of more than one pound shall be labeled to show the following information:

- (1) The name of each kind and variety present in excess of five percent (5%) and the percentage by weight of each in order of its predominance.
- (2) Lot identification.
- (3) Repealed by Session Laws 2009-455, s. 5, effective October 1, 2009.
- (4) For each named vegetable seed:
 - a. The percentage of germination exclusive of hard seed.
 - b. The percentage of hard seed, if present.

- c. The calendar month and year the test was completed to determine such percentages.

In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.

- (5) Net weight, except when in bulk as defined in this Article.
- (6) Name and address of persons who labeled said seed or who sells, offers or exposes said seed for sale within this State. If the seeds are labeled by the shipper for a consignee within this State, the shipper may use his approved code designation with the name and address of the consignee.
- (7) No tag or label shall be required, unless requested, on seeds sold directly to and in the presence of the purchaser and taken from a bag or container properly labeled.
- (8) Such other information as the Board shall prescribe by rule. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182; 1971, c. 637, s. 5; 1995, c. 47, s. 3; 2009-455, s. 5.)

§ 106-277.8. Responsibility for presence of labels.

(a) The immediate vendor of any lot of seed which is sold, offered or exposed for sale shall be responsible for the presence of the labels required to be attached to any lots of seed whether he is offering for sale or selling seed which bears labels of a previous vendor, with or without endorsement, or bears his own label.

(b) The labeler of any original or unbroken lot of seed shall be responsible for the presence of and the information on all labels attached to said lot of seed at the time he sells or offers for sale such lot of seed. (1963, c. 1182.)

§ 106-277.9. Prohibitions.

It shall be unlawful for any person:

- (1) To transport, to offer for transportation, to sell, distribute, offer for sale or expose for sale within this State agricultural or vegetable seeds for seeding purposes:
 - a. Unless a seed license has been obtained in accordance with the provisions of this Article.
 - b. Unless the test to determine the percentage of germination required by G.S. 106-277.5 through 106-277.7 shall have been completed (i) on agricultural seed within a nine-month period, exclusive of the calendar month in which the test was completed, (ii) on cool season lawn seeds and mixtures of cool season lawn seeds, including, but not limited to, Kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall fescue, perennial ryegrass, intermediate ryegrass, annual ryegrass, colonial bent grass, and creeping bent grass, within a 15-month period, exclusive of the calendar month in which the test was completed, and (iii) on vegetable seed within a 12-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; provided, the North Carolina Board of Agriculture may adopt rules to designate a longer period for any kind of agricultural or vegetable seed which is packaged in such container materials (hermetically sealed), and under such other conditions prescribed, that will, during such longer period, maintain the viability of said seed under ordinary conditions of handling.
- c. Not labeled in accordance with the provisions of this Article or having a false or misleading labeling or claim.
 - d. Pertaining to which there has been a false or misleading advertisement.
 - e. Consisting of or containing prohibited noxious-weed seeds.
 - f. Containing restricted noxious-weed seeds, except as prescribed by rules and regulations promulgated under this Article.
 - g. Containing weed seeds in excess of two percent (2%) by weight unless otherwise provided in rules and regulations promulgated under this Article.
 - h. That have been treated and not labeled as required in this Article, or treated and not conspicuously colored.
 - i. Repealed by Session Laws 2009-455, s. 6, effective October 1, 2009.
 - j. 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 seeds.
 - k. 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 rules and regulations of an officially recognized certifying agency.
 - l. Represented to be a hybrid unless such seed conforms to the definition of a hybrid as defined in this Article.
 - m. Unless it conforms to the definition of a "lot."
 - n. Any variety, hybrid or blend of seeds not recorded with the Commissioner as required under rules and regulations promulgated pursuant to this Article.
 - o. Seed of any variety or hybrid that has been found by official variety tests to be inferior, misrepresented or unsuited to conditions within the State. The Commissioner may prohibit the sale or distribution of such seed by and with the advice of the director of research of the North Carolina agricultural experiment station.
 - p. Using a designation on seed tag in lieu of the full name and address of the person who labels or tags seed unless such designation qualifies as a code designation under this Article.

