

Stricken language would be deleted from and underlined language would be added to present law.

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As Engrossed: H3/13/15 H3/19/15
A Bill

HOUSE BILL 1963

By: Representatives Eubanks, Branscum, Gillam, Gossage, Payton, Pitsch, Ratliff, Wardlaw
By: Senators B. Pierce, J. Cooper

For An Act To Be Entitled

AN ACT TO CREATE THE PRODUCTION CONTRACT ARBITRATION
PROCEDURE ACT; TO PROVIDE AN ARBITRATION PROCESS FOR
DISPUTES BETWEEN GROWERS AND CONTRACTORS RELATING TO
A PRODUCTION CONTRACT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE PRODUCTION CONTRACT
ARBITRATION PROCEDURE ACT; AND TO PROVIDE
AN ARBITRATION PROCESS FOR DISPUTES
BETWEEN GROWERS AND CONTRACTORS RELATING
TO A PRODUCTION CONTRACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 2 is amended to add an additional
chapter to read as follows:

Chapter 50

Production Contract Arbitration Procedure Act

2-50-101. Title.

This chapter shall be known as the "Production Contract Arbitration
Procedure Act".

2-50-102. Definitions.

As used in this chapter:

(1) "Contractor" means the same as defined in § 2-32-201;



- (2) "Grower" means the same as defined in § 2-32-201; and
- (3) "Production contract" means the same as defined in § 2-32-201.

2-50-103. Prerequisite to arbitration – Notice – Filings.

(a)(1) When a grower believes that he or she has been damaged by the failure of a contractor to perform under a production contract, as a prerequisite to the grower's right to bring a claim for arbitration against the contractor under this chapter, the grower shall file a complaint with the grievance committee established by the contractor.

(2) If the contractor has not established a grievance committee to handle growers' claims related to production contracts or if the grower wants to appeal the finding of the grievance committee established by the contractor, a grower may proceed with an arbitration claim under this chapter.

(3)(A) However, a grower is not required to bring a claim for arbitration under this chapter before seeking judicial relief on a claim related to a production contract.

(B) The rights provided under this chapter are supplemental to and not in lieu of any other rights a grower has in seeking relief on claim related to a production contract.

(b)(1) Within a reasonable time after the alleged violation becomes apparent or within thirty (30) days of a grievance committee's final determination on a contract dispute between a grower and contractor, the grower shall file a written notice of intent to seek arbitration with the Arkansas Livestock and Poultry Commission.

(2) A meeting shall be scheduled by the Executive Director of the Arkansas Livestock and Poultry Commission between the grower and contractor for the purpose of resolving the dispute, or if the dispute is not resolved, for officially filing the complaint.

(3) The grower shall:

(A) Make a sworn complaint against the contractor alleging the damages sustained or to be sustained;

(B) File the complaint with the executive director; and

(C) Send a copy of the complaint to the contractor by United States registered mail.

(c) Complaints shall be filed on forms provided by the commission.

(d)(1) A filing fee of two hundred fifty dollars (\$250) shall be paid to the executive director with each complaint filed.

(2) The filing fee shall be deposited into the Livestock and Poultry Fund Account in the State Treasury and may be used by the executive director to offset expenses of the investigation.

(e) Within ten (10) days after receipt of a copy of the complaint, the contractor shall:

(1) File with the executive director the contractor's answer to the complaint; and

(2) Send a copy of the answer to the grower by certified mail, return receipt requested.

2-50-104. Arbitration committee – Members.

(a)(1)(A) The Governor shall appoint an arbitration committee composed of seven (7) members and seven (7) alternate members as follows:

(i) The Governor shall appoint three (3) members and three (3) alternates from a list provided by the Arkansas Farm Bureau Federation of potential members who are growers;

(ii) The Governor shall appoint three (3) members and three (3) alternates from a list of potential members provided by the Poultry Federation; and

(iii)(a) The Governor shall appoint one (1) member and one (1) alternate from the public at large.

(b) The member and alternate appointed under this subdivision (a)(1)(A)(iii) shall not be a grower or contractor.

(B)(i) The terms of the initial members and alternates appointed to the committee shall be as follows:

(a) One (1) member and one (1) alternate appointed under subdivision (a)(1)(A)(i) of this section and one (1) member and one (1) alternate appointed under subdivision (a)(1)(A)(ii) of this section shall serve a one-year term;

(b) One (1) member and one (1) alternate appointed under subdivision (a)(1)(A)(i) of this section and one (1) member and one (1) alternate appointed under subdivision (a)(1)(A)(ii) of this section shall serve a two-year term; and

(c) One (1) member and one (1) alternate appointed under subdivision (a)(1)(A)(i) of this section, one (1) member and one (1) alternate appointed under subdivision (a)(1)(A)(ii) of this section, and the member and alternate appointed under subdivision (a)(1)(A)(iii) of this section shall serve a four-year term.

