HOUSE BILL NO. 11

INTRODUCED BY HOLLIDAY, SCHULTZ, ASAY, GALT, VINCENT, JACK MOORE, DARKO, LYBECK, KEYSER, COBB, ERNST, HANSON, WEEDING, RAPP-SVRCEK, CONOVER, NEUMAN, HOWE, BENGTSON, LANE, THOFT, DONALDSON, RANEY, CODY, ABRAMS, HAND

> BY REQUEST OF THE INTERIM SUBCOMMITTEE ON AGRICULTURAL PROBLEMS

IN THE HOUSE

March 25, 1986 Introduced and referred to Committee on Appropriations.

Fiscal note requested.

March 26, 1986 Fiscal note returned.

March 27, 1986 Committee recommend bill do pass as amended. Report adopted.

Statement of Intent attached.

March 28, 1986 Bill printed and placed on members' desks.

Second reading, do pass.

Third reading, passed.

Transmitted to Senate.

IN THE SENATE

March 28, 1986

Introduced and referred to Committee on Agriculture, Livestock and Irrigation.

Committee recommend bill be concurred in. Report adopted.

March 28, 1986	Second reading, concurred in.
	Third reading, concurred in. Ayes, 44; Noes, 5.
	Returned to House.
IN T	HE HOUSE
March 29, 1986	Received from Senate.
	Sent to enrolling.
	Reported correctly enrolled.

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49th Legislature Special Session 3/86 LC 0007/01

1 NTRODUCED BY Z BY REQUEST OF THE INTERIM SUBCOMMITTEE ON AGRICULTURAL PROBLEMS 6 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN AIDRIGICLE ASSISTANCE AND COUNSELING 7 AGRICULTURAL PROGRAM TΟ 110.20 FINANCIALLY DISTRESSED FARMERS; PROVIDING FOR FINANCIAL 8 MANAGEMENT TRAINING, LEGAL SERVICES, 9 COUNSELING, FARM VOLUNTARY DEBT MEDIATION, MENTAL HEALTH ASSISTANCE, SUPPORT FCHA 10 11 COUNSELING, AND REFERRAL SERVICES: AUTHORIZING THE 12 DEPARTMENT OF AGRICULTURE TO ADMINISTER THE PROGRAM: 13 APPROPRIATING FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE." 14

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

17 Section 1. Purpose. It is the declared purpose of 18 [this act] to establish an emergency program to directly 19 assist individual farmers who are financially distressed by 20 providing them assistance and counseling to manage farm 21 credit problems, to avoid forced liquidation or farm 22 foreclosure, and to cope with the financial stress resulting 23 from the adverse conditions of agriculture in this state.

Section 2. Definitions. As used in [this act], unlessthe context indicates otherwise, the following definitions

l apply:

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2 (1) "Agricultural production" means the production of
3 livestock, poultry, field crops, fruit, or other animal and
4 vegetable matter for food or fiber.

(2) "Agricultural property" means:

6 (a) real property that is principally used for7 agricultural production; and

8 (b) personal property that is part of an agricultural
9 production operation or used as security to finance such an
10 operation, including equipment, crops, livestock, and the
11 proceeds of any security.

(3) "Department" means the department of agriculture
 provided for in 2-15-3001.

14 (4) "Farmer" means a person who owns or operates a
15 farm or ranch primarily for the purpose of agricultural
16 production.

17 (5) "Mediator" means a person authorized under
18 [section 7] to serve as a negotiator between a farmer and a
19 creditor.

20 (6) "Program" means the agricultural assistance and21 counseling program provided for in [section 3].

22 (7) "Secured ceditor" means:

23 (a) the holder of a mortgage on agricultural property;
24 (b) a vendor of a contract for deed of agricultural
25 property;

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1	(c) a person with a lien or security interest in	1	(i) the cooperative extension service at Montana state
2	2 agricultural property; or	2	university;
3	(d) a judgment creditor with a judgment against a	3	(ii) state agencies;
4		4	(iii) legal service corporations or private law firms;
5	(8) "Unsecured creditor" means a person who extends	5	(iv) community service organizations;
6		6	<pre>(v) private business;</pre>
7		7	<pre>(vi) professional associations;</pre>
8		8	(vii) regional mental health corporations;
9		9	(viii) volunteer organizations; and
10		10	(ix) any other person or entity;
11		11	(b) contract for services with qualified personnel,
12	(2) Under the program, the department shall make	12	including financial counselors, farm management specialists,
13		13	accountants, attorneys, and mental health professionals, to
14		14	provide the assistance required under [section 3];
15	<pre>(b) farm management training;</pre>	15	(c) hire a coordinator to implement and manage the
16	(C) legal services;	16	program;
17	(d) voluntary debt mediation as provided for in	17	(d) provide training for interested and qualified
18	[section 6];	18	persons to assist farmers needing help with farm financial
19	<pre>(e) mental health assistance;</pre>	19	management problems;
20	(f) support counseling; and	20	(e) establish a toll-free telephone line to receive
21	(g) referral services.	21	requests for assistance, counseling, and referral of
22	Section 4. Powers and duties of department. (1) For	22	services; and
23	the purpose of administering the program, the department	23	(f) compile a directory of services available through
24	shall:	24	the program.
25	(a) utilize the services of:	25	(2) The department may:

