

HOUSE BILL NO. 386

1/23 Introduced
1/23 Referred to Agriculture, Livestock & Irrig.
Died in Committee

1 HOUSE BILL NO. 386
2 INTRODUCED BY Bradley

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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE COURT
5 POSTPONEMENT OF CERTAIN FARM FORECLOSURE PROCEEDINGS;
6 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION
7 DATE."

8
9 WHEREAS, farm commodity prices are below the break-even
10 point, considering the cost of production; and

11 WHEREAS, a continuing drought and other natural
12 disasters have created additional financial stress for
13 Montana farmers; and

14 WHEREAS, a recent survey of farmers, commercial banks,
15 the Farmer's Home Administration, Production Credit
16 Associations, and Federal Land Banks conducted by the
17 Montana Crop and Livestock Reporting Unit indicates 18% of
18 Montana farmers are delinquent on real estate loan payments
19 and 31% are delinquent on operating loan payments; and

20 WHEREAS, 45% of the farmers surveyed indicated that if
21 current economic conditions continued they would be able to
22 hold out 5 years or less; and

23 WHEREAS, these circumstances have resulted in an
24 emergency of a nature that justifies and validates
25 legislation granting extension of the time prior to

1 foreclosure sales and other relief.

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3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4 Section 1. Definitions. As used in [this act], the
5 term "homestead" means a quantity of land not less than 40
6 acres used for agricultural purposes and the dwelling house
7 and appurtenances thereon, if any.

8 Section 2. Application for relief. (1) Any mortgagor
9 or owner in possession of a mortgaged homestead, anyone
10 claiming under the mortgage, or anyone liable for the
11 mortgage debt may, at any time after issuance of a notice of
12 foreclosure proceedings and prior to the sale, petition the
13 district court of the county where the foreclosure
14 proceedings are pending, serving a summons and verified
15 complaint requesting that the sale in foreclosure be
16 postponed for up to 12 months.

17 (2) A vendee under a contract for deed involving the
18 conveyance of a homestead, anyone claiming under such
19 contract, or anyone liable for the contract payment, if the
20 contract has not been terminated as of [the effective date
21 of this act], may petition the district court in the same
22 manner specified in subsection (1), requesting that any
23 pending contract termination be postponed for up to 90 days.

24 (3) Upon receiving the ex parte petition for
25 postponement, the court shall order a stay in the



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1 foreclosure or termination proceeding until a hearing is
2 held on the petition.

3 (4) As a condition precedent to the postponement of
4 the foreclosure sale, the party serving the verified
5 complaint shall file it and pay to the clerk of court for
6 the person foreclosing the mortgage the actual costs
7 incurred, including attorney fees, in the foreclosure
8 proceeding before postponement. As a condition precedent to
9 postponement of the contract termination, the party seeking
10 relief shall file the verified complaint and pay to the
11 clerk of court for the person terminating the contract the
12 actual costs, including attorney fees, incurred in the
13 termination. If payment is made by other than cash or
14 certified check, the order postponing the sale or
15 termination is not final until the check or other negotiable
16 instrument has been paid.

17 Section 3. Required findings. Before ordering a
18 postponement in a foreclosure sale or contract termination
19 the court must determine that the petitioner:

20 (1) is unemployed, underemployed, or facing severe
21 economic problems due to natural disaster or low farm
22 commodity prices;

23 (2) has a bona fide inability to make payments as
24 required by the mortgage or contract for deed;

25 (3) has committed no waste of the property or assets

1 covered by the mortgage or contract; and

2 (4) has a reasonable chance of fulfilling his
3 obligations under the mortgage or contract if given an
4 extension of time as provided in [this act].

5 Section 4. Conditions imposed on grant of
6 postponement. (1) The petition shall request the court to
7 determine the reasonable value of the income on the property
8 or, if the property has no income, then the reasonable
9 rental value of the property subject to the contract for
10 deed or mortgage. The court, if it grants a postponement,
11 shall direct the contract vendee or mortgagor to pay all or
12 a reasonable part of the income or rental value for the
13 payment of taxes, insurance, interest, or principal at the
14 times and in the manner determined by the court. In
15 determining the amount of income or rental value to be paid,
16 the court may consider the relative financial conditions and
17 resources of the parties and the ability of the mortgagor or
18 contract vendee to pay. In the case of a contract for deed,
19 the court shall insure that the payment required by the
20 contract vendee is sufficient, together with other sources
21 of income, to adequately maintain the vendor's standard of
22 living.

