

FEB 15 1999

Agriculture

HOUSE FILE

269

BY GREINER

Passed House, Date _____

Passed Senate, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act establishing an agricultural seed resolution board and
2 procedures for resolving disputes regarding the performance of
3 seeds, and providing for fees.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 269

1 SUBCHAPTER II

2 AGRICULTURAL SEED RESOLUTION BOARD

3 Section 1. NEW SECTION. 199.21 DEFINITIONS.

4 As used in this subchapter, unless the context otherwise
5 requires:

6 1. "Board" means the agricultural seed resolution board as
7 established in section 199.22.

8 2. "Confidential information" means research, commercial,
9 or proprietary information, or a trade secret that is subject
10 to a protective order in discovery under the Iowa rules of
11 civil procedure or that is protected from public disclosure
12 pursuant to state law, including section 22.7.

13 3. "Dispute" means a controversy between a purchaser and a
14 seed labeler which is based on a claim that the seed failed to
15 perform based on any of the following:

16 a. A breach of warranty, including failure to perform
17 according to representations appearing on the label or placard
18 for the seed which is required pursuant to section 199.3 or
19 199.4.

20 b. Negligence or malfeasance attributable to the seed
21 labeler.

22 4. "Inquiry period" means the period for inquiry beginning
23 and ending as provided in sections 199.26 and 199.27.

24 5. "Party" means a purchaser or seed labeler.

25 6. "Purchaser" means the purchaser of seed that is labeled
26 by a seed labeler.

27 7. "Secretary" means the secretary of agriculture.

28 8. "Seed" means agricultural seed as defined in section
29 199.1.

30 9. "Seed labeler" means a person required to label seed as
31 provided in section 199.3 or 199.4.

32 Sec. 2. NEW SECTION. 199.22 BOARD ESTABLISHED.

33 1. An agricultural seed resolution board is established
34 within the department.

35 2. The board shall be composed of all of the following

1 persons:

2 a. The secretary or the secretary's designee.

3 b. The dean of the college of agriculture of the Iowa
4 state university of science and technology, or the dean's
5 designee.

6 c. A person appointed by the president of Iowa state
7 university who shall be an expert in seed science.

8 d. Two persons appointed by the secretary.

9 (1) One person shall represent seed businesses labeling
10 seed. The person shall be a member of an association of seed
11 businesses.

12 (2) One person shall represent grain producers or oil seed
13 producers. The person shall be a member of an association of
14 grain producers or oil seed producers, and shall be actively
15 engaged in grain or oil seed production.

16 3. Persons appointed by the secretary shall be selected
17 from a list of candidates requested from interested
18 organizations of seed businesses and grain or oil seed
19 producers.

20 4. Appointed members shall serve three-year terms
21 beginning and ending as provided in section 69.19. However,
22 the governor shall appoint initial members to serve for less
23 than three years to ensure members serve staggered terms. A
24 member is eligible for reappointment. An appointed member
25 representing an association is entitled to receive
26 compensation as provided in section 7E.6. A vacancy on the
27 board shall be filled for the unexpired portion of the regular
28 term in the same manner as regular appointments are made.

29 5. The board shall meet according to rules adopted by the
30 department. Three members constitute a quorum and the
31 affirmative vote of a majority of the members present is
32 necessary for any substantive action to be taken by the board.
33 However, a release report as required in section 199.34 shall
34 not be approved if more than one member present dissents. A
35 vacancy in the membership does not impair the duties of the

1 board.

2 6. A member having a conflict of interest shall not
3 participate in the inquiry for which the conflict exists, and
4 a statement by a member that the member has a conflict of
5 interest is conclusive for this purpose. A member shall not
6 participate in an inquiry involving a dispute in which a
7 member is personally interested. If a reasonable basis
8 appears on which to conclude that a member has a conflict of
9 interest, the secretary shall recuse the member and may
10 appoint a person to replace the recused member. The person
11 replacing the member must be knowledgeable regarding the same
12 issues as the recused member. The replacement member shall
13 have all the powers and duties of the recused member.

14 7. Each member of the board shall, before entering upon
15 the duties of the member's office, be sworn to the faithful
16 and impartial discharge of the member's duties under this
17 subchapter.