- q. By variety name seed not certified by an official seed-certifying agency when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act 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.
 - r. That employ a brand name on the label unless a variety or mixture of varieties is labeled as required in this Article. If a brand name other than a registered trademark is used, it must be a separate statement from the variety name or the statement of a mixture, or blend, of genetic variations.
 - s. Labeled as a "blend" unless the lot complies with the definition of "blend" in G.S. 106-277.2, and is registered with the Commissioner, as may be required in G.S. 106-277.9(1)n. Other mechanical combinations of varieties shall be labeled as a mixture according to the requirements in G.S. 106-277.5(1).
- (2) To transport, offer for transportation, sell, offer for sale, or expose for sale seeds, whole grain not for seeding purposes unless labeled "not for seeding purposes."
 - (3) To detach, alter, deface, or destroy any label provided for in this Article or the rules and regulations promulgated hereunder, or to alter or substitute seed in any manner that defeats the purposes of this Article.
 - (4) To disseminate false or misleading advertisement in any manner concerning agricultural seeds or vegetable seeds.
 - (5) To hinder or obstruct in any manner an authorized agent of the Commissioner in the performance of his lawful duties.
 - (6) To fail to comply with or to supply inaccurate information in reply to a stop-sale order; or to remove tags attached to or to remove or dispose of seed or screenings held under a stop-sale order unless authorized by the Commissioner.
 - (7) To use the name of the Department of Agriculture and Consumer Services or the results of tests and inspections made by the Department for advertising purposes.
 - (8) To use the words "type" or "trace" in lieu of information required by G.S. 106-277.4 through 106-277.7.
 - (9) To label and offer for sale seed under the scope of this Article without keeping complete records as specified in G.S. 106-277.12. (1941, c. 114, s. 5; 1943, c. 203, s. 3; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 4; 1957, c. 263, s. 2; 1959, c. 585, s. 2; 1963, c. 1182; 1971, c. 637, s. 6; 1987 (Reg. Sess., 1988), c. 1034, ss. 7-9; 1997-261, s. 47; 2009-455, s. 6.)

§ 106-277.10. Exemptions.

(a) When the required analysis and other information regarding the seed is present on a seedman's label or tag which bears an official North Carolina seed stamp or is accompanied by the North Carolina seed analysis tag on which is written, stamped or printed the words "See Attached Tag for Seed Analysis," the provisions of G.S. 106-277.5 through 106-277.7 shall be deemed to have been complied with.

(b) The official tag or label of the North Carolina Crop Improvement Association shall be considered an "official North Carolina seed analysis tag" when attached to containers of seed duly certified by the said Association or when it refers to an accompanying tag which carries the same information required in G.S. 106-277.5 to 106-277.7 and when fees applicable to the North Carolina seed analysis tag have been paid to the Commissioner.

(c) The label requirements for peanuts, cotton and tobacco seed may be limited to:

- (1) Lot identification.
- (2) Origin, if known. If unknown, so stated.
- (3) Commonly accepted name of kind and variety.
- (4) Name and number per pound of noxious-weed seeds.
- (5) Percentage of germination with month and year of tests.
- (6) Name and address of person who labeled said seed or who sells, offers, or exposes said seed for sale.

(d) The provisions of G.S. 106-277.3 through 106-277.7 do not apply:

- (1) To seed or grain sold or represented to be sold for purposes other than for seeding provided that said seed is labeled "not for seeding purposes" and that the vendor shall make it unmistakably clear to the purchaser of such seed or grain that it is not for seeding purposes.
- (2) To seed for conditioning when consigned to, being transported to or stored in an approved conditioning establishment, provided that the invoice or labeling accompanying said seed bears the statement "seed for conditioning" and provided further that other labeling or representation which may be made with respect to the unlearned or unconditioned seed shall be subject to this Article.
- (3) To seed sold by a farmer grower to a seed dealer or conditioner, or to seed in storage in or consigned to a seed-cleaning or conditioning plant; provided that any labeling or other representation which may be made with respect to the unlearned or unconditioned seed shall be subject to this Article.
- (4) To any carrier in respect to any seed or screenings transported or delivered for transportation in the ordinary course of its business as a carrier; provided that such carrier is not engaged in producing, conditioning, or marketing agricultural or vegetable seeds subject to provisions of this Article.

