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States' Alternative Dispute Resolution Statutes

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States' Alternative Dispute Resolution Statutes

STATE OF ARKANSAS

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Arbitration and Awards

Title 16, Subtitle 1, Chapter 7, Subchapter 1.

Current through end of the 2008 First Session

§ 16-108-101. Proceedings under court order

The proceedings upon arbitration and award made under an order or rule of court, or by consent of parties in vacation, shall be as follows in this subchapter.

§ 16-108-102. Submission

(a) All controversies which might be the subject of a suit or action may be submitted to the decision of one (1) or more arbitrators, or to two (2) and their umpire, in the manner provided in this subchapter.

(b) Parties may make submission by rule of any court having jurisdiction of the subject matter or by consent, in vacation. The parties making the submission shall, where there is no suit or action pending, by written agreement filed and noted on the record or by an entry on the record, state what matter is submitted.

(c) The rule of the court shall state the time in which the award is to be made and returned. The court may enlarge the time for making and returning an award.

§ 16-108-103. Arbitrator powers; oath

(a)(1) Arbitrators and the umpire, if there is one, before they proceed to act, shall take an oath to decide the controversy submitted to them according to law and evidence and the equity of the case, to the best of their judgment, without favor or affection.

(2) A certificate of the oath shall be returned to the court with the award.

(b) They shall have power to examine either party, on oath, at the request of his or her adversary.

(c)(1) Any one (1) of the arbitrators shall have power to issue subpoenas for witnesses to attend their sitting and give evidence touching the matters referred to them, to which all sheriffs and other like officers shall give obedience.

(2) Witnesses failing to attend before arbitrators at the time and place designated or who refuse to give evidence when they do attend shall be reported to the court by the arbitrators and proceeded against and punished as if the case had been pending in court.

§ 16-108-104. Submission by certain persons

(a) The personal representatives of a decedent, guardian of an infant, guardian of an idiot or lunatic, or any trustee may make a submission as provided for in this subchapter touching the estate of the decedent, infant, insane person, or person in respect to which he or she is trustee.

(b) Any submission so made in good faith, and the award made thereon, shall be binding and shall be entered as the judgment or decree of the court.

(c) No fiduciary shall be responsible for any loss sustained by an award adverse to the interest he or she represents unless the adverse award is caused by his or her fault or neglect.

§ 16-108-105. Arbitrator; failure to act

If any arbitrator fails or refuses to act, the court may set aside the order of reference.

§ 16-108-107. Meetings and award

(a)(1) The arbitrators and umpire, if there is one, shall meet at such convenient times and places as may be necessary, of which the parties shall have reasonable notice. They shall hear such evidence as either party may adduce.

(2) They shall have power to administer oaths.

(3) They shall make their award in writing, stating therein the time when it is made, and shall sign it.

(4) When the award is made out, one (1) copy shall be delivered to each of the contending parties. The original shall be returned to the court, and on it the arbitrators shall note the time of delivering a copy to each party.

(b) If the award is made out and returned, and copies delivered ten (10) days before the term of court next succeeding the delivery, the award shall be entered of record and made the judgment or decree of the court unless, on exceptions filed, the award shall be set aside.

(c) No award shall be set aside for the want of form. However, courts shall have power over awards on equitable principles as heretofore.

Uniform Arbitration Act

§ 16-108-201. Agreement to arbitrate--Application

(a) A written agreement to submit any existing controversy to arbitration arising between the parties bound by the terms of the writing is valid, enforceable, and irrevocable, save upon such grounds as exist for the revocation of any contract.

(b)(1) A written provision to submit to arbitration any controversy thereafter arising between the parties bound by the terms of the writing is valid, enforceable, and irrevocable, save upon such grounds as exist for the revocation of any contract.

(2) This subsection shall have no application to personal injury or tort matters, employer-employee disputes, nor to any insured or beneficiary under any insurance policy or annuity contract.

§ 16-108-202. Proceedings to compel or stay arbitration

(a) On application of a party showing an agreement described in § 16-108-201 and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party; otherwise, the application shall be denied.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subdivision (a) of this section, the application shall be made therein. Otherwise, and subject to § 16-108-218, the application may be made in any court of competent jurisdiction.

