

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1055*
Committee Substitute Favorable 6/4/97

Short Title: Arbitration of Seed Claims.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE MANDATORY ARBITRATION OF CLAIMS
3 RELATED TO DEFECTIVE SEED.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 106-277.29 is repealed.

6 Section 2. Article 31 of Chapter 106 of the General Statutes is amended by
7 adding the following new sections:

8 "**§ 106-277.30. Condition precedent to filing an action; notice required.**

9 (a) Complaint by Buyer. – When a buyer believes that he or she has suffered
10 damages due to the failure of agricultural or vegetable seed to produce or perform as
11 labeled, as warranted, or as a result of negligence, the buyer shall make a sworn
12 complaint against the dealer from whom the seeds were purchased, alleging the damages
13 sustained or to be sustained, and file the complaint with the Commissioner of Agriculture
14 within such time as to permit inspection of the seed, crops, or plants. The buyer shall
15 send a copy of the complaint to the dealer by registered mail. A filing fee of one hundred
16 dollars (\$100.00) shall be paid to the Commissioner of Agriculture with each complaint
17 filed. This fee may be used by the Commissioner to offset the expenses of the arbitration
18 committee incurred under G.S. 106-277.32. Within 10 days after receipt of a copy of the

1 complaint, the dealer may file an answer to the complaint and, in that event, shall send a
2 copy to the buyer by registered mail.

3 (b) Notice Required. – The seed dealer shall legibly print or type on the seed
4 container or affix a label on the seed container a notice in the following form or using
5 reasonably equivalent language:

6 **'NOTICE OF MANDATORY ARBITRATION**

7 Under the seed laws of some states, arbitration is required as a precondition of
8 maintaining certain legal actions against a seller of seed. Information about this
9 requirement where applicable, may be obtained from a State's Commissioner of
10 Agriculture or corresponding chief agricultural official.'

11 (c) Condition Precedent. – Complying with subsection (a) of this section is a
12 condition precedent to the buyer's right to file an action against the seed dealer. This
13 subsection does not apply if the seed dealer fails to provide notice as required under
14 subsection (b) of this section.

15 (d) Investigation Requested by Seed Dealer. – Any seed dealer against whom an
16 action is brought in any court, State or federal, by a buyer who alleges that the buyer has
17 suffered damages due to the failure of seeds purchased from a seed dealer to perform as
18 labeled, as warranted, or as a result of negligence may request an investigation by the
19 arbitration committee pursuant to G.S. 106-277.32. A filing fee of one hundred dollars
20 (\$100.00) shall be paid to the Department of Agriculture by the party requesting the
21 investigation.

22 (e) Referral to Committee. – The Commissioner of Agriculture shall refer the
23 complaint and the answer to the complaint, if any, to the arbitration committee to
24 investigate and make findings and recommendations on the matters complained of
25 pursuant to G.S. 106-277.32.

26 **"§ 106-277.31. Arbitration committee created; membership; duties.**

27 (a) The Commissioner of Agriculture shall appoint an arbitration committee
28 composed of five members, three of whom shall be appointed upon the recommendation
29 of the following: Director of the Agricultural Research Service, North Carolina State
30 University; Director of the North Carolina Cooperative Extension Service, North
31 Carolina State University; and President of the North Carolina Seedsmen's Association.
32 The other two members shall include: one farmer who is not connected in any way to
33 selling seeds at retail or wholesale and one employee of the Department of Agriculture.
34 An alternate for each member shall also be appointed in the same manner as that member
35 was appointed to serve whenever that member is unable or unwilling to serve. Each
36 member of the committee shall serve until replaced by the Commissioner of Agriculture.
37 The committee shall elect a chairperson. The chairperson shall conduct all meetings and
38 deliberations and direct all other activities of the committee.

39 (b) A clerk shall be appointed to serve the committee. The clerk shall be an
40 employee of the Department of Agriculture. The clerk shall keep accurate and correct
41 records of all meetings and deliberations and perform other duties for the committee as
42 directed by the chairperson.

