

# SENATE BILL REPORT

## SB 5075

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As of January 27, 2017

**Title:** An act relating to dispute resolution between seed buyers and dealers.

**Brief Description:** Concerning dispute resolution between seed buyers and dealers.

**Sponsors:** Senators Takko and Warnick.

**Brief History:**

**Committee Activity:** Agriculture, Water, Trade & Economic Development: 1/26/17.

**Brief Summary of Bill**

- Requires seed buyers to seek mediation before seeking a legal action to remedy damages in excess of \$5,000.
- Establishes a process for mediation between a seed buyer and seller.
- Repeals some provisions related to arbitration.

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### SENATE COMMITTEE ON AGRICULTURE, WATER, TRADE & ECONOMIC DEVELOPMENT

**Staff:** Karen Epps (786-7424)

**Background:** The Washington State Seed Act (Seed Act) serves to provide uniformity and consistency in the packaging of agricultural, vegetable, and flower seeds. The Washington State Department of Agriculture (WSDA) administers the Seed Act. The program conducts pre-harvest field inspections and laboratory testing of agricultural, vegetable, and flower seeds grown under the seed program. The program tests seed samples submitted by seed growers and companies to determine compliance with purity and germination standards, and to certify seeds for domestic and international marketing. The program provides for labeling of seeds in commerce.

Before a seed buyer may seek a legal action to remedy any damages valued at greater than \$2,000 caused by seeds that do not perform as represented by the required label, that buyer must first seek arbitration of his or her claim. This same arbitration requirement also applies to any counter claims raised by the party accused of misrepresenting his or her product.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Information relating to this prerequisite to legal action must be provided on the actual seed label.

The arbitration process begins with the aggrieved seed buyer filing a sworn claim with the WSDA and paying any filing fees. The seed seller then has 20 days to file any answer to the complaint. Once received, the Director of the WSDA (Director) must refer the complaint to an arbitration committee for investigation, findings, and recommendations.

The arbitration committee is appointed by the Director. The arbitration committee must have five members, including an employee of the WSDA. The Director must make these appointments so that the committee's membership is balanced between the interests of dealers and buyers. Prior to making the appointments, advice must be sought from the Washington State University and representatives of a seed dealer organization, an agricultural organization, and an organization representing seed purchasers. The arbitration committee must make a full investigation and return its findings to the Director within 60 days. The arbitration committee must investigate the claim, examine the buyer and the seller, hold informal hearings, and may grow a representative sample of the seed in question. The report must include a final award and recommendations as to covering costs.

**Summary of Bill:** A seed buyer must seek mediation of the claim before the buyer may seek a legal action to remedy damages in excess of \$5,000. The claim shall be tolled from the date the mediation proceedings are instituted until ten days after the date the mediation is concluded. Mediation proceedings are instituted from the date the buyer mails the dealer the buyer's complaint with the request for mediation. All claims for \$5,000 or less may be commenced in either district court or small claims court. Mediation only applies to a dealer subject to this state's jurisdiction in relation to the buyer's claims.

To submit a claim for mediation, the buyer files a complaint, in the form of a declaration or affidavit, against the dealer. The answer from the dealer must agree to participate in mediation or state the dealer's grounds for refusing to engage in mediation. The parties are equally responsible for the mediator's fees unless otherwise agreed between the parties before retaining the mediator. The mediator must be selected by mutual agreement of the parties from qualified mediators. The mediation must take place within the part of the state where the buyer conducts operations unless otherwise agreed to by the parties. Certain provisions related to arbitration are repealed.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill creates a significantly better process for parties who find themselves in a seed dispute. This bill create some good efficiencies for the WSDA. The bill gets them out of the arbitration business and allows them to focus on their primary objectives. The bill removes some financial risk from the WSDA Seed

Program, which is funded by producer fees. The bill eliminates some inconveniences for experts who are required to weigh in on these arbitrations. The result is not binding, so arbitration does not always accomplish much. The bill from last year did not allow for a mediation provision and seed industry had issues with it. This bill retains an optional mediation provision that is handled outside of the WSDA. WSDA and the seed industry have worked together on this bill. This is a good government bill that saves time and money for the parties to the dispute and it restores lost productivity for the industry employees who currently have to serve on this arbitration panel without pay. Stakeholders have worked on this bill during the interim and the bill is better than the agency request bill from last session.

OTHER: The arbitration process happens very rarely, but when it does, it can be expensive. The last one was over \$30,000 for costs to Washington State. Because the arbitration process is non-binding, the issue can still go to court. To grow an irrigated alfalfa field, the farmer would spend about \$80 an acre on seed, which is about 15 percent of the total cost. There is a challenge when the seed does not grow or there are issues with the seed. There should be a process for legal recourse for the parties, but the state should not dictate that it be a non-binding arbitration process. Arbitration has been ineffective and costly, and this bill resolves that removing the arbitration requirement and replacing it with non-binding mediation. Mediation allows the buyers and sellers to weigh their costs and decide whether mediation makes sense. There are thirteen states that have similar arbitration processes in place, but only three require the parties involved to pay the costs. The current arbitration process is not working well and removing this burden will reduce costs, achieve positive resolution to these disputes more quickly and remove a costly barrier for smaller growers in the state.

**Persons Testifying:** PRO: Senator Dean Takko, Prime Sponsor; Steve Fuller, WSDA; Jordan McDevitt, Ag Forestry Class 38.

OTHER: Madilynne Clark, WA Policy Center.

**Persons Signed In To Testify But Not Testifying:** No one.