(d) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section, or, if the issue is severable, the stay may be with respect thereto only. When the application is made in the action or proceeding, the order for arbitration shall include the stay.

(e) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

§ 16-108-203. Appointment of arbitrators by court

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the court on application of a party shall appoint one (1) or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

§ 16-108-204. Majority action by arbitrators

The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this subchapter.

§ 16-108-205. Hearing

Unless otherwise provided by the agreement:

- (1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five (5) days before the hearing. Appearance at the hearing waives notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy;
- (2) The parties are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing;
- (3) The hearing shall be conducted by all the arbitrators, but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

§ 16-108-206. Representation by attorney

A party has the right to be represented by an attorney at any proceeding or hearing under this subchapter. A waiver thereof prior to the proceeding or hearing is ineffective.

§ 16-108-207. Witnesses, subpoenas, depositions

- (a) The arbitrators may issue or cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.
- (b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.
- (c) All provisions of law compelling a person under subpoena to testify are applicable.
- (d) Fees for attendance as a witness shall be the same as for a witness in the circuit court.

§ 16-108-208. Award

- (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he or she notifies the arbitrators of his or her objection prior to the delivery of the award to him or her.

§ 16-108-209. Change of award by arbitrators

On application of a party or, if an application to the court is pending under §§ 16-108-211 -- 16-108-213, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in § 16-108-213(a)(1) and (3) or for the purpose of clarifying the award. The application shall be made within twenty (20) days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating that he or she must serve his objections thereto, if any, within ten (10) days from the notice. The award so modified or corrected is subject to the provisions of §§ 16-108-211 -- 16-108-213.

§ 16-108-210. Fees and expenses of arbitration

Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses incurred in the conduct of the arbitration, not including counsel fees, shall be paid as provided in the award.

§ 16-108-211. Confirmation of an award

Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating, modifying, or correcting the award, in which case the court shall proceed as provided in §§ 16-108-212 and 16-108-213.

§ 16-108-212. Vacating an award

(a) Upon application of a party, the court shall vacate an award in which:

- (1) The award was procured by corruption, fraud, or other undue means;
- (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
- (3) The arbitrators exceeded their powers;
- (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 16-108-205, as to prejudice substantially the rights of a party; or
- (5)(A) There was no arbitration agreement and the issue was not adversely determined in proceedings under § 16-108-202 and the party did not participate in the arbitration hearing without raising the objection;
- (B) But the fact that the relief was such that it could not or would not be granted by a court is not ground for vacating or refusing to confirm the award.

(b) An application under this section shall be made within ninety (90) days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud, or other undue means, it shall be made within ninety (90) days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than those stated in subdivision (a)(5) of this section, the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with § 16-108-203, or, if the award is vacated on grounds set forth in subdivisions (a)(3) and (4) of this section, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with § 16-108-203. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

§ 16-108-213. Modification or correction of award

(a) Upon application made within ninety (90) days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

- (1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;
- (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
- (3) The award is imperfect in a matter of form not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

§ 16-108-214. Judgment or decree on award

Upon the granting of an order confirming, modifying, or correcting an award, a judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements, may be awarded by the court.

§ 16-108-215. Judgment roll; docketing

(a) On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:

- (1) The agreement and each written extension of the time within which to make the award;
- (2) The award;
- (3) A copy of the order confirming, modifying, or correcting the award; and
- (4) A copy of the judgment or decree.

(b) The judgment or decree may be docketed as if rendered in an action.

§ 16-108-216. Applications to court

Except as otherwise provided, an application to the court under this subchapter shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

§ 16-108-217. Court--Jurisdiction

The term “court” means any circuit court of this state. The making of an agreement described in § 16-108-201 providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under this subchapter and to enter judgment on an award thereunder.

