

FIRST REGULAR SESSION

# SENATE BILL NO. 508

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR JOHNSON.

Read 1st time March 1, 1999, and 1,000 copies ordered printed.

S2125.011

TERRY L. SPIELER, Secretary.

## AN ACT

To amend chapter 266, RSMo, by adding thereto four new sections relating to Missouri seed law, with an effective date.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 266, RSMo, is amended by adding thereto four new sections, to be known as sections 266.096, 266.097, 266.098 and 266.099, to read as follows:

**266.096. 1. The director of the Missouri department of agriculture shall have the authority to appoint and enter into contract with an arbitration council and an independent organization or group for purpose of administering mandatory non-binding arbitration as related to seed as described this section.**

**2. The mandatory non-binding arbitration council shall be comprised of three members and three alternative members. Each alternate member shall serve only in the absence of the member for whom the person is an alternate. The arbitration council will be comprised of one member and one alternate from each of these areas: seed industry; farmer-producer; university or state government. Each member and alternate will serve a three year term and can be reappointed. The director has the authority to remove members from the arbitration council after a hearing as to cause.**

**3. The director shall appoint a chairman, a secretary, and a treasurer from the arbitration council. The chairman shall direct the activities of the council and oversee the investigation, schedule meetings and hold hearings. The secretary shall record the minutes of meetings and shall oversee the preparation of reports and recommendations to the buyer, seller and director. The treasurer shall collect the filing fee and the moneys covering the cost of investigation and shall ensure they are deposited in the arbitration council fund. The treasurer shall receive all itemized expense vouchers and send a billing to the loser of the arbitration, covering the cost of the investigation. The**

treasurer shall deposit the payment for the cost of investigation and ensure proper payment to the investigating organization or group as well as other persons submitting expenses relating to the investigation. The arbitration council can be called into session by the director of agriculture or the chairman of the council to consider matters related to arbitration.

4. The filing fee for the complaint and the money covering the cost of the investigation shall be collected by the arbitration council directly from the buyer or the seller involved in the complaint. The arbitration council is authorized to contract with the director pursuant to this section to perform the duties involved with mandatory non-binding arbitration and to transfer funds collected to the director who shall transfer the moneys to the director of revenue.

5. All money transferred from the arbitration council to the director for the administration of mandatory non-binding arbitration shall be credited to the "arbitration council fund", which is hereby created. All money credited to the arbitration council fund shall be appropriated by the general assembly for the use and benefit of the mandatory non-binding arbitration council and specified in the annual appropriations to said council to be used only for the cost of investigating and making recommendations involved with mandatory non-binding arbitration complaints received on seed. The director of agriculture shall pay to the treasurer of the arbitration council those moneys needed to cover costs of the investigation. The treasurer of the arbitration council shall pay the investigating organization or group as well as other persons who have submitted itemized expense costs incurred during their investigation duties. No payment will be made unless an itemized expense report is received.

6. Any fee covering the cost of investigation is due and payable by the loser of the arbitration within thirty days of the date of the bill. If after due notice, any person defaults in any payment for the cost of the investigation, the due amount may be collected by civil action and the person adjudged in default shall pay the costs of the action. The attorney general or, if requested by the attorney general, the prosecuting attorney of any county in which a cause of action arose under the provisions for the collection of the due and unpaid fees, shall institute proper action in the courts of this state for collection of those fees. The statute of limitations period for the institution of suit for collection shall be one year from the date of the billing.

7. All filing fees and moneys to cover the cost of investigating mandatory non-binding arbitration complaints paid to the director shall not be considered state funds and shall be administered by the director of revenue pursuant to article IV, section 15 of the Missouri constitution. The department of agriculture shall keep accurate records of the amount of money collected by the arbitration council. These records shall be

open, upon request, at all times to the officers of the council. The director shall provide the director of revenue with the information and reports necessary to facilitate accurate distribution of moneys to the treasurer of the arbitration council.

8. Moneys collected pursuant to mandatory non-binding arbitration will be credited to the arbitration council fund and will be distributed pursuant to the provisions of this section.

**266.097. 1. Any seed subject to mandatory non-binding arbitration in the state of Missouri must be labeled accordingly:**

(1) Indication of the seed being subject to mandatory non-binding arbitration must appear on all guaranteed analysis labels. A statement such as "subject to mandatory non-binding arbitration" shall be printed or stamped on the guaranteed analysis label. This label must be attached to all packages, containers or bags containing seed subject to mandatory non-binding arbitration;

(2) A notice of required arbitration in conspicuous language calling attention to the requirements of mandatory non-binding arbitration must be attached or printed on all packages, containers or bags containing seed subject to mandatory non-binding arbitration. The seller must supply the buyer the notice of required arbitration on all bulk seed subject to mandatory non-binding arbitration.

2. The notice of mandatory non-binding arbitration will read as follows in the state of Missouri:

**Notice of Required Arbitration**

Under the seed laws of several states, arbitration of disputes involving allegedly defective seed is required before certain legal actions may be initiated against a seller of seed. The consumer shall file a complaint along with the required filing fee with the chief agriculture officer of the state. Information about this requirement, where applicable, may be obtained from a state's director of agriculture, or corresponding chief agricultural official. In most cases, a complaint must be filed with the designated official and provided to the seller within such time as to permit inspection of seed, crops or plants.