18 8. The department shall serve as staff to the board.

19 Sec. 3. NEW SECTION. 199.23 RULES.

20 The department shall adopt rules required to administer
21 this subchapter after review and approval by the board.

22 Sec. 4. NEW SECTION. 199.24 PURPOSE OF THE BOARD.

23 The purpose of the board is to hear and investigate
24 disputes, collect and analyze evidence, and prepare findings
25 of fact and opinions, involving controversy between a
26 purchaser and a seed labeler which is based on a claim that
27 the seed failed to perform as promised, or due to negligence
28 or malfeasance attributable to the seed labeler.

29 Sec. 5. NEW SECTION. 199.25 CONSENT TO AN INQUIRY.

30 A purchaser shall consent to an inquiry as provided in this
31 subchapter by purchasing seed subject to the procedures for
32 disputes provided in this subchapter. The purchaser provides
33 consent if the requirement for dispute inquiry as provided in
34 this subchapter is provided on a label as provided in section
35 199.3, a placard for the sale of bulk seed as provided in

1 section 199.4, or a sales invoice. The notice shall appear in
2 a form required by the department pursuant to rules adopted by
3 the department. A purchaser does not provide consent if the
4 requirement for dispute inquiry as provided in this subchapter
5 is not provided on a label as provided in section 199.3, a
6 placard for the sale of bulk seed as provided in section
7 199.4, or a sales invoice.

8 Sec. 6. NEW SECTION. 199.26 MANDATORY INQUIRY.

9 1. A purchaser desiring to initiate a civil proceeding to
10 resolve a dispute shall file an inquiry petition with the
11 department, according to rules adopted by the department. A
12 purchaser shall not begin the civil proceeding until the
13 parties receive a release from the board, or until the court
14 determines after notice and hearing that the time delay
15 required for the review would cause the purchaser to suffer
16 irreparable harm.

17 2. If a release is necessary in order to initiate a civil
18 action, the board shall conduct an inquiry as provided in this
19 subchapter upon receipt of a petition for inquiry.

20 3. The board shall issue a release based upon any of the
21 following:

22 a. The conclusion of the inquiry period, and the issuance
23 of a release report to the secretary as provided in section
24 199.34.

25 b. A court order requiring the issuance of the release.

26 c. A determination that the purchaser did not consent to
27 the inquiry because the requirement for dispute inquiry was
28 not provided on a label, placard, or sales invoice, as
29 required pursuant to section 199.25.

30 d. A determination that the purchaser's petition was not
31 filed in a timely manner as provided in this section.

32 e. The receipt of an affidavit signed by both parties
33 waiving inquiry.

34 4. The board may terminate the inquiry if the board
35 receives a petition for termination by the purchaser.

1 Sec. 7. NEW SECTION. 199.27 TIME PERIODS FOR INQUIRY
2 PROCEEDINGS.

3 1. Within ten business days after receiving a petition for
4 inquiry, the board shall send an inquiry notice to all parties
5 to the dispute which may set a time and place for an initial
6 hearing.

7 2. a. Except as provided in paragraph "b", all of the
8 following shall apply:

9 (1) The board shall conduct at least one inquiry hearing,
10 if required pursuant to section 199.32, within thirty days of
11 the issuance of the inquiry notice.

12 (2) The board may call subsequent inquiry hearings during
13 the inquiry period, which shall be for not more than sixty
14 days after the board receives a petition for inquiry.

15 b. If all parties to a dispute consent, the first inquiry
16 hearing may occur after thirty days of the issuance of inquiry
17 notice, and the board may continue the inquiry after the end
18 of the ordinary inquiry period. Upon a majority vote of the
19 members, the board may without the consent of the parties
20 extend the inquiry period for the amount of time required to
21 complete tests necessary for the sound resolution of the
22 dispute.

23 Sec. 8. NEW SECTION. 199.28 INQUIRY PETITION, NOTICE,
24 AND ANSWER.

25 1. An inquiry petition required to be filed as provided in
26 section 199.26 shall be filed with the department within a
27 period of time required by the board which allows the board to
28 inspect seed, plants, or growing or harvested crops which are
29 subject to the dispute.

