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2 90th General Assembly
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4

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

A Bill

HOUSE BILL 1963

5 By: Representatives Eubanks, Branscum, Gillam, Gossage, Payton, Pitsch, Ratliff, Wardlaw
6 By: Senators B. Pierce, J. Cooper
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE PRODUCTION CONTRACT ARBITRATION
10 PROCEDURE ACT; TO PROVIDE AN ARBITRATION PROCESS FOR
11 DISPUTES BETWEEN GROWERS AND CONTRACTORS RELATING TO
12 A PRODUCTION CONTRACT; AND FOR OTHER PURPOSES.
13

Subtitle

16 TO CREATE THE PRODUCTION CONTRACT
17 ARBITRATION PROCEDURE ACT; AND TO PROVIDE
18 AN ARBITRATION PROCESS FOR DISPUTES
19 BETWEEN GROWERS AND CONTRACTORS RELATING
20 TO A PRODUCTION CONTRACT.
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22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

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

Chapter 50

Production Contract Arbitration Procedure Act

2-50-101. Title.

31 This chapter shall be known as the "Production Contract Arbitration
32 Procedure Act".
33

2-50-102. Definitions.

35 As used in this chapter:

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



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

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

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5 2-50-103. Prerequisite to arbitration – Notice – Filings.

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

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

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

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

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

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

31 (3) The grower shall:

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

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

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

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

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

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

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

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

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

13
14 2-50-104. Arbitration committee – Members.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33
34 2-50-105. Arbitration committee – Purpose.

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

1 complaints made by growers against contractors.

2 (b) The arbitration committee may recommend that:

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

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

7
8 2-50-106. Arbitration committee – Meetings – Informal hearing.

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

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

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19 2-50-107. Committee – Hearing and report – Findings as evidence.

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

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

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

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

30 (A) In the relevant production contract; or

31 (B) Before the official filing of arbitration.

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

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

1 subject of arbitration under this section, a party may introduce the report
2 of arbitration as evidence of the facts found in the report, and the court
3 may give such weight to the arbitration committee's findings and conclusions
4 of law and recommendations as to damages and costs as the court may see fit
5 based upon all the evidence before the court.

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

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12 2-50-108. Arbitration committee – Hearings.

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

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

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

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

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

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28 2-50-109. Arbitration committee – Records.

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

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32 2-50-110. Rules.

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

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36 2-50-111. Notice.

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

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/s/Eubanks