

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H3/8/99
A Bill

HOUSE BILL 1800

5 By: Representative Davis
6
7

8 **For An Act To Be Entitled**

9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE
10 PERTAINING TO THE ARBITRATION OF DEFECTIVE SEED
11 CLAIMS; AND FOR OTHER PURPOSES."
12

13 **Subtitle**

14 "TO AMEND VARIOUS SECTIONS OF THE
15 ARKANSAS CODE PERTAINING TO THE
16 ARBITRATION OF DEFECTIVE SEED CLAIMS."
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18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code 2-23-101 is amended to read as follows:

22 "2-23-101. Definitions.

23 Unless the context clearly requires otherwise, the definitions in this
24 section apply throughout this subchapter:

25 (1) 'State Plant Board' means the State Plant Board;

26 (2) 'Director' means the Director of the State Plant Board;

27 (3) 'Dealer' means any person, individual, partnership or company who
28 distributes agricultural seeds;

29 (4) 'Buyer' means a person who purchases agricultural seeds;

30 (5) 'Agricultural seed' means the seeds of grass, forage, cereal, oil
31 and fiber crops, and any other kinds of seed commonly recognized within this
32 state as agricultural seeds and mixtures of such seed;

33 (6) 'Arbitration committee' means the committee established by the
34 director under this subchapter to hear and make determinations in mandatory,
35 nonbinding, arbitration cases;

36 (7) 'Chairperson' means the person selected by the arbitration

1 committee from among its members to preside over arbitration hearings; ~~and~~

2 (8) 'Person' means an individual, firm, partnership, corporation, or
3 company;

4 (9) 'Label' means the display or displays of written, printed or
5 graphic matter upon or attached to the container of seed or as required by
6 regulations established under the Arkansas Plant Act of 1917, beginning at §
7 2-16-201;

8 (10) 'Labeler' means the person, firm, corporation or the registered
9 code number whose name appears on the label or container of seed;

10 (11) 'Labeling' includes all labels, advertisements and other written,
11 printed or graphic representations in any manner whatsoever pertaining to any
12 seed, whether in bulk or in containers, and includes representations on
13 invoices, except for current official publications of the United States
14 Department of Agriculture and the Department of Interior, state experiment
15 stations, state agricultural colleges, and other similar federal or state
16 institutions or agencies authorized by law to conduct research; and

17 (12) 'Advertisement' means all representations, other than those on the
18 label, written, recorded or published and distributed by the labeler."

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20 SECTION 2. Arkansas Code 2-23-102 is amended to read as follows:

21 "2-23-102. Prerequisite to legal action - Notice - Arbitration
22 committee.

23 (a) When any buyer believes that he has been damaged by the failure of
24 agricultural seed to produce or perform as represented by the ~~label attached~~
25 ~~to labeling of such seed as required by State Plant Board regulations~~
26 ~~established under the Arkansas Plant Act of 1917, § 2-16-201 et seq., as a~~
27 ~~prerequisite to the buyer's right to maintain a legal action against the~~
28 ~~dealer or labeler, such buyer shall file a written notice of intent to seek~~
29 ~~arbitration within reasonable time after the alleged defect or violation~~
30 ~~becomes apparent, to permit inspection of the crops or plants during the~~
31 ~~growing season. A meeting shall be scheduled by the Plant Board director~~
32 ~~between the buyer and labeler for the purpose of resolving the dispute, or if~~
33 ~~the dispute is not resolved, to officially filing the complaint. The buyer~~
34 ~~shall make a sworn complaint against the dealer or labeler from whom such~~
35 ~~seeds were purchased, alleging the damages sustained or to be sustained, and~~
36 ~~file same with the Director of the State Plant Board within ten (10) days~~

1 ~~after the alleged defect or violation becomes apparent, and the~~ The buyer
2 shall send a copy of said complaint to said ~~dealer~~ labeler by United States
3 registered mail.