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(a) establish an advisory board to assist the 1 department in determining policy and in developing plans for 2 administration of the program; and 3

(b) adopt rules necessary for the administration of 4 the program. 5

6 Section 5. Gifts and grants. The department may accept monetary or in-kind contributions, gifts, and grants 7 8 provided to support the program.

Section 6. Voluntary mediation -- filing procedure --9 dismissal of requests, (1) A farmer who is in danger of 10 11 imminent foreclosure, or who has received a notice of foreclosure, on agricultural property or a secured creditor 12 may request mediation of the farmer's indebtedness by filing 13 a request with the department on a form prescribed by the 14 15 department.

(2) In filing a mediation request, the farmer shall 16 17 provide:

(a) the name and address of each secured and unsecured 18 creditor: 19

(b) the amount owed to each creditor; 20

(c) the amount of the periodic installment payments 21 due each creditor; and 22

(d) any additional information the department may 23 require. 24

(3) A farmer requesting mediation shall authorize the 25

release to the department of any information held by a 1 creditor.

3 (4) Upon receipt of a properly completed mediation Λ request form, the department or its agent shall evaluate each request and may direct a mediator to meet with the 5 farmer and secured creditor to assist in mediation. An 6 7 unsecured creditor may participate in mediation between a farmer and secured creditor if each party agrees. 8

9 (5) Subject to the provisions of subsection (6). the department shall immediately terminate an attempt at 10 mediation and dismiss the mediation request if at any time 11 12 it finds that:

(a) a secured creditor does not agree to participate 13 in mediation requested by the farmer; or 14

15 (b) the farmer does not agree to participate in any 16 mediation requested by a secured creditor.

17 (6) If the mediation request involves more than one secured creditor and any one creditor does not agree to 18 participate in mediation, the department shall dismiss the 19 mediation request only insofar as it relates to that 20 21 creditor.

Section 7. Duties and requirements of mediators. (1) A 22 mediator must be qualified to provide the services required 23 under [this act]. A mediator must be an impartial person 24 knowledgeable in agricultural and financial matters. 25

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(2) In carrying out his properly authorized duties,
 the mediator shall:

3 (a) listen to the farmer and any creditor desiring to4 be heard;

5 (b) attempt to negotiate an agreement that:

6 (i) extends the term of credit;

7 (ii) reduces the dollar amount of payments under 8 credit; or

9 (iii) permits the farmer to continue in agricultural
10 production and provides reasonable security to the creditor;
11 and

12 (c) advise, counsel, and assist the farmer and 13 creditor in attempting to arrive at a satisfactory 14 agreement.

15 (3) A mediator may attempt to:

16 (a) arrange mutually agreed upon forebearance from
17 litigation, rescheduled or renegotiated debt, voluntary
18 sale, or other liquidation of any agricultural property; and
19 (b) obtain assistance from any public or private
20 agency.

21 Section 8. Mediation agreement. (1) If an agreement is
22 reached between the farmer and a creditor, the mediator
23 shall draft a written mediation agreement to be signed by
24 the farmer and the creditor.

25 (2) A farmer and any creditor who are parties to a

1 mediation agreement:

2 (a) are bound by the terms of the agreement;

3 (b) may enforce the mediation agreement as a legal
4 contract; and

5 (c) may use the mediation agreement as a defense
6 against an action contrary to the mediation agreement.

7 Section 9. Unsuccessful mediation. If a mediation 8 agreement cannot be reached, the mediator shall recommend to 9 the department that the mediation be concluded and the 10 mediation request be dismissed.

Section 10. Confidentiality of records. (1) All materials, data, and information received by the department with respect to any request filed under [section 6] are confidential and are not subject to examination or disclosure as public information.

16 (2) No official, employee, or agent of the department
17 may knowingly disclose any materials, data, or information
18 concerning a mediation request without the consent of the
19 farmer and the creditor.

