

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representative Shaver**

A Bill ACT 1024 OF 1991

HOUSE BILL 1909

For An Act To Be Entitled

8 "AN ACT TO PROVIDE FOR MANDATORY ARBITRATION OF CLAIMS
9 RELATED TO DEFECTIVE AGRICULTURAL SEED; TO ESTABLISH AN
10 ARBITRATION COMMITTEE; AND FOR OTHER PURPOSES."

11

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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14 SECTION 1. Definitions. Unless the context clearly requires otherwise,
15 the definitions in this section apply throughout this act.

16 (1) "State Plant Board" means the Arkansas State Plant Board.

17 (2) "Director" means the Director of the Arkansas State Plant Board.

18 (3) "Dealer" means any person who distributes agricultural seeds.

19 (4) "Buyer" means a person who purchases agricultural seeds.

20 (5) "Agricultural Seed" means the seeds of grass, forage, cereal, oil
21 and fiber crops and any other kinds of seed commonly recognized within this
22 state as agricultural seeds and mixtures of such seed.

23 (6) "Arbitration committee" means the committee established by the
24 Director under this act to hear and make determinations in mandatory,
25 nonbinding, arbitration cases.

26 (7) "Chairperson" means the person selected by the arbitration
27 committee from among their members to preside over arbitration hearings.

28 (8) "Person" means an individual, firm, partnership, corporation or
29 company.

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31 SECTION 2. Prerequisite to legal action; notice; arbitration committee.

32 (a) When any buyer believes that he has been damaged by the failure of
33 agricultural seed to produce or perform as represented by the label attached
34 to such seed as required by Arkansas State Plant Board regulations established
35 under the Arkansas Plant Act of 1917, as a prerequisite to the buyer's right
36 to maintain a legal action against the dealer, such buyer shall make a sworn

1 complaint against the dealer from whom such seeds were purchased, alleging the
2 damages sustained or to be sustained, and file same with the Director of the
3 Arkansas State Plant Board within ten (10) days after the alleged defect or
4 violation becomes apparent, and the buyer shall send a copy of said complaint
5 to said dealer by United States registered mail. A filing fee of one hundred
6 dollars (\$100) shall be paid to the Director of the Arkansas State Plant Board
7 with each complaint filed, and complaints shall be filed on forms provided by
8 said Board. This fee shall be deposited in the State Treasury Plant Board
9 Fund and may be used by the Director to offset expenses of the investigation.
10 Within ten (10) days after receipt of a copy of the complaint, the dealer
11 shall file with the Director of the Arkansas State Plant Board his answer to
12 said complaint and send a copy of same to the buyer by United States
13 registered mail. Provided, however, that unless notice of this section is
14 legibly printed or typed on the seed container or on a label affixed thereto,
15 or printed on the invoice covering bulk seed, the buyer shall not be required
16 to comply with this section as a prerequisite to maintaining a legal action
17 against the dealer. A notice in the following form, or some reasonably
18 equivalent language, is sufficient.

19 "Notice of Mandatory Arbitration

20 'NOTICE: As a prerequisite to maintaining a legal action based upon the
21 failure of seed to which this label is attached to produce as represented, a
22 consumer shall file a sworn complaint with the Director of the Arkansas State
23 Plant Board within such time as to permit inspection of the crops or plants
24 during the growing season.'

25 If language setting forth the requirement is not so placed on the seed
26 package, analysis label or invoice covering bulk seed shipments, the filing
27 and serving of a complaint under this paragraph is not required."

28 (b) Any seed dealer against whom suit is brought in any court, state or
29 federal, by a buyer who alleges that he has been damaged by the failure of
30 seeds purchased from a seed dealer to perform as labeled, may request an
31 investigation by the arbitration committee. A filing fee of one hundred
32 dollars (\$100) shall be paid by the party.

33 (c) The Director of the Arkansas State Plant Board shall refer the
34 complaint and the answer thereto to the arbitration committee provided in this
35 section for investigation, findings and recommendations on the matters

1 complained of.

2 (d) The Director of the Arkansas State Plant Board shall appoint an
3 arbitration committee composed of five (5) members and five (5) alternate
4 members with one (1) member and one (1) alternate to be appointed upon the
5 recommendation of each of the following: President of the Arkansas Seed
6 Growers Association, President of the Arkansas Seed Dealers Association and
7 the President of the Arkansas Farm Bureau Federation. The members and
8 alternates shall be confirmed by the Governor. The Director of the Arkansas
9 Agricultural Experiment Station, or his designee or alternate, and the
10 Director of the Arkansas Cooperative Extension Service, or his designee or
11 alternate, shall serve as ex officio members.

12 The original committee shall be appointed as follows: The Seed Growers
13 Association member shall serve one (1) year, Seed Dealers Association member
14 shall serve two (2) years and Farm Bureau member shall serve three (3) years.
15 Ex officio members shall serve until replaced by their organization. All
16 subsequent terms for Seed Grower, Seed Dealer and Farm Bureau members shall be
17 for four (4) years. Recommending organization shall submit member
18 recommendations not less than thirty (30) days prior to the expiration day of
19 an expiring term. Each alternate member shall serve only in the absence of
20 the member for whom he is an alternate. The committee shall elect a
21 chairperson from its membership and the Director of the Arkansas State Plant
22 Board or his designee, shall serve as secretary of the arbitration committee
23 and shall not vote.