23 (2) If the mortgagor or contract vendee defaults in
24 the payments ordered, the mortgagee may immediately commence
25 foreclosure proceedings as provided in 71-1-222 and the

1 contract vendor may terminate the contract 30 days after the
 2 default. If default is claimed because of waste, the
 3 mortgagee or contract vendor may commence foreclosure
 4 proceedings or terminate the contract immediately after the
 5 filing of an order of the court finding the waste.

6 (3) Upon the application of either party before the
 7 expiration of the extended period prior to the sale or
 8 contract termination and upon the presentation of evidence
 9 that the terms for partial payment fixed by the court are no
 10 longer just and reasonable due to a change in circumstances,
 11 the court may revise the terms in the manner the changed
 12 circumstances require.

13 Section 5. Compromises. If the parties to a
 14 foreclosure action agree in writing to a compromise
 15 settlement thereof or composition of the mortgage
 16 indebtedness, or both, the court has jurisdiction and may by
 17 its order confirm or approve the settlement or composition,
 18 or both.

19 Section 6. Time for hearing, issuance of order, review
 20 by certiorari. The hearing on the petition must be held
 21 within 30 days after the filing of the petition. The order
 22 therein must be made and filed within 5 days after the
 23 hearing. Review by the supreme court may be had by writ of
 24 certiorari, if application for the writ is made within 15
 25 days after notice of the order. The writ is returnable

1 within 30 days after the filing of the order.

2 Section 7. Reduction of redemption period --
 3 deficiency judgment forestalled. (1) If the court grants a
 4 postponement in the foreclosure sale, the redemption period
 5 pursuant to 71-1-228 must be reduced by an equivalent period
 6 of time, except that the redemption period may not be less
 7 than 30 days. If the court does not grant a postponement in
 8 the foreclosure sale, the redemption period is as provided
 9 in 71-1-228.

10 (2) No action may be maintained for a deficiency
 11 judgment until the period of redemption has expired.

12 Section 8. Application -- limitations. (1) [This act]
 13 applies to first mortgages secured by and contracts for deed
 14 conveying homesteads, including but not limited to:

15 (a) mortgages held by the United States or any agency
 16 thereof as security or pledge of the mortgagor, its
 17 successors or assigns; and

18 (b) mortgages held as security or pledge to secure
 19 payment of a public debt or to secure payment of the deposit
 20 of public funds.

21 (2) The provisions of [this act] do not apply to:

22 (a) mortgages or contracts for deed made after [the
 23 effective date of this act];

24 (b) mortgages or contracts for deed made before [the
 25 effective date of this act] which are renewed or extended

1 after [the effective date of this act] for a period longer
2 than 2 years; or

3 (c) mortgages or contracts for deed, regardless of
4 when made, if a second or subsequent mortgage is made
5 against the property after [the effective date of this act].

6 (3) No postponement or extension of time may be
7 granted that would:

8 (a) cause any right to be lost or adversely affected
9 by any statute of limitation;

10 (b) substantially diminish or impair the value of the
11 contract or obligation of the person against whom relief is
12 sought without reasonable allowance to justify the exercise
13 of police power under [this act]; or

14 (c) cause irreparable harm or undue hardship to any
15 mortgagee, contract vendor, judgment creditor, or their
16 successors or assigns.

17 (4) The remedy authorized by [this act] is available
18 to a mortgagor or contract vendee only one time with respect
19 to any homestead.

20 Section 9. Inconsistent laws. The provisions of [this
21 act] govern in the event of inconsistency with any provision
22 of Title 25, chapter 13; Title 70, chapter 32, part 2; Title
23 71, chapter 1; or any other law of this state.

24 Section 10. Effective date -- termination. This act is
25 effective on passage and approval and terminates April 1,

1 1987.

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