§ 16-108-218. Venue

An initial application shall be made to the circuit court of the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application shall be made in the county where the adverse party resides or has a place of business or, if he or she has no residence or place of business in this state, to the court of any county. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

§ 16-108-219. Appeals

(a) An appeal may be taken from:

- (1) An order denying an application to compel arbitration made under § 16-108-202;
- (2) An order granting an application to stay arbitration made under § 16-108-202(b);
- (3) An order confirming or denying confirmation of an award;
- (4) An order modifying or correcting an award;
- (5) An order vacating an award without directing a rehearing; or
- (6) A judgment or decree entered pursuant to the provisions of this subchapter.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

§ 16-108-220. Not retroactive

This subchapter applies only to agreements made subsequent to its taking effect.

§ 16-108-221. Uniformity of interpretation

This subchapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 16-108-222. Constitutionality

If any provision of this subchapter, or the application thereof to any person or circumstance, is held invalid, the invalidity shall not affect other provisions or applications of the subchapter which can be given without the invalid provision or application, and to this end the provisions of this subchapter are severable.

§ 16-108-223. Short title

This subchapter may be cited as the “Uniform Arbitration Act.”

Arbitration of Defective Seed Claims

Title 2, Subtitle 2, Chapter 23.

Current through end of the 2008 First Session

§ 2-23-101. Definitions

As used in this subchapter:

- (1) “Advertisement” means all representations other than those on the label written, recorded, or published and distributed by the labeler;
- (2) “Agricultural seed” means the seeds of grass, forage, cereal, oil and fiber crops, and any other kinds of seed commonly recognized within this state as agricultural seeds and mixtures of such seed;
- (3) “Arbitration committee” means the committee established by the director under this subchapter to hear and make determinations in mandatory, nonbinding arbitration cases;
- (4) “Buyer” means a person who purchases agricultural seeds;
- (5) “Chairperson” means the person selected by the arbitration committee from among its members to preside over arbitration hearings;
- (6) “Dealer” means any person, individual, partnership, or company who distributes agricultural seeds;
- (7) Repealed by Acts of 2007, Act 827, § 3, eff. July 31, 2007.
- (8) “Label” means the display or displays of written, printed, or graphic matter upon or attached to the container of seed or as required by regulations established under the Arkansas Plant Act of 1917, § 2-16-201 et seq.;
- (9) “Labeler” means the person, firm, corporation, or the registered code number whose name appears on the label or container of seed;
- (10) “Labeling” includes all labels, advertisements, and other written, printed, or graphic representations in any manner whatsoever pertaining to any seed, whether in bulk or in containers, and includes representations on invoices except for current, official publications of the United States Department of Agriculture and the United States Department of Interior, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research;
- (11) “Person” means an individual, firm, partnership, corporation, or company; and
- (12) Repealed by Acts of 2007, Act 827, § 4, eff. July 31, 2007.

§ 2-23-102. Prerequisite to legal action--Notice--Arbitration committee

(a)(1) When any buyer believes that he or she has been damaged by the failure of agricultural seed to produce or perform as represented by the labeling of the agricultural seed, as a prerequisite to the

buyer's right to maintain a legal action against the dealer or labeler and within a reasonable time after the alleged defect or violation becomes apparent, the buyer shall file a written notice of intent to seek arbitration to permit inspection of the crops or plants during the growing season.

(2) A meeting shall be scheduled by the Director of the State Plant Board between the buyer and labeler for the purpose of resolving the dispute, or if the dispute is not resolved, for officially filing the complaint.

(3) The buyer shall make a sworn complaint against the dealer or labeler alleging the damages sustained or to be sustained and file the complaint with the director.

(4) The buyer shall send a copy of the complaint to the labeler by United States registered mail.

(b)(1) A filing fee of two hundred fifty dollars (\$250) plus one dollar (\$1.00) per acre filed on, not to exceed a total of seven hundred fifty dollars (\$750), shall be paid to the director with each complaint filed, and complaints shall be filed on forms provided by the State Plant Board.

(2) This fee shall be deposited in the Plant Board Fund in the State Treasury and may be used by the director to offset expenses of the investigation.

(c) Within ten (10) days after receipt of a copy of the complaint, the labeler shall file with the director the labeler's answer to the complaint and send a copy of the answer to the buyer by United States registered mail.

(d)(1) However, unless notice of this section is legibly printed or typed on the seed container or on a label affixed to the seed container or printed on the invoice covering bulk seed, the buyer shall not be required to comply with this section as a prerequisite to maintaining a legal action against the dealer or labeler.

