

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 544

Introduced by Harr, 8.

Read first time January 21, 2015

Committee:

- 1 A BILL FOR AN ACT relating to agriculture; to amend sections 81-2,147.01
- 2 and 81-2,147.05, Reissue Revised Statutes of Nebraska; to adopt the
- 3 Community Gardens Act; to define and redefine terms; to provide for
- 4 applicability; to harmonize provisions; to repeal the original
- 5 sections; and to declare an emergency.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-2,147.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 81-2,147.01 As used in the Nebraska Seed Law:

4 (1) Advertisement means all representations, other than those on the
5 label, disseminated in any manner or by any means relating to seed,
6 including farm grain represented as suitable for sowing, within the scope
7 of the Nebraska Seed Law;

8 (2) Agricultural seed includes the seeds of grass, forage, cereal,
9 oil and fiber crops, and lawn and mixtures of such seeds and any other
10 kinds of seed commonly recognized within this state as agricultural seeds
11 and may include the seed of any plant that is being used as an
12 agricultural crop when the Director of Agriculture establishes in rules
13 and regulations that such seed is being used as agricultural seed;

14 (3) Blend means seeds consisting of more than one variety of a kind,
15 each in excess of five percent by weight of the whole;

16 (4) Brand means a word, name, symbol, number, or design to identify
17 seed of one person to distinguish it from seed of another person;

18 (5) Certifying agency means (a) an agency authorized under the laws
19 of a state, territory, or possession of the United States to officially
20 certify seed and which has standards and procedures approved by the
21 United States Secretary of Agriculture to assure genetic purity and
22 identity of the seed certified or (b) an agency of a foreign country
23 which is determined by the United States Secretary of Agriculture to
24 adhere to procedures and standards for seed certification comparable to
25 those adhered to generally by certifying agencies under subdivision (a)
26 of this subdivision;

27 (6) Conditioning means drying, cleaning, scarifying, or other
28 operations which could change the purity or germination of the seed and
29 require the seed lot or any definite amount of seed to be retested to
30 determine the label information;

31 (7) Director means the Director of Agriculture or his or her

1 designated employee or representative or authorized agent;

2 (8) Dormant seed means viable seeds, other than hard seeds, which
3 fail to germinate when provided the specified germination conditions for
4 the kind of seed in question;

5 (9) Flower seed includes seeds of herbaceous plants grown for their
6 blooms, ornamental foliage, or other ornamental parts and commonly known
7 and sold under the name of flower or wildflower seeds in this state;

8 (10) Germination means the emergence and development from the seed
9 embryo of those essential structures which for the kind of seed in
10 question are indicative of the ability to produce a normal plant under
11 favorable conditions;

12 (11) Hard seed means seeds which remain hard at the end of the
13 prescribed test period because they have not absorbed water due to an
14 impermeable seed coat;

15 (12) Hybrid means the first generation seed of a cross produced by
16 controlling the pollination and by combining (a) two or more inbred
17 lines, (b) one inbred or a single cross with an open-pollinated variety,
18 or (c) two varieties or species except open-pollinated varieties of corn
19 (*Zea mays*). The second generation and subsequent generations from such
20 crosses shall not be regarded as hybrids. Hybrid designations shall be
21 treated as variety names;

22 (13) Inert matter means all matter not seed which includes broken
23 seeds, sterile florets, chaff, fungus bodies, and stones as established
24 by rules and regulations;

25 (14) Kind means one or more related species or subspecies which
26 singly or collectively are known by one common name, such as corn, oats,
27 alfalfa, and timothy;

28 (15) Labeling includes all labels and other written, printed,
29 stamped, or graphic representations, in any form whatsoever, accompanying
30 or pertaining to any seed, whether in bulk or in containers, and includes
31 representations on invoices;

1 (16) Lot means a definite quantity of seed in containers or bulk
2 identified by a lot number or other mark, every portion of which is
3 uniform within recognized tolerances for the factors that appear in the
4 labeling;

5 (17) Mixture, mix, or mixed means seeds consisting of more than one
6 kind, each present in excess of five percent by weight of the whole;

