

# Contract Fairness and the 2008 Farm Bill

In 2003, 40% of all US agricultural products were produced with either a marketing and/or production contract. This trend is rapidly spreading from poultry to hogs to tobacco to specialty crops and grains. Unfortunately, these agricultural contracts are developed in an environment in which the corporate processors, handlers, packers or buyers have monopoly-like market power and farmers have almost no legal protection. The result is a growing imbalance in market power between the family farmer and agribusiness corporations, which is depressing farm income and threatening the economic viability and environmental health of our rural communities.

Fairness in contracts is impossible when individual producers have no power to negotiate terms or to protect themselves against fraud, retaliation or discrimination. Over 200 organizations have joined together to advocate for farm policy that can help balance the contract relationship. The provisions below are in the 2008 Farm Bill.

## **Minimum standards for agricultural contracts and reasonable government oversight**

- Enables a producer to settle a dispute in the Federal judicial district where he or she lives rather than where the company headquarters is located
- Improves oversight of USDA's enforcement of the Packers and Stockyards Act by requiring the Department to provide an annual compliance report detailing the number and length of time spent on investigations of potential violations of the Act
- Requires a company to give 3 days to cancel a contract after signing it.
- If large capital investments will be required of the contract grower, the contractor is required to disclose that such investments may be required over the life of the contract.
- Requires USDA to write regulations on whether a company has provided reasonable notice to a grower on suspension of the delivery of birds, when additional capital investments under a contract is unfair under the Act, and what a reasonable period of time is for a grower to remedy a breach of contract that would lead to termination of the contract.

## **Allows farmers to opt out of binding mandatory arbitration clauses at the time they sign a contract**

Many farmers and growers are forced to sign binding, mandatory arbitration clauses, as part of a take-it-or-leave-it, non-negotiable contract. Binding Mandatory Arbitration Clauses are problems for farmers because -

- Arbitration is much **more expensive** for a farmer than going through the court system
- It is more difficult for a farmer to prove his/her case in arbitration since basic legal processes such as discovery are very limited
- 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 producers to use **practices that are abusive** without fear of the farmer bringing them to court or having a record of their wrong doings. Arbitration can be a valid and effective method of dispute resolution when agreed to voluntarily through negotiation by two parties of similar power, but when used by a dominant party to limit the legal recourse of a weaker party in a non-negotiable contract, it becomes an abusive weapon.