



MYTHS AND FACTS

- Arbitration -

MYTH: *Mandatory arbitration is mutually beneficial to livestock and poultry processors and producers.*

FACT: Mandatory arbitration forces producers to give up access to the courts, even in cases of fraud, breach of contract, misrepresentation or other blatant contract abuses by the processor. Producers want the opportunity to choose either a judge or arbitrator for dispute resolution; mandatory arbitration clauses take that choice away from producers. If arbitration is mutually beneficial, then there should be no problem agreeing to arbitration voluntarily after the dispute arises. The Boswell amendment simply requires that arbitration be used to settle the controversy only if, after the controversy arises, both parties consent in writing.

MYTH: *Mandatory arbitration is cost-effective and a time-efficient method of dispute settlement compared to litigation.*

FACT: Arbitration cases are very expensive and time consuming. 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. In a recent Mississippi case, filing fees for a poultry producer to begin an arbitration proceeding were \$11,000. In contrast, filing fees for a civil court case are \$150 to \$250. Lawyer fees in a civil case are often paid on a contingent-fee basis. Further, complicated arbitration proceedings can take as long as nine to twelve months before a hearing is held.

MYTH: *If mandatory arbitration is removed, processors will take producers to court more often.*

FACT: If a processor believes a producer is not performing or has broken the contract in another way, the contract will simply be terminated or not renewed.

MYTH: *The Boswell amendment would prohibit or discourage arbitration.*

FACT: This provision does not prohibit or discourage arbitration. The Boswell amendment simply requires that arbitration be used to settle a controversy only if, after the controversy arises, both parties consent in writing. In some cases, companies coerce growers to sign revised contracts with a mandatory arbitration clause, and threaten to stop sending them animals unless they sign. Used fairly and appropriately, arbitration can be a beneficial dispute resolution tool, just not the only option. Mandatory arbitration should not be allowed to be used as a weapon to prevent producers from seeking justice when mistreated. In 2002, Congress passed a very similar provision to provide the same protections for car dealers in their contracts with car manufacturers and distributors.

MYTH: *Mandatory arbitration clauses in poultry contracts are fair, whereas the mandatory arbitration clauses in the car dealers' contracts were not because they were not governed under the American Arbitration Association (AAA).*

FACT: While the mandatory arbitration clauses in poultry contracts are often governed by AAA, they also have numerous other requirements that add costs and restrictions to the producer, such as the amount for the arbiters' fees before arbitration begins, the number of days to file a complaint, where the arbitration must take place (many times it is the state the processor is headquartered in), and "loser pays rules" which can include attorneys' and arbiters' fees.

Support the Boswell Arbitration Amendment!