

ARKANSAS CODE OF 1987 ANNOTATED

CHAPTER 23 ARBITRATION OF DEFECTIVE SEED CLAIMS

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2-23-101. **Definitions.**

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

- (1) “State Plant Board” means the Arkansas State Plant Board;
- (2) “Director” means the Director of the State Plant Board;
- (3) “Dealer” means any person, individual, partnership or company who distributes agricultural seeds;
- (4) “Buyer” means a person who purchases agricultural seeds;
- (5) “Agricultural Seed” means the seeds of grass, forage, cereal, oil and fiber crops and any other kinds of seed commonly recognized within this state as agricultural seeds and mixtures of such seed;
- (6) “Arbitration committee” means the committee established by the director under this act to hear and make determinations in mandatory, non-binding, arbitration cases;
- (7) “Chairperson” means the person selected by the arbitration committee from among its members to preside over arbitration hearings; and
- (8) “Person” means an individual, firm, partnership, corporation or company;
- (9) “Label” means the display or displays of written, printed or graphic matter upon or attached to the container of seed or as required by regulations established under the Arkansas Plant Act of 1917, beginning at § 2-16-201;
- (10) “Labeler” means the person, firm, corporation or the registered code number whose name appears on the label or container of seed;
- (11) “Labeling” includes all labels, advertisements and other written, printed or graphic representations in any manner whatsoever pertaining to any seed, whether in bulk or in containers, and includes representations on invoices, except for current official publications of the United States Department of Agriculture and Department of Interior, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research; and
- (12) “Advertisement” means all representations, other than those on the label, written, recorded or

published and distributed by the labeler."

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

(a) When any buyer believes that he has been damaged by the failure of agricultural seed to produce or perform as represented by the labeling of such seed, as a prerequisite to the buyer's right to maintain a legal action against the dealer or labeler, such buyer shall file a written notice of intent to seek arbitration within reasonable time after the alleged defect or violation becomes apparent, to permit inspection of the crops or plants during the growing season. A meeting shall be scheduled by the Plant Board director between the buyer and labeler for the purpose of resolving the dispute, or if the dispute is not resolved, to officially file the complaint. The buyer shall make a sworn complaint against the dealer or labeler, alleging the damages sustained or to be sustained, and file same with the Director of the State Plant Board. The buyer shall send a copy of said complaint to said labeler by United States registered mail.

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

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

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

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

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

"Notice of Mandatory Arbitration

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

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

2-23-103. Seed Dealer or labeler may request investigation - Requirements.

(a)(1) Any seed dealer or labeler against whom suit is brought in any court, state or federal, by a buyer who alleges that he has been damaged by the failure of seeds purchased from a seed dealer to perform as labeled, may request an investigation by the arbitration committee.

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

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

2-23-104. Arbitration committee - Members.

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

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

(ii) The President of the Arkansas Seed Dealers Association;

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

(iv) the Director of the Agricultural Council of Arkansas

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

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

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

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

(4) Recommending organizations shall submit member recommendations not less than thirty (30) days prior to the expiration day of an expiring term.

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

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

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

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

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

2-23-105. Committee purpose.

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

(b) The committee may recommend money damages be paid the buyer as a result of alleged failure of seeds to produce as represented by the labeling of the seed, and may also recommend that the seed dealer or labeler reimburse the buyer for the amount of the filing fee paid by the buyer.

2-23-106. Committee - Meetings - Informal hearing.

(a) The arbitration committee may be called into session by the Director of the State Plant Board or upon the direction of the chairperson to consider the matters referred to it by the Director of the State Plant Board.

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

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

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

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

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

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

(B) The court may also take into account any findings of the committee with respect to the failure of any party to cooperate in the arbitration proceedings, including any finding as to the effect of delay in filing

the arbitration claim upon the committee's ability to determine the facts of the case.

2-23-108. Committee - Investigative powers.

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

- (1) To examine that buyer on his use of the seed of which he complains and the dealer or labeler on his packaging, labeling and selling operation of the seed alleged to be faulty;
- (2) To grow to production a representative sample of the alleged faulty seed through the facilities of the State, under the supervision of the Director of the State Plant Board, when such action is deemed by the committee to be necessary;
- (3) To hold informal hearings at a time and place directed by the chairperson of the committee upon reasonable notice to the buyer and the dealer or labeler; and
- (4) To seek evaluations from authorities in allied disciplines, when deemed necessary.

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

2-23-109. Committee records.

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

2-23-110. Notice.

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