(ii) Successor members shall serve four-year terms, except that a person appointed to fill a vacancy resulting in an unexpired term shall serve only for the remainder of that term.

(2)(A) The Vice President of Agriculture for the University of Arkansas Division of Agriculture, or his or her designee, shall serve as an ex officio member.

(B) The ex officio member described under subdivision (a)(2)(A) of this section shall serve until replaced by his or her organization.

(3) Recommending organizations under subdivision (a)(1)(A) of this section shall submit member recommendations not less than thirty (30) days before the expiration day of an expiring term.

(4) Each alternate member shall serve only in the absence of the member for whom he or she is an alternate.

(5) Members of the arbitration committee may receive expense reimbursement in accordance with § 25-16-901 et seq.

(b)(1)(A) The arbitration committee shall elect a chairperson from its membership.

(B) The chairperson shall conduct all meetings and deliberations held by the arbitration committee and direct all other activities of the arbitration committee.

(2)(A) The Executive Director of the Arkansas Livestock and Poultry Commission, or his or her designee, shall serve as secretary of the arbitration committee and shall not vote.

(B) The secretary shall keep accurate and correct records on all meetings and deliberations and perform other duties for the arbitration committee as directed by the chairperson.

2-50-105. Arbitration committee – Purpose.

(a) The purpose of the arbitration committee is to assist growers and contractors in determining the facts relating to matters alleged in

complaints made by growers against contractors.

(b) The arbitration committee may recommend that:

(1) Money damages be paid to the grower as a result of the alleged failure of the contractor to perform under a production contract; and

(2) The contractor reimburse the grower for the amount of the filing fee paid by the grower.

2-50-106. Arbitration committee – Meetings – Informal hearing.

(a) The Executive Director of the Arkansas Livestock and Poultry Commission or the chairperson of the arbitration committee may call the arbitration committee into session to consider the matters referred to the arbitration committee by the Arkansas Livestock and Poultry Commission.

(b) If the arbitration committee determines that an informal hearing should be conducted to allow each party an opportunity to present his or her respective side of the dispute, attorneys may be present at the hearing to confer with their clients but may not participate directly in the proceedings unless requested to do so by the chairperson of the arbitration committee.

2-50-107. Committee – Hearing and report – Findings as evidence.

(a) When the Executive Director of the Arkansas Livestock and Poultry Commission refers to the arbitration committee a complaint made by a grower against a contractor, the arbitration committee shall:

(1) Hold a hearing on the matters stated in the complaint; and

(2) At the conclusion of the hearing, the secretary of the arbitration committee shall report through its secretary the findings and recommendations to the grower and the contractor by United States registered mail.

(b)(1) The report of the arbitration committee shall be binding upon all parties to the extent, if any, that they have so agreed:

(A) In the relevant production contract; or

(B) Before the official filing of arbitration.

(2) In the absence of an agreement to be bound by arbitration, a grower may commence legal proceedings against a contractor or assert such claims, as a counterclaim or defense in any action brought by the contractor, at any time after receipt of the report of arbitration.

(3)(A) In litigation involving a complaint that has been the

subject of arbitration under this section, a 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 committee's findings and conclusions of law and recommendations as to damages and costs as the court may see fit based upon all the evidence before the court.

(B) The court may also take into account the findings of the arbitration committee with respect to the failure of a party to cooperate in the arbitration proceedings, including any finding as to the effect of delay in filing the arbitration claim upon the arbitration committee's ability to determine the facts of the case.

2-50-108. Arbitration committee – Hearings.

(a) In conducting a hearing under § 2-50-107, the arbitration committee may:

(1) Examine the grower and contractor on their performance under the performance contract;

(2) Hold informal hearings at a time and place directed by the chairperson of the arbitration committee upon reasonable notice to the grower and the contractor; and

(3) Seek evaluations from authorities in allied disciplines, when necessary.

(b) A hearing conducted by less than the whole membership of the arbitration committee shall be by authority of a written directive by the chairperson, and the hearing shall be summarized in writing and considered by the arbitration committee in reporting its findings and making its recommendations.

2-50-109. Arbitration committee – Records.

The arbitration committee shall keep a record of its activities and reports on file in the Arkansas Livestock and Poultry Commission.

2-50-110. Rules.

The arbitration committee may make rules to carry out the purposes of this chapter.

2-50-111. Notice.

The grower or contractor shall give written notice to the Arkansas Livestock and Poultry Commission of the acceptance or rejection of the arbitration committee's recommended terms of settlement within thirty (30) days from the date the recommended terms of settlement are issued by the arbitration committee.

/s/Eubanks