30 2. An inquiry petition and an inquiry notice shall contain
31 information required by the board according to rules adopted
32 by the department.

33 a. An inquiry petition shall at least include a short and
34 plain statement of the matters asserted. If the purchaser is
35 unable to state the matters in detail at the time the notice

1 is served, the petition may be limited to a statement of the
2 issues involved. The purchaser shall furnish a more definite
3 and detailed statement as required by the board.

4 b. An inquiry notice to the parties shall at least include
5 a statement of the time, place, and nature of the inquiry
6 hearing. The department shall attach a copy of the inquiry
7 petition to the notice delivered to the seed labeler.

8 3. The department shall send the inquiry notice to the
9 parties by certified mail.

10 4. The seed labeler may file an answer to an inquiry
11 petition according to procedures adopted by rule by the
12 department. The answer shall specifically admit or deny each
13 allegation of the petition and state any additional facts
14 deemed to show a defense.

15 Sec. 9. NEW SECTION. 199.29 EFFECT OF AN INQUIRY NOTICE.

16 1. If a person filing an inquiry petition as provided in
17 section 199.28 receives from the board an inquiry notice as
18 provided in section 199.28, the person shall not continue
19 civil proceedings based on a claim relating to a dispute
20 subject to this subchapter unless the court determines that
21 the time delay required for the inquiry would cause the person
22 to suffer irreparable harm.

23 2. Time periods relating to a cause of action, including
24 applicable statutes of limitations, shall be suspended upon
25 filing an inquiry petition. The suspension shall terminate at
26 the conclusion of the inquiry period.

27 Sec. 10. NEW SECTION. 199.30 PRIORITIZING INQUIRY
28 PROCEEDINGS.

29 The board may establish procedures for prioritizing
30 disputes for inquiry. The board may delegate all or part of
31 any inquiry to two or more members, who shall make a report to
32 the board as required by the board.

33 Sec. 11. NEW SECTION. 199.31 INFORMAL SETTLEMENT.

34 Informal settlements of disputes that may culminate in an
35 inquiry proceeding are encouraged. The department may adopt

1 rules providing specific procedures for attempting informal
2 settlements prior to, during, or after the end of the inquiry
3 period. This section shall not be construed to require either
4 party to utilize informal procedures or settle a dispute
5 pursuant to informal procedures. An informal disposition may
6 be made of any dispute by stipulation, agreed settlement,
7 consent order, default, or by another method agreed upon by
8 the parties in writing.

9 Sec. 12. NEW SECTION. 199.32 INQUIRY PROCEEDINGS --
10 HEARINGS.

11 1. The board shall conduct inquiry hearings as provided by
12 rules adopted by the department. The board must conduct an
13 inquiry hearing if an answer is filed as provided in section
14 199.28. The parties to a dispute may, by written stipulation
15 representing an informed mutual consent, waive any provision
16 of this section relating to inquiry hearings, upon consent of
17 the board.

18 2. A party shall assume all costs for presenting evidence
19 or testimony to the board.

20 3. If a party fails to appear at an inquiry hearing after
21 proper service of a hearing notice, the board may, if
22 adjournment is not granted, proceed with the inquiry hearing
23 and continue the inquiry hearing in the absence of the party.

24 4. Each party shall be allowed to present a statement
25 including a brief on applicable laws and regulations at a
26 hearing before the board. Parties may be represented by
27 counsel at their own expense, and attorneys may be present at
28 the hearing to confer with their clients. However, an
29 attorney shall not be allowed to participate directly in the
30 hearing.

31 5. Except as provided in section 199.33, inquiry hearings
32 shall be open to the public and shall be recorded either by
33 mechanized means or by a certified shorthand reporter.

34 6. In conducting a hearing, the board shall have all the
35 powers of the department in hearing a contested case

1 proceeding under chapter 17A. The board may summon before it
2 and enforce the attendance of witnesses; administer oaths; and
3 require witnesses to give evidence, produce books, papers, and
4 other documents or things as the board may deem requisite to
5 the full investigation of the matters into which it is
6 inquiring. The board shall exclude irrelevant, immaterial, or
7 unduly repetitious evidence. A finding shall be based upon
8 the kind of evidence on which reasonably prudent persons are
9 accustomed to rely for the conduct of their serious affairs,
10 and may be based upon such evidence even if it would be
11 inadmissible in a jury trial.