4 (b)(1) A filing fee of ~~one hundred dollars (\$100)~~ two hundred fifty
5 dollars (\$250) plus one dollar (\$1.00) per acre filed on, not to exceed a
6 total of seven hundred fifty dollars (\$750), shall be paid to the Director of
7 the State Plant Board with each complaint filed, and complaints shall be filed
8 on forms provided by said board.

9 (2) This fee shall be deposited in the Plant Board Fund in the
10 State Treasury and may be used by the director to offset expenses of the
11 investigation.

12 (c) Within ten (10) days after receipt of a copy of the complaint, the
13 ~~dealer~~ labeler shall file with the Director of the State Plant Board his
14 answer to said complaint and send a copy of same to the buyer by United States
15 registered mail.

16 (d)(1) Provided, however, that, unless notice of this section is
17 legibly printed or typed on the seed container or on a label affixed thereto,
18 or printed on the invoice covering bulk seed, the buyer shall not be required
19 to comply with this section as a prerequisite to maintaining a legal action
20 *against the dealer or labeler.*

21 (2) A notice in the following form, or some reasonably equivalent
22 language, is sufficient:

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

29 (3) If language setting forth the requirement is not so placed on
30 the seed package, analysis label, or invoice covering bulk seed shipments, the
31 filing and serving of a complaint under this section is not required."
32

33 SECTION 3. Arkansas Code 2-23-103 is amended to read as follows:

34 "2-23-103. Seed dealer or labeler may request investigation -
35 Requirements.

36 (a)(1) Any seed dealer or labeler against whom suit is brought in any

1 court, state or federal, by a buyer who alleges that he has been damaged by
2 the failure of seeds purchased from a seed dealer to perform as labeled, may
3 request an investigation by the arbitration committee.

4 (2) A filing fee of ~~one hundred dollars (\$100)~~ two hundred fifty
5 dollars (\$250) plus one dollar (\$1.00) per acre filed on, not to exceed a
6 total of seven hundred fifty dollars (\$750) shall be paid by the party.

7 (b) The Director of the State Plant Board shall refer the complaint and
8 the answer thereto to the arbitration committee provided in § 2-23-104 for
9 investigation, findings, and recommendations on the matters complained of.”

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11 SECTION 4. Arkansas Code 2-23-104 is amended to read as follows:
12 “2-23-104. Arbitration committee - Members.

13 (a)(1) The Director of the State Plant Board shall appoint an
14 arbitration committee composed of ~~five (5)~~ six (6) members and ~~five (5)~~ six
15 (6) alternate members with one (1) member and one (1) alternate to be
16 appointed upon the recommendation of each of the following:

17 (A)(i) The President of the Arkansas Seed Growers
18 Association;

19 (ii) The President of the Arkansas Seed Dealers
20 Association; ~~and~~

21 (iii) The President of the Arkansas Farm Bureau
22 Federation; and

23 (iv) The Director of the Agricultural Council of
24 Arkansas.

25 (B) Terms for seed grower, seed dealer, and farm bureau and
26 agricultural council members shall be for four (4) years.

27 (2) The members and alternates shall be confirmed by the
28 Governor.

29 (3)(A) The Director of the University of Arkansas Agricultural
30 Experiment Station, or his designee or alternate, and the Director of the
31 University of Arkansas Cooperative Extension Service, or his designee or
32 alternate, shall serve as ex officio members.

33 (B) Ex officio members shall serve until replaced by their
34 organization.

35 (4) Recommending organizations shall submit member
36 recommendations not less than thirty (30) days prior to the expiration day of

1 an expiring term.

2 (5) Each alternate member shall serve only in the absence of the
3 member for whom he is an alternate.

4 (6) Members of the committee may receive expense reimbursement in
5 accordance with § 25-16-901 et seq.

6 (b) The committee shall elect a chairperson from its membership and the
7 Director of the State Plant Board, or his designee, shall serve as secretary
8 of the arbitration committee and shall not vote.