(2) A notice in the following form, or some reasonably equivalent language, is sufficient:

“Notice of Mandatory Arbitration

NOTICE: As a prerequisite to maintaining a legal action based upon the failure of seed to which this label is attached to produce as represented, a consumer shall file a sworn complaint with the Director of the State Plant Board within such time as to permit inspection of the crops or plants during the growing season.”

(3) If language setting forth the requirement is not so placed on the seed package, analysis label, or invoice covering bulk seed shipments, the filing and serving of a complaint under this section are not required.

§ 2-23-103. Seed dealer or labeler may request investigation--Requirements

(a)(1) Any seed dealer or labeler against whom suit is brought in any state or federal court by a buyer who alleges that he or she has been damaged by the failure of seeds purchased from a seed dealer to perform as labeled, may request an investigation by the arbitration committee.

(2) A filing fee of two hundred fifty dollars (\$250) plus one dollar (\$1.00) per acre filed on, not to exceed a total of seven hundred fifty dollars (\$750), shall be paid by the party.

(b) The Director of the State Plant Board shall refer the complaint and the answer to the complaint to the arbitration committee provided in § 2-23-104 for investigation, findings, and recommendations on the matters complained of.

§ 2-23-104. Arbitration committee--Members

(a)(1)(A) The Director of the State Plant Board shall appoint an arbitration committee composed of six

(6) members and six (6) alternate members with one (1) member and one (1) alternate to be appointed upon the recommendation of each of the following:

- (i) The President of the Arkansas Seed Growers Association;
- (ii) The President of the Arkansas Seed Dealers Association;
- (iii) The President of the Arkansas Farm Bureau Federation; and
- (iv) The Director of the Agricultural Council of Arkansas.

(B) Terms for seed grower, seed dealer, farm bureau, and agricultural council members shall be for four (4) years.

(2) The members and alternates shall be confirmed by the Governor.

(3)(A) The Director of the University of Arkansas Agricultural Experiment Station, or his or her designee or alternate, and the Director of the University of Arkansas Cooperative Extension Service, or his or her designee or alternate, shall serve as ex officio members.

(B) Ex officio members shall serve until replaced by their organizations.

(4) Recommending organizations shall submit member recommendations not less than thirty (30) days prior to the expiration day of an expiring term.

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

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

(b)(1) The committee shall elect a chairperson from its membership and the director, or his or her designee, shall serve as secretary of the committee and shall not vote.

(2) It shall be the duty of the chairperson to conduct all meetings and deliberations held by the committee and to direct all other activities of the committee.

(3) It shall be the duty of the secretary to keep accurate and correct records on all meetings and deliberations and perform other duties for the committee as directed by the chairperson.

§ 2-23-105. Committee purpose

(a) The purpose of the arbitration committee is to assist agricultural seed buyers and agricultural seed dealers or labelers in determining the facts relating to matters alleged in complaints made by buyers against dealers or labelers. The committee may make rules and regulations to carry out the purposes of this act.

(b) The committee may recommend money damages be paid the buyer as a result of alleged failure of seeds to produce as represented by the labeling of the seed and may also recommend that the seed dealer or labeler reimburse the buyer for the amount of the filing fee paid by the buyer.

§ 2-23-106. Arbitration committee; sessions; hearings

(a) The arbitration committee may be called into session by the Director of the State Plant Board or upon the direction of the chairperson to consider the matters referred to it by the board.

(b) If the 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.

§ 2-23-107. Committee--Investigation and report--Findings as evidence

(a) When the Director of the State Plant Board refers to the arbitration committee any complaint made by a buyer against a dealer or labeler, the committee shall make a full and complete investigation of the matters complained of and at the conclusion of the investigation, report through its secretary the findings and recommendations to the buyer and to the labeler by United States registered mail.

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

(A) In any contract governing the sale of the seed; or

(B) Prior to the official filing of arbitration.

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

(3)(A) In any litigation involving a complaint which has been the subject of arbitration under this section, 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 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 any findings of the committee 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 committee's ability to determine the facts of the case.

