

## **IC 15-15-5**

### **Chapter 5. Indiana Seed Arbitration Council**

#### **IC 15-15-5-1**

##### **Applicability of chapter; notice**

Sec. 1. This chapter applies to civil actions against a seller for the failure of agricultural or vegetable seeds to perform if the container in which the seeds were sold included the following notice on the label:

##### **NOTICE OF REQUIRED ARBITRATION**

Under the seed laws of Indiana and some other states, arbitration is required as a precondition of maintaining certain legal actions, counterclaims, or defenses against a seller of seed. Information about this requirement, where applicable, may be obtained from a state's seed commissioner or the Indiana State Department of Agriculture.

*As added by P.L.2-2008, SEC.6. Amended by P.L.120-2008, SEC.48.*

#### **IC 15-15-5-2**

##### **Uniform Arbitration Act; applicability**

Sec. 2. Arbitration under this chapter is not subject to IC 34-57-2.  
*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-3**

##### **"Agricultural or vegetable seeds"**

Sec. 3. As used in this chapter, "agricultural or vegetable seeds" refers to:

- (1) agricultural; or
- (2) vegetable;

seeds that are subject to IC 15-15-1.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-4**

##### **"Arbitration"**

Sec. 4. As used in this chapter, "arbitration" refers to arbitration conducted under this chapter.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-5**

##### **"Buyer"**

Sec. 5. As used in this chapter, "buyer" means a buyer of:

- (1) agricultural; or
- (2) vegetable;

seeds that are subject to IC 15-15-1.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-6**

##### **"Commissioner"**

Sec. 6. As used in this chapter, "commissioner" refers to the state seed commissioner.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-7**

##### **"Council"**

Sec. 7. As used in this chapter, "council" refers to the Indiana seed arbitration council established by section 9 of this chapter.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-8**

##### **"Seller"**

Sec. 8. As used in this chapter, "seller" refers to a seller of:

- (1) agricultural; or
- (2) vegetable;

seeds that are subject to IC 15-15-1.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-9**

##### **Indiana seed arbitration council established**

Sec. 9. (a) The Indiana seed arbitration council is established.

(b) The following persons or their designees are members of the council:

- (1) The director of Purdue University cooperative extension service.
- (2) The director of the office of agricultural research programs at Purdue University.
- (3) The president of the Indiana Seed Trade Association.
- (4) The president of an Indiana farmer organization selected by the commissioner.
- (5) The commissioner.

(c) The council shall select a chairperson from its membership.

(d) The council may be called into session by the commissioner or by the council's chairperson to consider matters under this chapter.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-10**

##### **Council's duties**

Sec. 10. The council shall do the following:

- (1) Assist buyers and sellers in determining the validity of complaints between the buyer and the seller.
- (2) Recommend cost damages resulting from the failure of seed to perform or produce properly, whether the damages are related to:
  - (A) specific representations on the label;
  - (B) other information on the seed container; or
  - (C) conditions attributed to the quality of the seed.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-11**

##### **Authority of council; investigations; hearings; subpoenas**

Sec. 11. The council may do the following:

- (1) Examine all nonprivileged records of the buyer and the seller that the council considers relevant to a complaint filed under this chapter.
- (2) Investigate and conduct tests the council considers necessary to determine the validity of the complaint. The council may enter into contracts with qualified persons to perform investigations and tests under this subdivision.
- (3) Hold hearings at the times and places designated by the chairperson to perform the functions described in section 10 of this chapter. Written notice of a hearing must be given to the buyer and the seller not later than twenty (20) days before the hearing. Each party must be given an opportunity to present its position at a hearing.
- (4) Negotiate and recommend to the buyer and the seller conditions for settlement of a complaint.
- (5) Hold hearings to present:
  - (A) the results of the investigation of a complaint; and
  - (B) the recommendations to the buyer and the seller for settlement of the complaint.
- (6) Compel either or both of the following by subpoena:
  - (A) The attendance and testimony of witnesses.
  - (B) The production of documents.

If the council issues a subpoena, the circuit or superior court of the county in which a subpoena is to be served shall enforce the subpoena.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-12**

##### **Conditions precedent to civil suit; tolling of limitations**

Sec. 12. (a) As a condition precedent to maintaining a civil action against a seller for failure of the agricultural or vegetable seeds to produce or perform:

- (1) as represented by the label required to be attached to those seeds or furnished under IC 15-15-1-32 or IC 15-15-1-33;
- (2) as represented by warranty; or
- (3) because of negligence;

the buyer must submit the claim to arbitration.

(b) Any applicable period of limitation with respect to a claim subject to this chapter is tolled until twenty (20) days after the filing of the report of arbitration with the commissioner.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-13**

##### **Counterclaims or defenses; notice**

Sec. 13. (a) As a condition precedent to asserting a counterclaim or a defense in an action brought by a seller against a buyer, the counterclaim or defense must be submitted to arbitration.