7 (18) Mulch means a protective covering of any suitable material
8 placed with seed which acts to retain sufficient moisture to support seed
9 germination and sustain early seedling growth and aids in preventing the
10 evaporation of soil moisture, controlling weeds, and preventing erosion;

11 (19) Origin means a foreign country or designated portion thereof, a
12 state, the District of Columbia, Puerto Rico, or a possession of the
13 United States, where the seed was grown;

14 (20) Other crop seed means seed of plants grown as crops, other than
15 the kind or variety included in the pure seed, as established by rules
16 and regulations;

17 (21) Person includes any corporation, company, society, association,
18 body politic and corporate, community, individual, partnership, limited
19 liability company, or joint-stock company or the public generally;

20 (22) Primary noxious weed seeds means the seeds of any plant
21 designated by the director as a noxious weed pursuant to the Noxious Weed
22 Control Act. Pursuant to subdivision (1)(c) of section 81-2,147.06, the
23 director may add to or subtract from this primary noxious weed seeds
24 list;

25 (23) Prohibited noxious weed seeds means the seeds of plants which
26 are highly destructive and difficult to control in this state by ordinary
27 good cultural practice, the use of herbicides, or both and includes field
28 bindweed (*Convolvulus arvensis*), hoary cress (*Cardaria draba*), Russian
29 knapweed (*Centaurea repens*), johnsongrass (*Sorghum halepense*), Scotch
30 thistle (*Onopordum acanthium*), morning glory (*Ipomoea purpurea*) when
31 found in field crop seeds, skeletonleaf bursage (*Ambrosia discolor*),

1 woollyleaf bursage (*Ambrosia tomentosa*), serrated tussock (*Nassella*
2 *trichotoma*), and puncturevine (*Tribulus terrestris*). Pursuant to
3 subdivision (1)(c) of section 81-2,147.06, the director may add to or
4 subtract from this prohibited noxious weed seeds list;

5 (24) Pure live seed means the product of the percent of germination
6 plus percent of hard or dormant seed multiplied by the percent of pure
7 seed divided by one hundred. The result shall be expressed as a whole
8 number;

9 (25) Pure seed means seed exclusive of inert matter and all other
10 seeds not of the seed being considered as established by rules and
11 regulations;

12 (26) Record means any and all information which relates to the
13 origin, treatment, germination, purity, kind, and variety of each lot or
14 definite amount of seed handled in this state. Such information includes
15 seed samples and records of declarations, labels, purchases, sales,
16 conditioning, bulking, treatment, handling, storage, analyses, tests, and
17 examinations;

18 (27) Restricted noxious weed seeds means the seeds of plants which
19 are objectionable in fields, lawns, and gardens of this state but can be
20 controlled by ordinary good cultural practice, the use of herbicides, or
21 both and includes dodder (*Cuscuta* spp.), wild mustard (*Brassica* spp.),
22 dock (*Rumex* spp.), quackgrass (*Elytrigia repens*), pennycress (*Thlaspi*
23 *arvense*), purple loosetrife (*Lythrum salicaria*), and horsenettle (*Solanum*
24 *carolinense*). Pursuant to subdivision (1)(c) of section 81-2,147.06, the
25 director may add to or subtract from this restricted noxious weed seeds
26 list;

27 (28) Sale in any of its variant forms means sale, to barter or ~~or~~
28 exchange in the ordinary course of business or commerce, offer for sale,
29 expose for sale, move, or transport, in any of their variant forms but
30 does not include any transaction, supply, distribution, barter, exchange,
31 movement, or transport that is noncommercial in nature ~~, or otherwise~~

1 supplying;

2 (29) Screenings means the results of the process which removes, in
3 any way, weed seed, inert matter, and other materials from any
4 agricultural, vegetable, or flower seed in any kind of cleaning process;

5 (30) Seed library means a nonprofit, governmental, or cooperative
6 organization that donates and receives donations of seeds with the
7 purposes of promoting seed saving, educating the public about seeds, and
8 providing access to free seeds;

9 (31 ~~30~~) Seizure means a legal process carried out by court order
10 against a definite amount or lot of seed;

11 (32 ~~31~~) Stop-sale order means an administrative order provided by
12 law restraining the sale, use, disposition, and movement of a definite
13 amount or lot of seed;