20 Section 11. Closed meetings. Meetings between a farmer 21 and any creditor conducted by a mediator are not open to 22 public participation and are not subject to the provisions 23 of the open meeting law contained in 2-3-203.

24 Section 12. Appropriation. There is appropriated from 25 the general fund to the department of agriculture for the

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1 biennium ending June 30, 1987, the sum of \$350,000 to 2 administer [this act].

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3 Section 13. Effective date -- termination. This act is
4 effective on passage and approval and terminates July 1,
5 1987.

-End-

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STATE OF MONTANA - FISCAL NOTE Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB011 , Version: as introduced

Description of Proposed Legislation:

A bill to provide an appropriation to establish an agricultural assistance and counselling program.

Assumptions:

- 1. The proposed legislation sunsets on July 1, 1987.
- 2. The department will implement the proposed programs within the appropriated amount.
- 3. An unknown number of farms will remain in operation.

Fiscal Impact:

The proposed legislation will have a positive impact on state and local revenues, but it is not possible to estimate the number of farm operations that will remain viable because of the proposed legislation.

Expenditures:

N/A

 $\frac{\text{Revenues}}{N/A}$

Long-Range Effects of Proposed Legislation: N/A

Technical or Mechanical Defects or Conflicts With Existing Legislation: N/A

RIDCET DIRECTOR

Office of Budget and Program Planning

Halles March 25 DATE 1986

Fiscal Note for <u>HB011</u>

49th Legislature Special Session 3/86

HB 0011/si

HB 0011/si

APPROVED BY COMMITTEE on appropriations

STATEMENT OF INTENT		
HOUSE BILL 11		
House Appropriations Committee		
A statement of intent is required for this)	bill	because

6 it contains a delegation of authority to allow the 7 department of agriculture to adopt rules necessary for the 8 administration of an agricultural assistance and counseling 9 program.

10 It is the intent of the legislature that the department 11 of agriculture establish an emergency program fulfilling the 12 purpose stated in section 1. Under such program, the 13 department must provide to financially distressed farmers 14 and ranchers the types of assistance enumerated in section 15 3.

To the best extent possible, the department should 16 first utilize the available services of the cooperative 17 18 extension service, state agencies, private businesses, professional organizations, volunteer groups, and other 19 persons having knowledge and experience in providing the 20 type of assistance and counseling required by this bill. The 21 cooperative extension service and other state agencies 22 should cooperate with the department of agriculture in 23 providing needed services. 24

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In contracting for services mandated in section 3, the

Montana Legislative Council

department should ensure that contracted personnel are
 properly qualified and trained to provide assistance.
 Moreover, the department should establish a procedure to
 monitor the delivery of services and to guarantee the proper
 expenditure of public funds.

6 All contracts for services should be issued on a fair and impartial basis. In addition, all contracts should 7 8 contain a clause requiring insurance against liability for the negligence of personnel in providing assistance or 9 10 counseling to financially distressed farmers and ranchers. In devising an agricultural assistance and counseling 11 12 program, the department should examine the various financial 13 counseling, debt mediation, and other programs established 14 in many states to aid agricultural producers who are in 15 serious financial trouble. Specifically, the department should consider the success of similar programs in North 16 Dakota, South Dakota, Iowa, Illinois, Minnesota, Missouri, 17 1.9 and Kansas.