§ 2-23-108. Committee--Investigative powers

(a) In conducting its investigation, the arbitration committee may:

(1) Examine the buyer on his or her use of the seed of which he or she complains and the dealer or labeler on his or her packaging, labeling, and selling operation of the seed alleged to be faulty;

(2) Grow to production a representative sample of the alleged faulty seed through the facilities of the state, under the supervision of the Director of the State Plant Board, when such action is deemed by the committee to be necessary;

(3) Hold informal hearings at a time and place directed by the chairperson of the committee upon reasonable notice to the buyer and the dealer or labeler; and

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

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

§ 2-23-109. Arbitration committee recordkeeping requirements

The committee shall keep a record of its activities and reports on file in the State Plant Board.

§ 2-23-110. Notification

The consumer and seedsman shall give written notice to the department of the acceptance or rejection of the arbitration committee's recommended terms of settlement within thirty (30) days from the date such recommended terms of settlement are issued by the arbitration committee.

Arkansas Farm Mediation Act

Title 2, Subtitle 1, Chapter 7.

Current through end of the 2008 First Session

§ 2-7-101. Chapter citation

This chapter shall be known and may be cited as the “Arkansas Farm Mediation Act”.

§ 2-7-102. Definitions

As used in this chapter, unless the context otherwise requires:

(1)(A) “Action” means a court action or legal recourse to the courts of the State of Arkansas by a creditor against a farmer for payment of a debt, to enforce or foreclose a security interest, lien, or mortgage, or to repossess or declare a creditor's interest in agricultural property.

(B) “Action” includes, but is not limited to, garnishment, replevin, foreclosure, execution of judgment, and involuntary receivership;

(2) “Agricultural property” means all of the following:

(A) Real property that is used principally for farming or ranching;

(B) Real property that is a farmer's principal place of residence and any land contiguous to the residence;

(C) Personal property that is used as security to finance farming or ranching; and

(D) Personal property that is used for farming or ranching;

(3) “Creditor” means any person who holds a mortgage on agricultural property, who has a lien on or a security interest in agricultural property, or who is a judgment creditor with a judgment against a farmer affecting the farmer's agricultural property;

(4) “Farmer” means any person who is engaged in farming or ranching, who has at least twenty thousand dollars (\$20,000) in outstanding agricultural loans that are secured by real estate, crops, livestock, farm machinery, or other agricultural supplies, and who either:

(A) Owns or leases a total of fifty (50) acres or more of land that is agricultural property; or

(B) Has had gross sales of farm products of at least twenty thousand dollars (\$20,000) in any of the preceding three (3) years;

(5) “Farming” or “ranching” means the employment or operation of real property for the production of agricultural products including, but not limited to, the following:

(A) The production or cultivation of agricultural, horticultural, or aquacultural commodities such as field crops, rice, soybeans, cotton, sorghum, corn, wheat, fruit, vegetables, mushrooms, nurserystock, ornamental trees, sod, or flowers;

(B) Animal or poultry husbandry and the production of poultry and poultry products, livestock, equine or fur-bearing animals and wildlife, including the raising, breeding, shearing, grazing, or other feeding of these animals;

(C) Dairy production;

(D) Viticulture, wine-making, and related activities; and

(E) On-site storing, handling, and processing incidental to the production of the foregoing agricultural or horticultural products and commodities;

(6) “Mediation” means the process in which a neutral person or persons intermediate between or among parties for the purpose of facilitating the settlement of their dispute by mutual agreement; and

(7) “Party” or “parties” means, with respect to the mediation of a dispute affecting a farmer's agricultural property, the farmer, a creditor of the farmer, and any other person necessary to the resolution of a dispute or an action.

Subchapter 2. Farm Mediation Office

§ 2-7-201. Establishment

(a) There is hereby created within the Division of Agriculture Development of the Arkansas Development Finance Authority the Arkansas Farm Mediation Office which shall administer the Arkansas Farm Mediation Program to provide mediation and debt management services to farmers and their creditors in the State of Arkansas.

(b)(1) The program shall be administered by the Director of the Division of Agriculture Development who shall employ mediators and administrative staff in such numbers as are necessary and as the General Assembly may appropriate to carry out the provisions of this chapter.