14 (33 ~~32~~) Tetrazolium (TZ) test means a type of test in which
15 chemicals are used to produce differential staining of strong, weak, and
16 dead tissues, which is indicative of the potential viability of seeds;

17 (34 ~~33~~) Treated means that the seed has been given an application of
18 a substance or subjected to a process or coating for which a claim is
19 made or which is designed to reduce, control, or repel disease organisms,
20 insects, or other pests which attack seeds or seedlings growing
21 therefrom;

22 (35 ~~34~~) Variety means a subdivision of a kind which is distinct,
23 uniform, and stable. For purposes of this subdivision: (a) Distinct means
24 that the variety can be differentiated by one or more identifiable
25 morphological, physiological, or other characteristics from all other
26 varieties of public knowledge; (b) uniform means that variations in
27 essential and distinctive characteristics are describable; and (c) stable
28 means that the variety will remain unchanged in its essential and
29 distinctive characteristics and its uniformity when reproduced or
30 reconstituted as required by the different categories of varieties;

31 (36 ~~35~~) Vegetable seed includes the seeds of those crops which are

1 grown in gardens and on truck farms and are generally known and sold
2 under the name of vegetable or herb seeds in this state; and

3 (37 36) Weed seed includes the seeds of any plant generally
4 recognized as a weed within this state as established in rules and
5 regulations and includes the primary noxious weed seeds, prohibited
6 noxious weed seeds, and restricted noxious weed seeds.

7 Sec. 2. Section 81-2,147.05, Reissue Revised Statutes of Nebraska,
8 is amended to read:

9 81-2,147.05 (1) Sections 81-2,147.02 and 81-2,147.03 shall not
10 apply:

11 (a) To seed or grain not intended for sowing purposes;

12 (b) To seed in storage in, or being transported or consigned to, a
13 cleaning or conditioning establishment for cleaning or conditioning,
14 except that the invoice or labeling accompanying any shipment of such
15 seed shall bear the statement Seed for Conditioning, and any labeling or
16 other representation which may be made with respect to the uncleaned
17 unconditioned seed shall be subject to the Nebraska Seed Law;~~or~~

18 (c) To any carrier in respect to any seed transported or delivered
19 for transportation in the ordinary course of its business as a carrier if
20 such carrier is not engaged in producing, conditioning, or marketing
21 agricultural, vegetable, or flower seeds subject to the Nebraska Seed
22 Law; or -

23 (d) To seed libraries.

24 (2) No person shall be subject to the penalties of the Nebraska Seed
25 Law for having sold agricultural, vegetable, or flower seed which was
26 incorrectly labeled or represented as to kind, variety, or origin, if
27 required, which seeds cannot be identified by examination thereof, unless
28 he or she has failed to obtain an invoice, genuine grower's declaration,
29 or other labeling information and to take such other precautions as may
30 be reasonable to insure the identity to be as stated.

31 Sec. 3. Sections 3 to 7 of this act shall be known and may be cited

1 as the Community Gardens Act.

2 Sec. 4. (1) The Legislature finds and declares that:

3 (a) Community gardens provide significant health, educational, and
4 social benefits to the general public, especially for those who reside in
5 urban and suburban areas of this state;

6 (b) The community garden movement (i) continues to provide low-cost
7 food that is fresh and nutritious for those who may be unable to readily
8 afford fresh fruits and vegetables for themselves or their families, (ii)
9 promotes public health and healthier individual lifestyles by encouraging
10 better eating habits and increased physical activity by growing food,
11 (iii) fosters the retention and expansion of open spaces, particularly in
12 urban environments, (iv) enhances urban and suburban environmental
13 quality and community beautification, (v) provides inexpensive community
14 building activities, recreation, and physical exercise for all age
15 groups, (vi) establishes a safe place for community involvement and helps
16 to reduce the incidence of crime, (vii) engenders a closer relationship
17 between urban residents, nature, and the local environment, and (viii)
18 fosters green job training and ecological education at all levels; and

19 (c) It is the public policy of this state to promote and foster
20 growth in the number of community gardens and the acreage of such
21 gardens.

22 (2) It is the intent of the Legislature and the purpose of the
23 Community Gardens Act to foster growth in the number, size, and scope of
24 community gardens in this state by encouraging state agencies,
25 municipalities, and private parties in their efforts to promote community
26 gardens.