(e) No person shall be subject to the penalties of this Article for having sold, offered or exposed for sale in this State any agricultural or vegetable seeds which were incorrectly labeled or represented as to origin, kind or variety when such seeds cannot be identified by examination thereof unless such person has failed to obtain an invoice or grower's declaration giving origin, kind and variety or to take such other precautions as may be necessary to insure the identity to be that stated. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182; 2009-455, ss. 7, 8.)

§ 106-277.11. Disclaimers, nonwarranties and limited warranties.

The use of a disclaimer, nonwarranty or limited warranty clause in any invoice, advertising [or] written, printed or graphic matter pertaining to any seed shall not constitute a defense, or be used as a defense in any way, in any prosecution or in any proceedings for confiscation of seeds brought under the provisions of this Article or rules and regulations made and promulgated thereunder. (1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 106-277.12. Records.

All persons transporting or delivering for transportation, selling, offering or exposing for sale agricultural or vegetable seeds if their name appears on the label shall keep for a period of two years a file sample and a complete record of such seed, including invoices showing lot number, kind and variety, origin, germination, purity, treatment, and the labeling of each lot. The Commissioner or his duly authorized agents shall have the right to inspect such records in connection with the administration of this Article at any time during customary business hours. (1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 106-277.13. Tolerances to be established and used in enforcement.

Due to variations which may occur between the analyses or tests and likewise between label statements and the results of subsequent analyses and tests, recognized tolerances shall be employed in the enforcement of the provisions of this Article, except as otherwise established by appropriate rules and regulations promulgated under authority of this Article. (1963, c. 1182.)

§ 106-277.14. Administration.

The duty of enforcing this Article and its rules and regulations and carrying out its provisions and requirements shall be vested in the Commissioner of Agriculture. (1963, c. 1182.)

§ 106-277.15. Rules, regulations and standards.

The Board of Agriculture, in accordance with the Administrative Procedure Act, may adopt such rules, regulations and standards which they may find to be advisable or necessary to carry out and enforce the purposes and provisions of this Article, which shall have the force and effect of law. The Board of Agriculture shall adopt rules, regulations and standards as follows:

- (1) Prescribing the methods of sampling, inspecting, analyzing, testing and examining agricultural and vegetable seed, and determining the tolerance to be followed in the administration of this Article.
- (2) Declaring a list of prohibited and restricted noxious weeds, conforming with the definitions stated in this Article, and to add to or subtract therefrom, from time to time, after a public hearing following due public notice.
- (3) Declaring the maximum percentage of total weed seed content permitted in agricultural seed.
- (4) Declaring the maximum number of "restricted" noxious-weed seeds per pound of agricultural seed permitted to be sold, offered or exposed for sale.
- (5) Declaring the minimum percentage of germination permitted for sale as "Agricultural Seeds."
- (6) Declaring germination standards for vegetable seeds.
- (7) Prescribing the form and use of tags or stamps to be used in labeling seed.
- (8) Prescribing such other rules and regulations as may be necessary to secure the efficient enforcement of this Article.

- (9) Establishing fees and charges for agricultural and vegetable seed testing and analysis.
- (10) Prescribing minimum hybrid percentage for labeling for each species hybridized.
- (11) Prescribing labeling and coloring requirements for treated seed.
- (12) Establishing a Tobacco Seed Committee which shall approve flue-cured tobacco varieties prior to registration with the Department.
- (13) Prescribing labeling requirements for agricultural and vegetable seed. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182; 1981, c. 495, s. 6; 1987 (Reg. Sess., 1988), c. 1034, s. 10; 1995, c. 47, s. 4.)

§ 106-277.16. Seed-testing facilities.

The Commissioner is authorized to establish and maintain or make provision for seed-testing facilities, to employ educationally qualified persons, to make or provide for making purity and germination tests of seeds, upon request, for farmers or seedsmen, and to prescribe rules and regulations governing such testing, and to incur such expenses as may be necessary to comply with these provisions. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.17. Registration and variety testing.

The Commissioner is authorized to require the registration, after field testing for performance and trueness-to-variety, of any variety, blend, or hybrid as a prerequisite to sale in this State and to promulgate rules and regulations pertaining to same. The Commissioner is further authorized to prohibit the sale of any variety, blend, or hybrid or any kind of crop, by and with the advice of the Director of the North Carolina Agricultural Research Service, that has been found by official field tests to be inferior, misrepresented or unsuited to conditions within the State. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182; 1987 (Reg. Sess., 1988), c. 1034, ss. 11, 12; 1989, c. 770, s. 24.)