(b) Upon the buyer's filing of a written notice of intention to assert a claim as a counterclaim or defense, accompanied by a copy of the buyer's complaint in arbitration filed under section 18 of this chapter,

the action brought by the seller shall be stayed and any applicable statute of limitations is tolled with respect to the claim until twenty (20) days after filing of the report of arbitration with the commissioner.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-14**

##### **Binding effect of arbitration report**

Sec. 14. The report of arbitration under section 21 of this chapter is binding upon all parties to the extent that they have so agreed in a contract governing the sale of the seed.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-15**

##### **Absence of agreement to be bound by arbitration; presentation of post report claims**

Sec. 15. In the absence of an agreement to be bound by arbitration, a buyer may:

- (1) commence legal proceedings against a seller based upon a claim subject to this chapter; or
- (2) assert a claim subject to this chapter as a counterclaim or defense in any action brought by the seller;

at any time after the receipt of the report of arbitration.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-16**

##### **Report of arbitration as evidence in subsequent litigation**

Sec. 16. 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 council's findings of fact and conclusions of law and recommendations as to damages and costs contained in the report as the court considers appropriate based upon all the evidence before the court. The court may also take into account any finding of the council 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 council's ability to determine the facts of the case.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-17**

##### **Filing arbitration claim; filing fee; time of complaint**

Sec. 17. (a) A buyer that seeks to assert a claim under this chapter shall invoke arbitration under this chapter by filing a sworn complaint with the commissioner together with a filing fee of one hundred dollars (\$100). The buyer shall serve a copy of the complaint upon the seller by certified mail.

(b) Except in the case of seed that has not been planted, the claim shall be filed within a reasonable time after the alleged defect or violation becomes apparent so as to permit effective inspection of:

- (1) the crops or plants under field conditions; or
- (2) the grain harvested from the crops or plants.

(c) Notwithstanding subsection (b), a claim must be filed not later than ninety (90) days after completion of the harvest of the crop of the seed at issue.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-18**

##### **Answer to complaint; filing fee**

Sec. 18. (a) Not later than twenty (20) days after receipt of a copy of the complaint, the seller shall file with the commissioner an answer to the complaint and serve a copy of the answer upon the buyer by certified mail.

(b) The seller shall pay a filing fee of one hundred dollars (\$100) to the commissioner when the seller files the answer to the complaint under subsection (a).

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-19**

##### **Investigation; payment of costs; disposition of payments**

Sec. 19. (a) Before beginning a complaint investigation, the commissioner shall prepare and provide to the parties an estimate of the costs to be incurred during the investigation of the complaint.

(b) Before a complaint investigation begins, the buyer and the seller shall each pay to the commissioner an amount equal to fifty percent (50%) of the costs estimated by the commissioner under subsection (a). The money required to be paid under this subsection is in addition to the filing fees required by sections 17 and 18 of this chapter.

(c) The commissioner shall deposit the money paid under subsection (b) in a separate account. The costs of the investigation shall be paid from money in the account.

(d) If the actual costs of the investigation are greater than the costs estimated under subsection (a), the buyer and the seller shall each pay fifty percent (50%) of the difference between the actual costs and the costs estimated under subsection (a).

(e) If the actual costs of the investigation are less than the costs estimated under subsection (a), the commissioner shall refund to the buyer and the seller each fifty percent (50%) of the difference between the actual costs and the costs estimated under subsection (a).

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-20**

##### **Council investigation of complaint**

Sec. 20. The commissioner shall refer the complaint and answer to the council for investigation, findings, and recommendations.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-21**

##### **Report of findings**

Sec. 21. Upon referral of a complaint for investigation, the council shall make a prompt and full investigation of the matters complained of and report its findings and recommendations to the commissioner not later than sixty (60) days after the referral or a later date as the parties may determine.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-22**

##### **Council report; contents**

Sec. 22. The report of the council must include findings of facts, conclusions of law, and recommendations as to costs, if any.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-23**

##### **Delegation of investigation**

Sec. 23. The council may delegate all or any part of any investigation to one (1) or more of its members. Any delegated investigation shall be summarized in writing and considered by the council in its report.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-24**

##### **Confidentiality of trade secrets and proprietary information**

Sec. 24. The council shall ensure that all trade secrets and other information of a proprietary nature collected during the course of an investigation under this chapter are kept confidential to the degree necessary to ensure the property rights of the seller and the civil rights of the buyer.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-25**

##### **Per diem and travel expenses**

Sec. 25. A member of the council is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). A member is, however, entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-26**

##### **Transmission of report to parties**

Sec. 26. After the council has made its report, the commissioner shall promptly transmit the report by certified mail to all parties.

*As added by P.L.2-2008, SEC.6.*

#### **IC 15-15-5-27**

##### **Settlement recommendation; acceptance or rejection of recommendation**

Sec. 27. The buyer and seller shall each give written notice to the commissioner of the acceptance or rejection of the council's recommended terms of settlement not later than thirty (30) days after the date of the council's recommendation.

*As added by P.L.2-2008, SEC.6.*

### **IC 15-15-5-28**

#### **Rules**

Sec. 28. The commissioner may adopt rules under IC 4-22-2 to do the following:

- (1) Describe the conditions and circumstances relating to seed to which arbitration under this chapter is applicable.
- (2) Supplement the procedures of the arbitration process set forth in this chapter.

*As added by P.L.2-2008, SEC.6.*