(2) The director may apply to the United States Secretary of Agriculture or any other agency or department for any financial assistance for the administration and operation of the program.

(3) The director or his or her designee shall select mediators who are knowledgeable in the areas of finance, agriculture, and negotiation and shall train them in any other matters as are necessary to carry out their functions under this chapter.

(4) The director shall have the authority to promulgate any necessary rules and regulations to carry out the provisions of this chapter.

§ 2-7-202. Information; confidentiality

(a) All materials, data, and information received by the Arkansas Farm Mediation Office are confidential and are not subject to examination or disclosure as public information under the Freedom of Information Act, § 25-19-101 et seq.

(b) No mediator or administrative employee of the office shall knowingly disclose any materials, data, or information concerning a mediation request or suspension order without the consent of the farmer and the creditors involved.

(c) Mediation meetings between a farmer and any other parties conducted by a mediator are not open to public participation and are not subject to the provisions for open meetings under the Freedom of Information Act of 1967, § 25-19-101 et seq.

§ 2-7-203. Administration; forms

The Arkansas Farm Mediation Office shall prepare all forms necessary for the administration of this chapter and shall ensure that forms are disseminated and that the availability of mediation under this chapter is publicized so that creditors and borrowers of agricultural loans receive adequate notification of the Arkansas Farm Mediation Program.

Subchapter 3. Mediation

§ 2-7-301. Farm mediation program; participation

(a)(1) A farmer and any creditor of the farmer may voluntarily participate in mediation under the

Arkansas Farm Mediation Program if they wish to resolve a dispute between them that involves the creditor's interest in a mortgage, lien, security interest, or judgment affecting the agricultural property of the farmer.

(2) Voluntary mediation shall occur before an action has been initiated in court in which the farmer and creditor are parties.

(b) The Arkansas Farm Mediation Office shall adopt voluntary mediation application and request forms.

§ 2-7-302. Commencement of proceedings; release

(a) In connection with a secured indebtedness of twenty thousand dollars (\$20,000) or more, no proceeding against a farmer shall be commenced to foreclose a mortgage on agricultural property, to terminate a contract for deed to purchase agricultural property, to repossess or foreclose a security interest in agricultural property, to set off or seize an account, moneys, or other asset which is agricultural property, or to enforce any judgment against agricultural property unless the creditor has first obtained a release as provided in this chapter.

(b) An action for attachment or replevin may be commenced without first obtaining a release in those cases provided for under § 16-110-101(1)(A)(vi)-(viii) or § 18-60-807.

§ 2-7-303. Creditor; service; notice; form

(a) Prior to commencing any proceeding prohibited by this section, § 2-7-302, and §§ 2-7-304--2-7-306 without first obtaining a release, a creditor shall serve a notice on the farmer that the farmer may request mandatory mediation of the farm indebtedness.

(1) The notice shall be in a form and contain the information as required by rule.

(2) The Director of the Arkansas Farm Mediation Program shall make forms available in each county recorder's office.

(b) The notice shall contain, at a minimum, the following information:

(1) The name and address of the farmer;

(2) The name, address, and telephone number of the creditor;

(3) A description of the debt and the amount currently owed;

(4) A description of the agricultural property securing the debt;

(5) A description of the proceeding the creditor intends to commence or continue or the action the creditor intends to take;

(6) A statement that the farmer has the right to request mandatory mediation which could result in restructuring the debt;

(7) The address and telephone number of the director;

(8) A statement that a request for mandatory mediation must be served on the director within fourteen (14) days after service of the notice on the farmer; and

(9) The location of the office of the recorder of the county in which the farmer resides where an application form for requesting mandatory mediation may be obtained.

(c) A creditor shall also serve a copy of such mediation notice on the director within five (5) days after the mediation notice has been served on the farmer by the creditor.

§ 2-7-304. Mediation requests

All requests for mediation by a farmer under § 2-7-302 shall be served on the Director of the Arkansas Farm Mediation Program within fourteen (14) days after the mediation notice was served on the farmer by the creditor. Every request for mediation shall be in a form and contain the information required by the director.