§ 106-277.18. Registration and licensing of dealers.

It shall be the duty of the Commissioner and he is hereby authorized to require each seed dealer selling, offering or exposing for sale in, or exporting from, this State any agricultural or vegetable seeds for seeding purposes, including packet or package seeds, to register with the Commissioner and to obtain a license annually. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725; 1963, c. 1182.)

§ 106-277.19. Revocation, suspension, or refusal of license for cause; hearing; appeal.

In accordance with Chapter 150B of the General Statutes, the Commissioner is authorized to suspend any seed license issued for a period not to exceed three years, revoke any seed license issued, or to refuse to issue a seed license to any person upon satisfactory proof that said person has repeatedly violated any of the provisions of this Article or any of the rules adopted thereunder. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182; 2013-345, s. 1(a).)

§ 106-277.20. Right of entry for purposes of inspection; duty of vendors.

For the purpose of carrying out this Article the Commissioner or his agent is authorized to enter upon any public or private premises during regular business hours in order to have access to seeds subject to his Article and the rules and regulations thereunder. It shall be the duty of the dealer or vendor to arrange seed lots so as to be accessible for inspection, and to provide such information and records as may be deemed necessary. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.21. Sampling, inspecting and testing; notice of violations.

It shall be the duty of the Commissioner, who may act through his authorized agents, to sample, inspect, make analysis of and test agricultural and vegetable seeds transported, held in storage, sold, offered or exposed for sale within this State for sowing purposes at such time and place and to such extent as he may deem necessary to determine whether said seeds are in compliance with the provisions of this Article, and to notify promptly the person or persons who transported, had in his possession, sold, offered or exposed the seeds for sale of any violation. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.22. Stop-sale orders; penalty covering expenses; appeal.

The Commissioner is authorized to issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of agricultural or vegetable seeds which the Commissioner, or his authorized agent, finds is in violation of any of the provisions of this Article or the rules and regulations promulgated thereunder, which order shall prohibit further sale or movement of such seed until such officer has evidence that the law has been complied with and a written release has been issued to the owner or custodian of said seed by the enforcement officer. Any person violating the labeling requirements of the law shall be subject to a penalty covering all costs and expenses incurred in connection with the withdrawal from sale and the release of said seed. With respect to seeds which have been denied sale as provided in this section, the owner, custodian or the person labeling such seeds shall have the right to appeal from such order to the superior court of the county in which the seeds are found, praying for judgment as to the justification of said order and for discharge of such seed from the order prohibiting the same in accordance with the findings of the court; and provided, further, that the provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this Article. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.23. Notice of violations; hearings, prosecutions or warnings.

It shall be the duty of the Commissioner to give notice of every violation of the provisions of this Article with respect to agricultural or vegetable seeds, or mixtures of such seeds, to the person in whose hands such seeds are found, and to send copies of such notice to the shipper of such seed and to the person whose "analysis tag or label" is attached to the container of such seeds, in which notice the Commissioner may designate a time and place for a hearing. The person or persons involved shall have the right to introduce evidence either in person or by agent or attorney. If, after hearing, or without such hearing in the event the person fails or refuses to appear, the Commissioner is of the opinion that the evidence warrants prosecution he may institute proceedings in a court of competent

jurisdiction in the locality which the violation occurred or, if he believes the public interest will be adequately served thereby, he may direct to the alleged violator a suitable written notice or warning. (1941, c. 114, s. 8; 1945, c. 828; 1949, c. 725; 1963, c. 1182; 2009-455, s. 9.)

§ 106-277.24. Penalty for violations.

Any person, firm or corporation violating any provision of this Article or any rule or regulation adopted pursuant thereto shall be guilty of a Class 3 misdemeanor and upon conviction thereof shall pay a fine of not more than ten thousand dollars (\$10,000). This fine shall not apply, however, to a retailer with respect to any transaction where the seed sold by the retailer was acquired by the retailer in a sealed container or package, or the retailer did not have reasonable knowledge that the seed sold was in violation of this Article. In determining the amount of the fine, the court shall consider the retail value of the seed sold in violation of the law, and in cases involving the unlawful sale of seed protected under the federal Plant Variety Protection Act, the court shall order the payment of restitution to any injured party for any losses incurred as a result of the unlawful sale. (1941, c. 114, s. 8; 1945, c. 828; 1949, c. 725; 1963, c. 1182; 1993, c. 539, s. 758; 1994, Ex. Sess., c. 24, s. 14(c); 2013-345, s. 1(b).)

