

AGRICULTURE CODE

TITLE 5. PRODUCTION, PROCESSING, AND SALE OF HORTICULTURAL PRODUCTS

SUBTITLE A. SEED AND FERTILIZER

CHAPTER 64. ARBITRATION OF SEED PERFORMANCE DISPUTES

Sec. 64.001. APPLICABILITY. This chapter applies only to claims or counterclaims due to the failure of seed purchased in a seed bag or package that contains or has attached the notice required by Section 64.003 of this code.

Added by Acts 1989, 71st Leg., ch. 604, Sec. 1, eff. Jan. 1, 1990.

Amended by Acts 1993, 73rd Leg., ch. 598, Sec. 1, eff. Sept. 1, 1993.

Sec. 64.002. REQUIREMENT OF ARBITRATION. (a) When a purchaser of seed designed for planting claims to have been damaged by the failure of the seed to produce or perform as represented by warranty or by the label required to be attached to the seed under this subtitle or as a result of negligence, the purchaser must submit the claim to arbitration as provided by this chapter not later than the 10th day after the date on which the purchaser discovered or reasonably should have discovered the defect as a prerequisite to the exercise of the purchaser's right to maintain a legal action against the labeler or any other seller of the seed.

(b) Any period of limitations that applies to the claim shall be tolled until the 11th day after the date of filing with the commissioner of the report of arbitration by the board of arbitration.

(c) A claim of damages due to the failure of the seed as described by Subsection (a) of this section may not be asserted as a counterclaim or defense in any action brought by a seller against a purchaser until the purchaser has submitted a claim to arbitration.

(d) When the court in which an action has been filed by a seller of seed described by Subsection (c) of this section receives from the purchaser a copy of the purchaser's complaint filed in arbitration, accompanied by a written notice of intention to use the claim as a counterclaim or defense in the action, the seller's action shall be stayed. Any period of limitations that applies to

the claim is suspended until the 11th day after the date of filing with the commissioner of the report of arbitration by the board of arbitration.

Added by Acts 1989, 71st Leg., ch. 604, Sec. 1, eff. Jan. 1, 1990.

Amended by Acts 1993, 73rd Leg., ch. 598, Sec. 2, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 543, Sec. 1, eff. Sept. 1, 2003.

Sec. 64.003. NOTICE OF ARBITRATION REQUIREMENT. (a) Conspicuous language calling attention to the requirement for arbitration under this chapter shall be included on the analysis label required under this subtitle or otherwise attached to the seed bag or package.

(b) The required notice shall read substantially as follows:

NOTICE OF REQUIRED ARBITRATION

Under the seed laws of Texas, arbitration is required as a precondition of maintaining certain legal actions, counterclaims, or defenses against a seller of seed. Information about this requirement may be obtained from the state commissioner of agriculture.

Added by Acts 1989, 71st Leg., ch. 604, Sec. 1, eff. Jan. 1, 1990.

Amended by Acts 1993, 73rd Leg., ch. 598, Sec. 3, eff. Sept. 1, 1993.

Sec. 64.004. EFFECT OF ARBITRATION. In any litigation involving a complaint that has been the subject of arbitration under this chapter, any party may introduce the report of arbitration as evidence of the facts found in the report, and the court may give such weight to the arbitration board's findings of fact, conclusions of law, and recommendations as to damages and costs as the court determines advisable. The court may also take into account any findings of the board of arbitration with respect to the failure of any party to cooperate in the arbitration proceedings, including the arbitration board's ability to determine the facts of the case.

Added by Acts 1989, 71st Leg., ch. 604, Sec. 1, eff. Jan. 1, 1990.

Amended by Acts 2003, 78th Leg., ch. 543, Sec. 2, eff. Sept. 1,

2003.

Sec. 64.005. ARBITRATION BOARD. (a) The State Seed and Plant Board, as constituted under Section 62.002 of this code, is the board of arbitration for complaints filed under this chapter.

(b) As a board of arbitration, the State Seed and Plant Board shall conduct arbitration as provided by this chapter. The arbitration board may be called into session by the commissioner or the chairman of the State Seed and Plant Board to consider matters referred to the arbitration board by the commissioner or the chairman.

(c) The State Seed and Plant Board shall also be given the authority to hire an outside arbitrator who is not an employee of the Department of Agriculture or a member of the arbitration board. Added by Acts 1989, 71st Leg., ch. 604, Sec. 1, eff. Jan. 1, 1990.

Sec. 64.006. ARBITRATION PROCEDURES. (a) A purchaser may begin arbitration by filing with the commissioner a sworn complaint and a filing fee, as provided by department rule. The purchaser shall send a copy of the complaint to the seller by certified mail.

(b) Not later than the 15th day after the date the seller receives a copy of the complaint, the seller shall file with the commissioner an answer to the complaint and send a copy of the answer to the purchaser by certified mail.

(c) The commissioner shall refer the complaint and the answer to the arbitration board for investigation, findings, and recommendations.

(d) On referral of the complaint for investigation, the arbitration board shall make a prompt and full investigation of the matters complained of and report its findings and recommendations to the commissioner not later than the 60th day after the date of the referral, or before a later date determined by the parties.

(e) The report of the arbitration board shall include findings of fact, conclusions of law, and recommendations as to costs, if any. If there is a cost, the commissioner shall assess the cost of arbitration against any party found responsible.

(f) In the course of its investigation, the arbitration

board or any of its members may:

(1) examine the purchaser and the seller on all matters that the arbitration board considers relevant;

(2) grow to production a representative sample of the seed through the facilities of the commissioner or a designated university under the commissioner's supervision; or

(3) hold informal hearings at the time and place the chairman of the State Seed and Plant Board directs, with reasonable notice to all parties.

(g) The arbitration board may delegate all or any part of any investigation to one or more of its members. Any delegated investigation shall be summarized in writing and considered by the arbitration board in its report.

(h) The arbitration board shall consider any field inspection or other data submitted by either party in its report and recommendation.

(i) The members of the arbitration board serve without compensation but are entitled to reimbursement for expenses incurred in the performance of their duties in the amounts provided by the General Appropriations Act.

(j) After the arbitration board has filed a report of arbitration, the commissioner shall promptly transmit the report by certified mail to all parties.

Added by Acts 1989, 71st Leg., ch. 604, Sec. 1, eff. Jan. 1, 1990.
Amended by Acts 1993, 73rd Leg., ch. 598, Sec. 4, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 419, Sec. 2.25, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 543, Sec. 3, eff. Sept. 1, 2003.

Sec. 64.0065. EFFECT OF NONCOMPLIANCE. The arbitration board may dismiss a purchaser's claim to arbitration if the purchaser fails to submit the claim within the period prescribed by Section [64.002\(a\)](#).

Added by Acts 2003, 78th Leg., ch. 543, Sec. 4, eff. Sept. 1, 2003.

Sec. 64.007. DEPARTMENT RULES. The department may adopt rules necessary to carry out the purposes of this chapter.

Added by Acts 1989, 71st Leg., ch. 604, Sec. 1, eff. Jan. 1, 1990.