

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1055\*  
Committee Substitute Favorable 6/4/97  
Committee Substitute #2 Favorable 8/19/98

Short Title: Arbitration of Seed Claims.

(Public)

Sponsors:

Referred to:

April 21, 1997

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

The General Assembly of North Carolina enacts:

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 G.S. 106-277.29 is repealed.

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

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

(a) Complaint by Buyer. – When a buyer has reasonable cause to believe that he or she has suffered damages due to the failure of agricultural seeds or vegetable seeds to produce or perform as labeled, as warranted, or as a result of negligence, the buyer shall make a complaint against the dealer from whom the seeds were purchased, alleging the damages sustained or to be sustained, and file the complaint with the Commissioner of Agriculture within such time as to permit inspection of the seeds, crops, or plants. The buyer shall send a copy of the complaint to the dealer by certified or registered mail. A filing fee of one hundred dollars (\$100.00) shall be paid to the Department of Agriculture and Consumer Services with each complaint filed. This fee may be used by the Commissioner to offset the expenses of the arbitration committee incurred under G.S.

1 106-277.32. Within 10 days after receipt of a copy of the complaint, the dealer may file  
2 an answer to the complaint and, in that event, shall send a copy to the buyer by certified  
3 or registered mail.

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

7 **‘NOTICE OF MANDATORY ARBITRATION**

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

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

16 (d) Investigation Requested by Seed Dealer. – Any seed dealer who has received  
17 notice, either orally or in writing, that a buyer has reasonable cause to believe that he or  
18 she has suffered damage due to the failure of agricultural seeds or vegetable seeds sold by  
19 the dealer to perform as labeled, as warranted, or as a result of negligence, may request  
20 an investigation by the arbitration committee pursuant to G.S. 106-277.32. A filing fee of  
21 one hundred dollars (\$100.00) shall be paid to the Department of Agriculture and  
22 Consumer Services by the party requesting the investigation. The dealer shall send a  
23 copy of the request to the buyer by certified or registered mail. The buyer may file a  
24 response to the request with the Commissioner of Agriculture within 10 days of receipt of  
25 the request for an investigation.

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

30 **"§ 106-277.31. Arbitration committee created; membership; duties.**

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

1       **(b)** A clerk shall be appointed to serve the committee. The clerk shall be an  
2 employee of the Department of Agriculture and Consumer Services. The clerk shall keep  
3 accurate and correct records of all meetings and deliberations and perform other duties  
4 for the committee as directed by the chairperson.

5       **(c)** The purpose of the arbitration committee is to assist seed buyers and seed  
6 dealers in determining the matters alleged in complaints made by buyers against seed  
7 dealers.

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

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

15       **(f)** Members of the committee appointed by the Commissioner who are not State  
16 employees shall be entitled to receive reimbursement for necessary travel and subsistence  
17 expenses pursuant to G.S. 138-5. Other members of the committee shall not be entitled  
18 to any compensation or reimbursement of expenses from the Department of Agriculture  
19 and Consumer Services.

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

22 **"§ 106-277.32. Duties of arbitration committee.**

23       **(a)** In conducting its investigation of claims referred by the Commissioner of  
24 Agriculture, activities of the arbitration committee may include any of the following:

25           **(1)** Examine the buyer regarding the buyer's use of the seeds of which the  
26 buyer complains and examine the seed dealer on the dealer's packaging,  
27 labeling, and selling of the seeds alleged to be faulty.

28           **(2)** Grow a representative sample of the alleged faulty seeds to production  
29 when such action is deemed by the committee to be necessary.

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

32           **(4)** Seek evaluations from authorities in allied disciplines, when deemed  
33 necessary by the committee.

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

36       **(b)** The committee shall keep a record of its activities and reports on file in the  
37 Department of Agriculture and Consumer Services. The Department shall transmit all  
38 findings and recommendations to the buyer and to the seed dealer within 30 days of  
39 completion of the arbitration.

40       **(c)** No investigation shall be made by less than the whole membership of the  
41 committee unless the chairperson directs such investigation in writing. Such  
42 investigation shall be summarized in writing and considered by the committee in  
43 reporting its findings and making its recommendations.

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

4 **"§ 106-277.33. Filing an action regarding a defective seed claim.**

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

9 (b) In any court action involving a complaint that has been the subject of an  
10 investigation under G.S. 106-277.32, any party may introduce evidence of seed quality,  
11 cultivation practices and procedures, and scientific opinion contained in the report of the  
12 arbitration committee. Statements of the parties and recommendations of the arbitration  
13 committee as resolution of the dispute are not admissible as evidence unless such  
14 evidence is otherwise discoverable."

15 Section 3. This section of this act and G.S. 106-277.31, as enacted by Section  
16 2 of this act, are effective when they become law. The remainder of this act becomes  
17 effective December 1, 1998, and applies to complaints filed with the Commissioner of  
18 Agriculture pursuant to this act on or after that date.