§ 106-277.25. Seizure and disposition of seeds violating Article.

Any lot of agricultural or vegetable seeds, mixtures of such seeds being sold, exposed for sale, offered for sale or held with intent to sell in this State contrary to the provisions of this Article shall be subject to seizure on complaint of the Commissioner to the resident judge of the superior court in the county in which the seeds or mixtures of such seeds are located. In the event the court finds the seeds to be in violation of the provisions of this Article and orders the condemnation thereof, such seeds shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this State; provided that in no instance shall such disposition be ordered by the court without first having given the claimant an opportunity to apply to the court for the release of the seeds, with permission to process or relabel to bring them into compliance with the provisions of this Article. (1945, c. 828; 1949, c. 725; 1963, c. 1182; 2009-455, s. 10.)

§ 106-277.26. Publication of test results and other information.

The Commissioner is authorized to publish the results of analyses, tests, examinations, studies and investigations made as authorized by this Article, together with any other information he may deem advisable. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.27. Cooperation with United States Department of Agriculture.

The Commissioner is authorized to cooperate with the United States Department of Agriculture in seed law enforcement and testing seed for trueness as to kind and variety. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.28. License and inspection fees.

For the purpose of providing a fund to defray the expense of inspection, examination, and analysis of seeds and the enforcement of this Article:

- (1) Repealed by Session Laws 1991, c. 588, s. 1.
- (2) Each seed dealer who offers for sale any agricultural, vegetable, or lawn or turf seeds for seeding purposes shall register with the Commissioner and shall obtain an annual license, for each location where activities are conducted, by January 1 of each year and shall pay the following license fee:
 - a. Wholesale or combined wholesale and retail seed dealer.....\$125.00
 - b. Retail seed dealer\$30.00.
 - c.,d. Repealed by Session Laws 2009-455, s. 11, effective October 1, 2009.
- (3) Each seed dealer or grower who has seed, whether originated or labeled by the dealer or grower, that is offered for sale in this State shall report the quantity of seed offered for sale and pay an inspection fee of four cents (4¢) for each container of seeds weighing 10 pounds or more. Seed shall be subject to the inspection fee and reporting requirements only once in any 12-month period. This fee does not apply to seed grown by a farmer and offered for sale by the farmer at the farm where the seed was grown.

Each seed dealer or grower shall keep accurate records of the quantity of seeds and container weights offered for sale from each distribution point in the State. These records shall be available to the Commissioner or an authorized representative of the Commissioner at any and all reasonable hours for the purpose of verifying the quantity of seed offered for sale and the fees paid. Each seed dealer or grower shall report quarterly on forms furnished by the Commissioner the quantity and container weight of seeds first offered for sale that quarter. The reports shall be made on the first day of January, April, July, and October, or within 10 days thereafter. Inspection fees shall be due and paid with the next quarterly report filed after the seed is first offered for sale. If the report is not filed and the inspection fees paid to the Department of Agriculture and Consumer Services by the tenth day following the date due, or if the report of the quantity or container weights is false, the Commissioner may issue a stop-sale order for all seed offered for sale by the dealer or grower. If the inspection fees are unpaid more than 15 days after the due date, the amount due shall bear a penalty of ten percent (10%) which shall be added to the inspection fees due. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725; 1963, c. 1182; 1969, c. 105; 1987 (Reg. Sess., 1988), c. 1034, s. 13; 1989, c. 37, s. 8; 1991, c. 98, s. 1; c. 588, s. 1; 1995, c. 47, s. 5; 1997-261, s. 48; 2005-276, s. 42.1(c); 2009-455, s. 11.)

§ 106-277.29: Repealed by Session Laws 1998-210, s. 2.

§ 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. (1998-210, s. 3.)

§ 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." (1998-210, s. 3.)

§ 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. (1998-210, s. 3.)

§ 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. (1998-210, s. 3.)

§ 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. (1998-210, s. 3.)

§§ 106-278 through 106-284.4. Reserved for future codification purposes.