**266.098. 1. As a prerequisite to the buyer's right to bring legal action against the seller of such seed, the buyer shall first submit a sworn complaint to arbitrate as provided in this section when claiming to have been damaged by the failure of any seed for planting to produce or perform as represented by the label attached to each container of seed and/or accompanying any sale of bulk seed pursuant to section 266.051, or by warranty or guarantee, or as a result of negligence. A thirty day period is allowed from the time the buyer's written complaint is received until the arbitration council begins its investigation. During this thirty day period, the seller has fifteen days from the receipt of the complaint to answer the buyer and provide the director**

with a copy of the answer. Settlement can be made any time during this thirty day period. No claims other than the complaint or counterclaims other than the answer can be made during this thirty day period.

2. A buyer may invoke arbitration on seed bearing a notice of required arbitration by filing a sworn complaint to the director along with a filing fee of two hundred and fifty dollars. The buyer shall on the same date serve a sworn complaint to the seller by certified mail. The sworn complaint must be filed within such time as to allow the inspection of the seed and the crops or plants under field conditions. Any seed subject to mandatory non-binding arbitration that fails to germinate as guaranteed shall be reported to the seller within thirty days of the discovery of the failure and before any replanting takes place. This fact must be sworn to in the complaint and may not be rebutted by the seller.

3. Within fifteen days of receipt of the complaint, the seller must send an answer to the buyer and file a copy with the director by certified mail.

4. The filing fee of two hundred fifty dollars for each complaint must accompany the sworn complaint and be payable to the arbitration council fund and will be used to offset the cost of investigation, should the complaint go to arbitration. The filing fee will be refunded if complaint is settled before going to arbitration.

5. At the end of the thirty days from the date of receipt of the complaint, the director will supply the arbitration council copies of the complaint from the buyer and answer from the seller if no settlement has been made.

6. Upon receipt of the complaint and answer, the chairman of the arbitration council shall complete or cause to be completed a thorough investigation. Depending on the scope of the complaint, the investigation may be completed by the arbitration council members or by the investigating organization or groups contracted or appointed by the director. In any matters involving genetically engineered seed or seed processing traits of a special nature to which such complaint is made, the seller or labeler of such seed shall furnish the arbitration council the technology, methodology and procedures necessary to conduct any test to determine if the seeds will perform or produce as represented by the labeler of the seed. Trade secrets and advanced technology submitted pursuant to this section shall be a closed record and protected from disclosure pursuant to subdivision (15) of section 610.021, RSMo. Failure to furnish such technology and procedures shall result in an irrebuttable presumption that the seeds failed to perform as claimed.

7. The arbitration council, members of the designated investigating organization or group, and any technological experts designated by the director shall be allowed to inspect the buyers' records and farming operation where the seed under arbitration is planted. They may also examine the seller or labeler's cleaning, packaging, production

**of seed, labeling, storage practices and selling operations of seed claimed to be faulty, if deemed necessary.**

**8. A representative sample of seed in question can be tested through the facilities of the state or seed testing facility designated by the director up to and including grow out tests.**

**9. The arbitration council may hold informational hearings at a time and place so designated by the chairman of the arbitration council. Written announcement of this meeting will be made by the chairman notifying the buyer, seller, and director. The buyer and seller shall be given opportunity to present their respective sides of the dispute. Attorneys may be present at the hearing to confer with their clients, but no attorney may participate directly in the hearings.**

**10. The arbitration council shall approve its findings and recommendations, based on the facts and conclusions of law, and shall assess any liability and damages by a majority vote of its members. The arbitration council secretary will then make a written report of its findings and liability and damage assessment, if any, to the buyer, the seller, and the director. The report shall also include detailed accounting of the cost of the investigation including any unique costs incurred by the seller when providing technology and testing procedure information.**

**11. A sixty-day period is allowed from the time a referral of the complaint by the director to the arbitration council is made until the written report by the arbitration council secretary shall be sent. Such sixty-day period may be extended by agreement of all parties or by reason of good cause shown by the arbitration council to the director.**

**12. The buyer and seller have thirty days from receipt of the arbitration council's decision to accept or reject the suggested settlement. The buyer and seller shall advise the director and chairman of the arbitration council of their individual decisions.**

**13. If the seed is found to be faulty in any way, the seller shall pay the cost of the investigation and the two-hundred-fifty-dollar filing fee will be returned to the buyer. If the seed is found not to be faulty in any way, the buyer shall forfeit his filing fee and pay the balance remaining for the cost of the investigation. Payment of the cost of the investigation will be made to the arbitration council fund, based on the itemized expense reports submitted by those individuals or groups involved with the investigation to the treasurer of the arbitration council.**

**14. Failure of the loser of the arbitration to pay the cost of the investigation within thirty days of receiving written notice of the due amount will result in action taken as indicated in subdivision (6) of subsection 1 of section 266.096, RSMo.**

**15. The members of the arbitration council shall receive no compensation for the**

performance of their duties but may be reimbursed for travel expenses such as lodging, meals, and mileage, at the current state rate, if applicable. Funding for these expenses may be paid in part by the filing fee and will be included as a part of the investigation cost.

**266.099. 1. The report of arbitration shall be binding upon the buyer and seller only if they have a signed contract agreeing to accept the recommendations of the arbitration council.**

**2. In the absence of an agreement to be found 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 decision of arbitration.**

**3. 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. The council's findings and conclusions of law and any recommendation for liability damages and costs may be used, along with any other presented evidence, as criteria for the court's judgment. Any delays when filing the arbitration claims to the council, as well as any effects on the investigation caused by such delays when filing the claims, may also be used by the court when making its judgment.**

Section B. The enactment of this act shall become effective January 1, 2000.

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