

## IN THE HOUSE OF REPRESENTATIVES

## HOUSE BILL NO. 36

## BY AGRICULTURAL AFFAIRS COMMITTEE

## AN ACT

RELATING TO THE PURE SEED LAW; AMENDING SECTION 22-435, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE STATE SEED ADVISORY BOARD; AND AMENDING SECTION 22-436, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SEED ARBITRATION AND THE SEED ARBITRATION COUNCIL.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-435, Idaho Code, be, and the same is hereby amended to read as follows:

22-435. STATE SEED ADVISORY BOARD. (1) In order to maintain close contact between the department and the seed industry, there is hereby created a state seed laboratory advisory board which shall consist of ~~eight~~ nine (9) official members and ~~eight~~ nine (9) ex officio alternates appointed by the director of the department of agriculture from a list provided by the Idaho seed council. The Idaho seed council will nominate a member and an alternate for each vacancy on the advisory board to represent the following seed commodities:

- (a) Cereal grains
- (b) Grasses - turf
- (c) Grasses - forage
- (d) Small seeded legumes
- (e) Corn and small seeded vegetables
- (f) Garden beans
- (g) Field beans
- (h) Oil crops
- (i) Natives.

The executive ~~secretary~~ vice-president of the Idaho crop improvement association shall serve as a permanent ~~ninth~~ tenth official member of the board. The president of the Idaho seed analysts association, or his representative, shall serve as a permanent ~~tenth~~ eleventh official member of the board. Additionally, without the need for any nominations, the director shall appoint one (1) grower member who shall serve as the ~~eleventh~~ twelfth official member of the board and serve a three (3) year term.

(2) ~~The members first appointed shall determine by lot the length of their terms: Four (4) to serve for three (3) years, and four (4) to serve for two (2) years, each term beginning July 1, 1989~~ Existing member terms will end on the last May 31 of an existing term with the successor term to begin June 1 of the same year. All terms shall be for a period of three (3) years. A member and his alternate shall serve the same length of term. Vacancies in office shall be filled by an alternate for the unexpired term.

(3) Official members or an alternate present in the absence of his respective representative will have the right to vote. A member and his respective alternate are not to work for the same employer.

1 (4) Members or alternates of the board shall be compensated as provided in section  
2 59-509(a), Idaho Code.

3 (5) The functions of the board shall be to advise and counsel with the department in the  
4 administration of the provisions of sections 22-414 through 22-436, Idaho Code.

5 (6) The board shall meet at the call of the chairman or the director of the Idaho  
6 department of agriculture or his designee. A majority of the members present at any meeting  
7 shall constitute a quorum, and a majority vote of the quorum at any meeting shall constitute an  
8 official act of the board.

9 (7) At the first meeting after ~~July~~ June 1, in each year, the board shall select a chairman.  
10 The director of the Idaho department of agriculture and the ~~bureau chief~~ manager of the Idaho  
11 state seed laboratory in the department of agriculture or their representatives, shall be ex officio  
12 members without the right to vote.

13 SECTION 2. That Section 22-436, Idaho Code, be, and the same is hereby amended to  
14 read as follows:

15 22-436. SEED ARBITRATION. (1) Requirement of arbitration. When any buyer  
16 claims to have been damaged by the failure of any seed for planting to produce or perform as  
17 represented by the required label to be attached to such seed under section 22-415, Idaho Code,  
18 or by warranty, or as a result of negligence, as a prerequisite to the buyer's right to maintain a  
19 legal action against the dealer or any other seller of such seed, the buyer shall first submit the  
20 claim to arbitration as provided in this section. The monetary value of the claim must exceed  
21 three thousand dollars (\$3,000). Any applicable period of limitations with respect to such claim  
22 shall be tolled until ten (10) days after the filing of the report of arbitration with the director of  
23 the department of agriculture as provided in subsection (5)(i) of this section.

24 (2) Notice of arbitration requirement. Conspicuous language calling attention to the  
25 requirement for arbitration under this section shall be referenced or included on the analysis  
26 label required under section 22-415, Idaho Code, or otherwise attached to the seed bag or  
27 package. Arbitration shall not be required unless this notice is included. A notice in the  
28 following form, or equivalent language, shall be sufficient:

29 NOTICE OF REQUIRED ARBITRATION

30 Under the seed laws of some states, arbitration is required as a  
31 precondition of maintaining certain legal actions, counterclaims or  
32 defenses against a seller of seed. The buyer must file a complaint  
33 along with the filing fee with the Idaho Department of Agriculture  
34 within such time as to permit inspection of the crops, plants or trees.  
35 The buyer shall notify and serve a copy of the complaint upon the  
36 seller by certified mail.

37 (3) Effect of arbitration.

38 (a) Agreement to arbitrate. The report of arbitration shall be binding upon all parties to  
39 the extent, if any, that they have so agreed in any contract governing the sale of the seed.

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

1 (c) Use as evidence. In any litigation involving a complaint which has been the  
 2 subject of arbitration under this section, any party may introduce the report of arbitration  
 3 as evidence of the findings of the report, and the court may give such weight to the  
 4 arbitration council's findings and recommendations as to damages and costs, as the court  
 5 may see fit based upon all the evidence before the court. The court may also take into  
 6 account any finding of the arbitration council with respect to the failure of any party to  
 7 cooperate in the arbitration proceedings including, any finding as to the effect of delay in  
 8 filing the arbitration claim upon the arbitration council's ability to determine the facts of  
 9 the case.