12 7. a. The board shall utilize its experience, technical
13 competence, and specialized knowledge in the evaluation of the
14 evidence concerning a dispute.

15 b. The board may consider ex parte communications,
16 including communications offered by either party to the
17 dispute, witnesses, experts, or departmental officials. The
18 board may conduct or request that another person conduct an
19 examination or analysis of seeds, or perform tests or
20 experiments involving the seeds, plants, or grain. The
21 department of agriculture and land stewardship and Iowa state
22 university shall cooperate in carrying out this subsection.

23 8. If the board seeks information from a party which the
24 party claims is confidential information that is not relevant
25 to the inquiry, and access to the information cannot be
26 resolved informally, a determination on access shall be made
27 through a petition to district court for declaratory judgment
28 and an in camera confidential viewing of such information.
29 The board and the court shall provide appropriate processes to
30 safeguard the confidentiality of such information.

31 Sec. 13. NEW SECTION. 199.33 RECORD -- CONFIDENTIALITY
32 -- CLOSED SESSION.

33 1. The board shall maintain a record of its inquiry
34 proceeding. The record shall include all of the following:

35 a. All evidence received or considered by the board.

- 1 b. Any statement of matters officially noticed.
- 2 c. Any findings or rulings of the board.
- 3 d. Any petition for inquiry or answer.
- 4 e. The board's release report as provided in section
- 5 199.34.

6 2. Verbal or written information relating to an inquiry
7 during any stage of the inquiry proceeding, whether reflected
8 in notes, memoranda, or other work products in the inquiry
9 files, is confidential, until the conclusion of the inquiry as
10 provided in section 199.34. At the conclusion of the inquiry,
11 chapter 22 shall apply to information received by the board.
12 However, confidential information shall not be subject to
13 public disclosure unless agreed to by the party claiming the
14 confidentiality.

15 3. Notwithstanding section 21.5, the board may conduct a
16 closed session after a majority vote of the members present
17 approve closing the session. The closed session must be
18 necessary for any reason provided in section 21.5 or to
19 consider confidential information.

20 4. Members of the board shall not be examined in any
21 judicial or administrative proceeding regarding confidential
22 information and are not subject to judicial or administrative
23 process requiring the disclosure of confidential information.

24 Sec. 14. NEW SECTION. 199.34 CONCLUSION OF THE INQUIRY
25 PERIOD -- RELEASE REPORT.

26 The board shall issue a release within sixty days following
27 the conclusion of the inquiry period. The release shall
28 include a release report. The report shall contain findings
29 of fact regarding the dispute and opinions regarding the
30 issues in dispute. The board shall file the record of the
31 inquiry proceedings with the department including original
32 exhibits, a transcript of the proceedings, and evidence
33 received by the board. Confidential information shall not be
34 disclosed except as agreed to by the party protecting the
35 information. A court may review confidential information in

1 camera. The release shall include the date when the release
2 was issued by the board and the signature of the secretary of
3 the board.

4 Sec. 15. NEW SECTION. 199.35 LIMITATION ON LIABILITY --
5 IMMUNITY FROM SPECIAL ACTIONS.

6 1. A member of the board is not liable for civil damages
7 for a statement or opinion made during the inquiry period,
8 unless the member acts in bad faith, with malicious purpose,
9 or in a manner exhibiting willful and wanton disregard of
10 human rights, safety, or property.

11 2. A judicial action which seeks an injunction, mandamus,
12 or similar equitable relief shall not be brought against the
13 board until conclusion of the inquiry as provided in section
14 199.34.

15 Sec. 16. NEW SECTION. 199.36 FEES.

16 1. A purchaser filing an inquiry petition as provided in
17 section 199.28 shall submit a filing fee with the department.
18 The fees shall be submitted in a manner and according to
19 requirements established by the board. The board shall
20 establish the amount of the fee. The board may waive the fee
21 for any party demonstrating financial hardship.

22 2. The fees collected by the department shall be
23 considered repayment receipts as defined in section 8.2.