24 It shall be the duty of the chairperson to conduct all meetings and
25 deliberations held by the committee and to direct all other activities of the
26 committee. It shall be the duty of the secretary to keep accurate and correct
27 records on all meetings and deliberations and perform other duties for the
28 committee as directed by the chairperson.

29 (e) The purpose of the arbitration committee is to assist agricultural
30 seed buyers and agricultural seed dealers in determining the facts relating to
31 matters alleged in complaints made by buyers against dealers. The committee
32 may recommend money damages be paid the buyer as a result of alleged failure
33 of seeds to produce as represented by the label on the seed container or
34 invoice, and may also recommend that the seed dealer reimburse the buyer for
35 the amount of the filing fee paid by the buyer.

1 (f) The arbitration committee may be called into session by the
2 Director of the Arkansas State Plant Board or upon the direction of the
3 chairperson to consider the matters referred to it by the Director of the
4 Arkansas State Plant Board.

5 (g) If the committee determines that an informal hearing should be
6 conducted to allow each party an opportunity to present their respective side
7 of the dispute, attorneys may be present at the hearing to confer with their
8 clients, however, may not participate directly in the proceedings unless
9 requested to do so by the chairperson of the arbitration committee.

10 (h) When the Director refers to the arbitration committee any complaint
11 made by a buyer against a dealer, said committee shall make a full and
12 complete investigation of the matters complained of, and at the conclusion of
13 said investigation, report through its secretary, the findings and
14 recommendations to the buyer and to the dealer by United States registered
15 mail.

16 (i) The report of arbitration shall be binding upon all parties to the
17 extent, if any, that they have so agreed in any contract governing the sale of
18 the seed. In the absence of an agreement to be bound by arbitration, a buyer
19 may commence legal proceedings against a seller or assert such claim as a
20 counterclaim or defense in any action brought by the seller, at any time after
21 the receipt of the report of arbitration. In any litigation involving a
22 complaint which has been the subject of arbitration under this section, any
23 party may introduce the report of arbitration as evidence of the facts found
24 in the report, and the courts may give such weight to the committee's findings
25 and conclusions of law and recommendations as to damages and costs, as the
26 court may see fit based upon all the evidence before the court. The court may
27 also take into account any findings of the committee with respect to the
28 failure of any party to cooperate in the arbitration proceedings, including
29 any finding as to the effect of delay in filing the arbitration claim upon the
30 committee's ability to determine the facts of the case.

31 (j) In conducting its investigation, the arbitration committee is
32 authorized:

33 (1) To examine the buyer on his use of the seed of which he
34 complains and the dealer on his packaging, labeling and selling operation of
35 the seed alleged to be faulty;

1 (2) To grow to production a representative sample of the alleged
2 faulty seed through the facilities of the State, under the supervision of the
3 Director of the Arkansas State Plant Board when such action is deemed by the
4 committee to be necessary;

5 (3) To hold informal hearings at a time and place directed by the
6 chairperson of the committee upon reasonable notice to the farmer and the
7 dealer;

8 (4) To seek evaluations from authorities in allied disciplines,
9 when deemed necessary.

10 (k) The committee shall keep a record of its activities and reports on
11 file in the Arkansas State Plant Board.

12 (l) Any investigation made by less than the whole membership of the
13 committee shall be by authority of a written directive by the chairperson and
14 such investigation shall be summarized in writing and considered by the
15 committee in reporting its findings and making its recommendations.

16 (m) The consumer and seedsman shall give written notice to the
17 department of the acceptance or rejection of the arbitration committee's
18 recommended terms of settlement within thirty (30) days from the date such
19 recommended terms of settlement are issued by the arbitration committee.

20 (n) Members of the committee shall be entitled to receive reimbursement
21 of necessary travel and subsistence expenses as provided by law.

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23 SECTION 3. This act shall become effective July 1, 1991.

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25 SECTION 4. All provisions of this act of a general and permanent nature
26 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
27 Revision Commission shall incorporate the same in the Code.

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29 SECTION 5. If any provision of this act or the application thereof to
30 any person or circumstance is held invalid, such invalidity shall not affect
31 other provisions or applications of the act which can be given effect without
32 the invalid provision or application, and to this end the provisions of this
33 act are declared to be severable.

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35 SECTION 6. All laws and parts of laws in conflict with this act are

1 hereby repealed.

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3 SECTION 7. EMERGENCY. It is hereby found and determined by the General
4 Assembly that it is essential to the effective administration of this act that
5 the provisions hereof become effective on July 1, 1991; that without an
6 emergency clause, this act might not become effective until after July 1,
7 1991. Therefore, an emergency is hereby declared to exist and this act being
8 necessary for the preservation of the public peace, health and safety shall be
9 in full force and effect on and after July 1, 1991.

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APPROVED: 4/8/91

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