10 (4) Establishment of sSeed arbitration council. ~~The director of the department of~~  
 11 ~~agriculture shall appoint an arbitration council composed of six (6) members and five (5)~~  
 12 ~~alternate members. An Idaho department of agriculture representative and an alternate shall~~  
 13 ~~serve as permanent members. One (1) member and one (1) alternate shall be appointed upon~~  
 14 ~~the recommendation of each of the following~~ Each of the following individuals or organizations  
 15 may provide a nomination list of five (5) names to the director. From the nomination lists, the  
 16 director shall comprise a list consisting of fifteen (15) names from which three (3) members of  
 17 the arbitration council shall be selected pursuant to the provisions of subsection (5)(c) of this  
 18 section:

19 (a) The associate dean of the college of agriculture; director of the Idaho agricultural  
 20 experiment stations, college of agriculture, university of Idaho.

21 (b) The department head of plant, soil and entomological sciences, college of agriculture,  
 22 university of Idaho.

23 (c) The president of Idaho-eastern Oregon seed association.

24 (d) The president of the Idaho crop improvement association.

25 (e) The president of the Idaho farm bureau.

26 ~~Initially, three (3) members and their alternates shall be appointed for four (4) year~~  
 27 ~~terms and three (3) members and their alternates shall be appointed for two (2) year terms.~~  
 28 ~~Thereafter, members and alternates shall be appointed for four (4) year terms.~~

29 ~~Each alternate member shall serve only in the absence of the member for whom the~~  
 30 ~~person is an alternate. No member or alternate shall be involved in an investigation of a~~  
 31 ~~complaint if he, his employer or employee is named in the filed complaint.~~

32 ~~Either the buyer or the seller may challenge any member or alternate of the council if~~  
 33 ~~there is reason to believe that a conflict of interest exists. In the event that a member or~~  
 34 ~~alternate is challenged, the director of the department of agriculture shall appoint, with the~~  
 35 ~~consent of the buyer and seller, a replacement, who shall be knowledgeable about agricultural~~  
 36 ~~husbandry.~~

37 ~~The council shall elect a chairman and a secretary from its membership. The chairman~~  
 38 ~~shall conduct meetings and deliberations of the council and direct all of its other activities. The~~  
 39 ~~secretary shall keep accurate records of all such meetings and deliberations and perform such~~  
 40 ~~other duties for the council as the chairman may direct.~~

41 ~~The purpose of the council is to conduct arbitration as provided in this section. The~~  
 42 ~~council may be called into session by or at the direction of the director or upon direction of its~~  
 43 ~~chairman to consider matters referred to it by the director or such chairman in accordance with~~  
 44 ~~this section.~~

45 (5) Procedures.

1 (a) Commencement. A buyer may invoke arbitration by filing a sworn complaint  
2 with the director together with a filing fee of one hundred dollars (\$100) which is  
3 nonrefundable. The buyer shall serve a copy of the complaint upon the seller by certified  
4 mail within such time as to permit inspection of the crops, plants or trees by the seed  
5 arbitration council or its representatives and by the dealer or seller from whom the seed  
6 was purchased. If the seeds are not planted, the buyer shall serve a copy of the complaint  
7 upon the seller by certified mail not later than two (2) years after the purchase of the seed  
8 lot.

9 (b) Seller's answer. Within twenty (20) days after receipt of a copy of the complaint,  
10 the seller shall file with the director an answer to the complaint and serve a copy of the  
11 answer upon the buyer by certified mail.

12 (c) Referral to arbitration council. ~~The director shall refer the complaint and answer~~  
13 ~~to the council for investigation, findings and recommendation~~ The complaint and answer  
14 shall be referred to a five (5) person arbitration council. Each party shall select one  
15 (1) arbitrator from the director's list of nominees established under the provisions of  
16 subsection (4) of this section. Those arbitrators shall select a third arbitrator from the  
17 director's list of nominees. A representative of the Idaho department of agriculture shall  
18 be the fourth arbitrator and a representative from the university of Idaho agricultural  
19 extension service shall be the fifth arbitrator. The five (5) member council shall select  
20 a chairman from its membership. The chairman shall conduct deliberations of the council  
21 and direct all of its other activities. Upon request by the chairman, the department may  
22 provide administrative support to the arbitration council.

23 (d) Investigation. Upon referral of a complaint for investigation the council shall make  
24 a prompt and full investigation of the matters complained of and report its findings and  
25 recommendations to the director within sixty (60) days of such referral or such later date  
26 as parties may determine.

27 (e) Scope of report. The report of the council shall include findings and  
28 recommendations as to investigation costs, if any, for settlement of a complaint.

29 (f) Authority of council. In the course of its investigation, the council or any of its  
30 members may:

31 (i) Examine the buyer and the seller on all matters which the council considers  
32 relevant.

33 (ii) Grow to production a representative sample of the seed through the facilities  
34 of the director or a designated university.

35 (iii) Submit seed samples for testing by state seed laboratory or appropriate  
36 laboratory.

37 (iv) Hold informal hearings at such time and place as the chairman may direct  
38 upon reasonable notice to all parties.

39 (v) Upon the chairman's request, call any person in for comments knowledgeable  
40 on any matter under investigation.

41 (vi) Assess the cost of conducting the investigation to the nonprevailing party or  
42 between the parties of a given complaint when deemed appropriate.

43 (vii) Include as the cost of investigation: travel, lodging and meals as established  
44 by the state, for any witness called by the council, and other administrative and  
45 secretarial expenses.

- 1 (g) Delegation. The council may delegate all or any part of any investigation to one (1)
- 2 or more of its members. Any such delegated investigation shall be summarized in writing
- 3 and considered by the council in its report.
- 4 (h) Compensation. The members of the council shall be compensated as provided in
- 5 section 59-509(b), Idaho Code.
- 6 (i) Distribution of report. After the council has made its report the director shall
- 7 promptly transmit the report by certified mail to all parties.