24 Sec. 17. NEW SECTION. 199.37 COURTS.

25 Any case heard by a court involving a claim which was
26 subject to an inquiry shall be tried de novo. However, the
27 court trying an issue of fact without a jury, whether by
28 equitable or ordinary proceedings, may adopt the findings of
29 the board as a report filed by a master. In a case in which
30 the trier of facts is a jury or the court trying the case
31 without a jury, either party in a case arising from a dispute
32 may offer the record of the inquiry proceeding as evidence of
33 facts alleged by a party. A party may offer the report as
34 evidence of facts alleged by a party or as expert opinion
35 rendered by the board.

EXPLANATION

1
2 This bill establishes an agricultural seed resolution board
3 within the department of agriculture and land stewardship.
4 The purpose of the board is to hear and investigate disputes,
5 collect and analyze evidence, and prepare findings of fact and
6 opinions, involving controversy between a purchaser and a seed
7 company which is based on a claim that the seed failed to
8 perform as promised, or due to negligence or malfeasance
9 attributable to the seed labeler.

10 The board is composed of the secretary of agriculture, or
11 the secretary's designee; the dean of the college of
12 agriculture of the Iowa state university of science and
13 technology, or the dean's designee; a person appointed by the
14 president of Iowa state university who shall be an expert in
15 seed science; and two persons appointed by the secretary, one
16 person representing seed companies and one person representing
17 grain producers or oil seed producers.

18 The bill provides that a purchaser consents to an inquiry
19 as provided in the bill by purchasing seed subject to the
20 procedures for dispute if the requirement for dispute inquiry
21 is provided on a label, placard for the sale of bulk seed, or
22 a sales invoice.

23 The board is required to investigate a dispute and prepare
24 a report containing findings of fact regarding the dispute,
25 including opinions determined relevant by the board.

26 A person who is a purchaser under the bill who desires to
27 initiate a civil proceeding to resolve a dispute must file an
28 inquiry petition with the department. The purchaser cannot
29 begin the civil proceeding until the parties to the dispute
30 receive a release from the board, or until ordered by a court.
31 The board shall issue a release based upon a number of
32 factors, including the conclusion of the inquiry period. The
33 board must send an inquiry notice to all parties to the
34 dispute and must call an inquiry hearing within a time
35 certain. The board is charged to utilize its experience,

1 technical competence, and specialized knowledge in the
2 evaluation of the evidence concerning a dispute. The bill
3 provides for collecting evidence including testimony from
4 interested persons, or conducting an examination or analysis
5 of seeds, or performing tests or experiments involving the
6 seeds, plants, or grain.

7 The bill provides that informal settlements of disputes
8 that may culminate in an inquiry proceeding are encouraged.
9 The board may conduct inquiry hearings. The bill provides
10 procedures for the conduct of those hearings. The bill
11 provides for maintaining a record of its inquiry, including
12 evidence received by the board and the record of each inquiry
13 hearing. The bill provides for the confidentiality of
14 information received by the board, and for closed sessions.

15 At the conclusion of the inquiry period, the board is
16 required to issue a release, which includes a release report.
17 The report must contain findings of fact regarding the
18 dispute, including opinions regarding the issues in dispute.
19 The board must also file a record of the inquiry proceeding
20 with the department. The record includes original exhibits, a
21 transcript of the proceedings, and evidence received by the
22 board.

23 The bill provides that a member of the board is not liable
24 for civil damages for a statement or opinion made during the
25 inquiry period, unless the member acts in bad faith. The bill
26 provides that a judicial action which seeks an injunction,
27 mandamus, or similar equitable relief cannot be brought
28 against the board until conclusion of the inquiry.

29 The bill provides that a purchaser filing an inquiry
30 petition shall submit a filing fee with the department. The
31 fees collected by the department are considered repayment
32 receipts.

33 The bill provides that in any case involving a claim which
34 was subject to a dispute, the court trying an issue of fact
35 without a jury, may adopt the findings of the board as a

1 report filed by a master. In any case, either party in a case
2 arising from a dispute may offer the report or the record as
3 evidence of facts alleged by a party or as expert opinion.

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