

RAFI-USA

Rural Advancement Foundation International - USA

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Binding Mandatory Arbitration in Agricultural Contracts

Many farmers and growers are forced to sign mandatory arbitration clauses, as part of a take-it-or-leave-it, non-negotiable contract with a large, vertically integrated processing firm. By signing a binding mandatory arbitration clause a farmer is **signing away his/her constitutional right to a trial by jury**. This is a problem for a farmer because

- Arbitration can be **very expensive** and beyond the means of most farmers. A grower in Texas was recently billed over \$20,000 for her portion of the initial costs, with payment due before the arbitration process could begin. In comparison, court filing fees run around \$200.
- It is more difficult for a farmer to prove his/her case in arbitration since basic legal processes such as discovery are waived
- Arbitration is governed by procedures and rules chosen by the company that wrote the contract

Since a farmer signs a contract before any dispute arises, it allows the companies to use **practices that are abusive** without fear of the farmer bringing them to court or having a record of their wrong doings.

Common Myths	Realities
Arbitration is less expensive than taking a dispute to court.	Arbitration can require both filing fees and fees related to actual proceedings such as the arbitrator's hourly wage. The total costs for the individual filing a complaint can quickly mount to over \$10,000 and much more. These fees are in addition to any legal fees related to attorneys or expert testimony. Filing in a public court typically runs \$150 - \$200.
Arbitration has less complex procedures and can be done without legal representation.	Arbitration does not have the procedural safeguards of going to court such as standards of evidence and the discovery process. Without these safeguards, the company may not have to share documentation or evidence that may be crucial to the dispute. While theoretically an individual could attend arbitration without a lawyer, there is little doubt the corporate counter part to the dispute will have legal representation. The absence of legal representation for the farmer would create an immediate and significant disadvantage.
Arbitration cuts down on the number of petty law suits, freeing the courts for more substantial cases.	Arbitration reduces law suits by restricting American citizens' rights to access our public court system <i>regardless</i> of the merit or significance of the complaint.
Unfair or abusive arbitration clauses are not enforced by the courts.	The legal record of decisions regarding arbitration is inconsistent and unclear. For example, the Arkansas Supreme Court recently ruled an arbitration clause in a Tyson hog contract was unenforceable. The ruling was based on the fact the contract forced the farmer to arbitrate any complaint and placed no restriction on the companies' dispute resolution options. Unfortunately, courts in other states have ruled the exact opposite. Lawyers are hesitant to take on any case involving an arbitration clause since challenging the arbitration clause adds a significant layer of work and uncertainty to any case, regardless of how credible the complaint.

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