§ 2-7-305. Assignment of mediator; information

(a) Within five (5) days after receiving a request for mediation, the Director of the Arkansas Farm Mediation Program shall inform the farmer and the creditor of any financial analysis or legal or other services available that may assist them in preparing for the mediation meeting and of any other requirements the farmer and creditor must meet prior to the mediation meeting.

(b)(1) Within twenty-one (21) days after receiving a request for mediation, the director shall assign a mediator and serve notice on the farmer and all his or her known creditors of the name of the mediator, the time and place of the mediation meeting.

(2) The meeting shall be not more than forty-two (42) days after the director receives the request, and of any activities prohibited during mediation.

§ 2-7-306. Inapplicability of provisions

Sections 2-7-302--2-7-305 shall not apply:

(1) Where the debt to be collected was listed as a scheduled debt by the farmer in a petition in bankruptcy or for which a proof of claim form has been filed by a creditor under United States Code, Title 11, Chapters 7, 11, 12, or 13; and

(A) The debt was discharged;

(B) The creditor was granted relief from the automatic stay;

(C) Provision for repayment, restructuring, or other treatment of the debt was made in a confirmed plan;

(D) In the year preceding the date of commencement of the collection action, the automatic stay provided for under 11 U.S.C. § 362 was in effect with regard to the debt for more than ninety (90) days; or

(2) When the Arkansas Farm Mediation Office has not adopted and promulgated bylaws, rules, regulations, or program guidelines necessary to implement this chapter or has not hired qualified mediators for the mediation region in which the agricultural property involved is located.

§ 2-7-307. Meetings

(a) The initial mediation meeting shall be attended by the farmer and the creditor who served the mediation notice. The meeting shall be at least one (1) hour long and may be continued for a longer period at the discretion of the parties involved. Other creditors of the farmer are strongly encouraged to attend and may attend all mediation meetings.

(b) After the initial meeting any further mediation meetings shall be held by consent of the parties.

§ 2-7-308. Mediator responsibilities; attorneys

- (a)(1) A farmer or other party has the right to be represented by an attorney at any mediation meeting or hearing.
- (2) A waiver of this right prior to any mediation meeting or hearing is ineffective.
- (b) At the initial mediation meeting and subsequent meetings, the mediator shall:
- (1) Listen to the farmer and the creditors desiring to be heard;
 - (2) Attempt to mediate between the farmer and the creditors to reach a consensus where possible;
 - (3) Advise the farmer and creditor as to the existence of available assistance programs;
 - (4) Encourage the parties to adjust, refinance, or provide for the payment of the farmer's debts; and
 - (5) Advise, counsel, and assist the farmer and creditors in attempting to arrive at an agreement for the future conduct of financial relations among the parties or to arrive at a settlement which may be stipulated to in court for the resolution to the court action.

§ 2-7-309. Agreements; contents

If an agreement is reached between the farmer and any creditor or creditors, the agreement shall:

- (1) Be signed by the farmer and any such creditor or creditors;
- (2) Bind each to the terms of the agreement;
- (3) Be enforced as a legal contract between the farmer and such creditor or creditors; and
- (4) Constitute a mediation release.

§ 2-7-310. Issuance of release

(a) The Director of the Arkansas Farm Mediation Program shall issue a release upon request to any creditor who has paid any required fees and:

- (1) Who has attended an initial mediation meeting pursuant to § 2-7-301 or § 2-7-307;
- (2) Who has served a mediation notice on the farmer and the farmer has not requested mediation within the time allowed;
- (3) When the farmer has waived mediation with respect to that creditor or the agricultural property at issue;
- (4) When the agricultural property has been abandoned by the farmer;
- (5) In the discretion of the director if the default is other than monetary;
- (6) When ordered to do so by a court upon a finding by the court that mediation would be unduly burdensome and an extreme hardship on the creditor;
- (7) Upon the failure of a farmer to appear at a scheduled mediation meeting; or
- (8) As otherwise provided by rule.

(b) A release is effective as to any proceeding commenced or continued or any action taken one (1) year or less after its date of issuance, but a release is not effective as to any proceeding commenced or action taken more than one (1) year after its date of issuance.