1 (c) The purpose of the arbitration committee is to assist seed buyers and
2 agricultural seed dealers in determining the matters alleged in complaints made by buyers
3 against seed dealers.

4 (d) The arbitration committee may be called into session by the Commissioner of
5 Agriculture at the Commissioner's discretion or upon the direction of the chairperson to
6 consider the matters referred to it by the Commissioner of Agriculture.

7 (e) The Department shall provide administrative support for the investigation
8 under this section. The committee shall adopt rules to govern investigations and
9 hearings. A copy of the rules shall be mailed to each party to a dispute upon receipt of a
10 complaint.

11 (f) Members of the committee appointed by the Commissioner who are not
12 governmental employees shall be entitled to receive reimbursement for necessary travel
13 and subsistence expenses pursuant to G.S. 138-5. Other members of the committee shall
14 not be entitled to any compensation or reimbursement of expenses from the Department
15 of Agriculture.

16 (g) The Attorney General shall represent the committee in any and all legal
17 proceedings that may arise concerning or against the committee.

18 **"§ 106-277.32. Duties of arbitration committee.**

19 (a) In conducting its investigation of claims referred by the Commissioner of
20 Agriculture, the arbitration committee may engage in all of the following activities:

21 (1) Examine the buyer regarding the buyer's use of the seed of which the
22 buyer complains and examine the seed dealer on the dealer's packaging,
23 labeling, and selling of the seed alleged to be faulty.

24 (2) Grow a representative sample of the alleged faulty seed to production
25 when such action is deemed by the committee to be necessary.

26 (3) Hold informal hearings at a time and place directed by the chairperson
27 upon reasonable notice to the buyer and the seed dealer.

28 (4) Seek evaluations from authorities in allied disciplines, when deemed
29 necessary by the committee.

30 (5) Visit and inspect the affected site and take samples, make plant counts,
31 and take pictures of affected and unaffected areas.

32 (b) The committee shall keep a record of its activities and reports on file in the
33 Department of Agriculture. The Department shall transmit all findings and
34 recommendations to the buyer and to the seed dealer within 30 days of completion of the
35 arbitration.

36 (c) No investigation shall be made by less than the whole membership of the
37 committee unless the chairperson directs such investigation in writing. Such
38 investigation shall be summarized in writing and considered by the committee in
39 reporting its findings and making its recommendations.

40 (d) The report of arbitration shall be binding upon all parties to the extent, if any,
41 that they have so agreed in writing subsequent to the filing of a complaint pursuant to
42 G.S. 106-277.30.

43 **"§ 106-277.33. Filing an action regarding a defective seed claim.**

1 (a) In the absence of an agreement to be bound by arbitration, a buyer may file an
2 action against a seed seller or assert such claim as a counterclaim or defense in any action
3 brought by the seed seller at any time after the receipt of the report of arbitration under
4 G.S. 106-277.32.

5 (b) In any action involving a complaint that has been the subject of arbitration
6 under G.S. 106-277.32, any party may introduce the report of arbitration as evidence of
7 the facts found in the report, and the court may give such weight to the committee's
8 findings and conclusions of law and recommendations as to damages and costs as the
9 court deems appropriate, based upon all the evidence before the court. The court may
10 consider any finding of the committee with respect to the failure of any party to cooperate
11 in the arbitration proceedings, including any finding as to the effect of delay in filing the
12 arbitration claim upon the committee's ability to determine the facts of the case."

13 Section 3. There is appropriated from the General Fund to the Department of
14 Agriculture the sum of ten thousand dollars (\$10,000) for the 1997-98 fiscal year and the
15 sum of ten thousand dollars (\$10,000) for the 1998-99 fiscal year to be used to implement
16 and administer this act.

17 Section 4. This act becomes effective July 1, 1997.