27 Sec. 5. For purposes of the Community Gardens Act:

28 (1) Community garden means public or private land upon which
29 individuals have the opportunity to raise a garden on land which they do
30 not themselves own;

31 (2) Garden means a piece or parcel of land appropriate for

1 cultivation of herbs, fruits, flowers, nuts, honey, poultry for egg
2 production, maple syrup, ornamental or vegetable plants, nursery
3 products, or vegetables;

4 (3) Municipality means any county, village, or city or any office or
5 agency of a county, village, or city;

6 (4) State agency means any department or other agency of the State
7 of Nebraska;

8 (5) Use means to avail oneself of or to employ without conveyance of
9 title gardens on vacant public land by any individual or organization;
10 and

11 (6) Vacant public land means any land owned by the state or another
12 governmental subdivision, including a municipality, that is not in use
13 for a public purpose, is otherwise unoccupied, idle, or not being
14 actively utilized for a period of at least six months, and is suitable
15 for garden use.

16 Sec. 6. (1) A state agency or municipality having title to vacant
17 public land may permit community organizations to use such lands for
18 community garden purposes. Such use of vacant public land may be
19 conditioned on the community organization having liability insurance and
20 accepting liability for injury or damage resulting from use of the vacant
21 public land for community garden purposes. State agencies and
22 municipalities may adopt and promulgate rules, regulations, ordinances,
23 or resolutions to establish an application process for a community
24 garden. The applicant may include a request for access to a fire hydrant
25 or other source of water owned or operated by the state agency or
26 municipality or by a utility district in order to provide water to the
27 community garden. The state agency, municipality, or utility district
28 shall consider whether to supply the water to the applicant at a reduced
29 or fixed rate.

30 (2) A state agency or municipality which receives an application
31 pursuant to this section shall respond to the applicant within sixty days

1 from the date on which the application is received and shall make a final
2 determination within one hundred eighty days from such date.

3 Sec. 7. (1) The Director of Agriculture shall establish a community
4 gardens task force on or before August 1, 2015, to identify and develop
5 ways to encourage state agencies, municipalities, and individuals to
6 establish and expand community gardens. The director shall designate a
7 chairperson of the task force. The members of the task force shall be
8 appointed by the director and shall include no more than nine members. At
9 least three of the members shall be representatives of nonprofit
10 organizations involved with community gardens. The remaining members may
11 include representation from appropriate state agencies, existing
12 community gardens, counties, cities, towns, villages, utility districts,
13 and school districts.

14 (2) The director may request the assistance of other state agencies
15 to carry out the work of the task force.

16 (3) The goals of the task force may include, but are not limited to,
17 the study, evaluation, and development of recommendations (a) to
18 encourage the establishment and expansion of community gardens by state
19 agencies, municipalities, and individuals, (b) to encourage cooperation
20 between the activities and operations of community gardens and the
21 provision of donated food to local voluntary food assistance programs for
22 the poor and disadvantaged, and (c) to increase the benefits that
23 community gardens may provide to the community in which they are located.

24 (4) In carrying out its duties under subsection (3) of this section,
25 the task force may consider recommendations that (a) encourage the
26 execution of conservation easements by state agencies, municipalities, or
27 individuals to establish or protect community gardens, (b) encourage the
28 creation of mechanisms to transfer development rights to protect
29 community gardens or encourage the donation or lease of lands for
30 community gardens, (c) encourage development of model zoning codes, local
31 land use laws, or other municipal policies that could encourage the

1 establishment or retention of community gardens, and (d) provide for any
2 other activity to achieve the goals deemed appropriate by the task force.

3 (5) The task force shall issue a preliminary report to the
4 Department of Agriculture and electronically to the Legislature no later
5 than December 15, 2015, and shall issue a final report to the Department
6 of Agriculture and electronically to the Legislature no later than
7 December 15, 2016.

8 Sec. 8. Original sections 81-2,147.01 and 81-2,147.05, Reissue
9 Revised Statutes of Nebraska, are repealed.

10 Sec. 9. Since an emergency exists, this act takes effect when
11 passed and approved according to law.