9 (1) It shall be the duty of the chairperson to conduct all
10 meetings and deliberations held by the committee and to direct all other
11 activities of the committee.

12 (2) It shall be the duty of the secretary to keep accurate and
13 correct records on all meetings and deliberations and perform other duties for
14 the committee as directed by the chairperson."

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16 SECTION 5. Arkansas Code 2-23-105 is amended to read as follows:

17 "2-23-105. Committee purpose.

18 (a) The purpose of the arbitration committee is to assist agricultural
19 seed buyers and agricultural seed dealers or labelers in determining the facts
20 relating to matters alleged in complaints made by buyers against dealers or
21 labelers. The committee shall have the authority to make rules and
22 regulations to carry out the purposes of this act.

23 (b) The committee may recommend money damages be paid the buyer as a
24 result of alleged failure of seeds to produce as represented by the ~~Label on~~
25 Labeling of the seed ~~container or invoice~~ and may also recommend that the seed
26 dealer or labeler reimburse the buyer for the amount of the filing fee paid by
27 the buyer."

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29 SECTION 6. Arkansas Code 2-23-107 is amended to read as follows:

30 "2-23-107. Committee - Investigation and report - Findings as evidence.

31 (a) When the director refers to the arbitration committee any complaint
32 made by a buyer against a dealer or labeler, said committee shall make a full
33 and complete investigation of the matters complained of, and, at the
34 conclusion of said investigation, report, through its secretary, the findings
35 and recommendations to the buyer and to the ~~dealer~~ labeler by United States
36 registered mail.

1 (b)(1) The report of arbitration shall be binding upon all parties to
2 the extent, if any, that they have so agreed in any contract governing the
3 sale of the seed, or prior to the official filing of arbitration.

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

8 (3)(A) In any litigation involving a complaint which has been the
9 subject of arbitration under this section, any party may introduce the report
10 of arbitration as evidence of the facts found in the report, and the courts
11 may give such weight to the committee's findings and conclusions of law and
12 recommendations as to damages and costs, as the court may see fit based upon
13 all the evidence before the court.

14 (B) The court may also take into account any findings of
15 the committee with respect to the failure of any party to cooperate in the
16 arbitration proceedings, including any finding as to the effect of delay in
17 filing the arbitration claim upon the committee's ability to determine the
18 facts of the case."

19
20 SECTION 7. Arkansas Code 2-23-108 is amended to read as follows:

21 "2-23-108. Committee - Investigative powers.

22 (a) In conducting its investigation, the arbitration committee is
23 authorized:

24 (1) To examine the buyer on his use of the seed of which he
25 complains and the *dealer* or labeler on his packaging, labeling, and selling
26 operation of the seed alleged to be faulty;

27 (2) To grow to production a representative sample of the alleged
28 faulty seed through the facilities of the state, under the supervision of the
29 Director of the State Plant Board, when such action is deemed by the committee
30 to be necessary;

31 (3) To hold informal hearings at a time and place directed by the
32 chairperson of the committee upon reasonable notice to the ~~farmer~~ buyer and
33 the *dealer* or labeler; and

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

36 (b) Any investigation made by less than the whole membership of the

1 committee shall be by authority of a written directive by the chairperson, and
2 such investigation shall be summarized in writing and considered by the
3 committee in reporting its findings and making its recommendations.”
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5 SECTION 8. All provisions of this act of a general and permanent nature
6 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
7 Revision Commission shall incorporate the same in the Code.
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9 SECTION 9. If any provision of this act or the application thereof to
10 any person or circumstance is held invalid, such invalidity shall not affect
11 other provisions or applications of the act which can be given effect without
12 the invalid provision or application, and to this end the provisions of this
13 act are declared to be severable.
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15 SECTION 10. All laws and parts of laws in conflict with this act are
16 hereby repealed.

17 /s/ Davis
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