-2- SECOND READING

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resulting from the adverse conditions of agriculture in this 1 HOUSE BILL NO. 11 1 state. IT IS A GOAL OF THIS PROGRAM TO MAXIMIZE PROGRAM 2 INTRODUCED BY HOLLIDAY, SCHULTZ, ASAY, GALT, VINCENT, 2 3 EFFECTIVENESS BY UTILIZING PEER COUNSELORS AND BY JACK MOORE, DARKO, LYBECK, KEYSER, COBB, ERNST, HANSON, 3 4 COOPERATING WITH THE PRIVATE SECTOR. WEEDING, RAPP-SVRCEK, CONOVER, NEUMAN, HOWE, BENGTSON, 4 Section 2. Definitions. As used in [this act], unless 5 LANE, THOFT, DONALDSON, RANEY, CODY, ABRAMS, HAND 5 the context indicates otherwise, the following definitions 6 BY REQUEST OF THE INTERIM SUBCOMMITTEE 6 7 apply: ON AGRICULTURAL PROBLEMS 7 (1) "Agricultural production" means the production of 8 8 livestock, poultry, field crops, fruit, or other animal and 9 "AN ACT ESTABLISHING AN A BILL FOR AN ACT ENTITLED: q 10 vegetable matter for food or fiber. AGRICULTURAL ASSISTANCE AND COUNSELING PROGRAM TO AID 10 (2) "Agricultural property" means: 11 FINANCIALLY DISTRESSED FARMERS; PROVIDING FOR FINANCIAL 11 (a) real property that is principally used for 12 COUNSELING, AND FARM MANAGEMENT TRAINING CONSULTING, LEGAL 12 13 agricultural production; and INFORMATION SERVICES, VOLUNTARY DEBT MEDIATION, MENTAL 13 (b) personal property that is part of an agricultural 14 AND REFERRAL SUPPORT COUNSELING, HEALTH ASSISTANCE, 14 15 production operation or used as security to finance such an SERVICES; AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO 15 16 operation, including equipment, crops, livestock, and the ADMINISTER THE PROGRAM; APPROPRIATING FUNDS; AND PROVIDING 16 17 proceeds of any security. AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE." 17 (3) "Department" means the department of agriculture 18 18 provided for in 2+15-3001. 19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 19 (4) "Farmer" means a person who owns or operates a 20 Section 1. Purpose. It is the declared purpose of 20 21 farm or ranch primarily for the purpose of agricultural [this act] to establish an emergency program to directly 23 22 production. assist individual farmers who are financially distressed by 22 (5) "Mediator" means a person authorized under 23 providing them assistance and counseling to manage farm 23 [section 7] to serve as a negotiator between a farmer and a 24 credit problems, to avoid OR MITIGATE forced liquidation or 24 creditor. 25 farm foreclosure, and to cope with the financial stress 25

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1	(6) "PEER COUNSELOR" MEANS A PERSON WHO IS OR HAS BEEN
2	INVOLVED IN PRODUCTION AGRICULTURE AND WHO HAS BEEN TRAINED
3	THROUGH THE DEPARTMENT AND OTHERS IN FINANCIAL COUNSELING
4	AND MEDIATION OR NEGOTIATION TECHNIQUES AND WHO WORKS TO AID
5	FINANCIALLY DISTRESSED FARMERS THROUGH THIS PROGRAM.
6	<pre>(6)(7) "Program" means the agricultural assistance and</pre>
7	counseling program provided for in [section 3].
8	<pre>(7)(8) "Secured ceditor" means:</pre>
9	(a) the holder of a mortgage on agricultural property;
10	(b) a vendor of a contract for deed of agricultural
11	property;
12	(c) a person with a <u>STATUTORY</u> lien or <u>A PERFECTED</u>
13	security interest in agricultural property; or
14	(d) a judgment creditor with a judgment against a
15	debtor engaged in agricultural production.
16	<pre>(0) "Unsecured creditor" means a person who extends</pre>
17	credit without <u>A PERFECTED</u> security <u>INTEREST</u> to a farmer for
18	the purchase of goods or services used in agricultural
19	production.
20	Section 3. Agricultural assistance and counseling
21	program. (1) The department shall establish an agricultural
22	assistance and counseling program to aid financially
23	distressed farmers in this state.
24	(2) Under the program, the department shall make
25	available to farmers the following types of assistance:

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1	(a) financial counseling <u>CONSULTING;</u>
2	(b) farm management training <u>CONSULTING;</u>
3	<pre>(c) legal <u>INFORMATION</u> services;</pre>
4	(d) voluntary debt mediation as provided for in
5	[section 6];
6	<pre>(e) mental health assistance;</pre>
7	(f) support counseling; and
8	(g) referral services.
9	Section 4. Powers and duties of department. (1) For
10	the purpose of administering the program, the department
11	shall:
12	(a) utilize the services of:
13	(I) A NETWORK OF TRAINED PEER COUNSELORS WHO CAN
14	DIRECTLY ASSIST FINANCIALLY DISTRESSED FARMERS;
15	(i) (II) the cooperative extension service AND THE
16	COLLEGE OF AGRICULTURE at Montana state university;
17	<pre>(ii)(III) state OR FEDERAL agencies;</pre>
18	<pre>tii)(IV) legal service corporations, THE UNIVERSITY OF</pre>
19	MONTANA LAW SCHOOL, or private law firms;
20	(iv)(V) community service organizations;
21	<pre>tv)(VI) private business;</pre>
22	<pre>tvi)(VII) professional associations;</pre>
23	t∀ii }(VIII) regional mental health corporations;
24	(∀iii) (IX) volunteer organizations; and
25	(ix)(X) any other person or entity;

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(b) contract for services with qualified personnel,	1	dismissa
including financial PEER counselors, farm management	2	imminent
specialists, accountants, attorneys, and mental health	3	foreclos
professionals, to provide the assistance required under	4	may requ
[section 3];	5	a reque
(c) hire a coordinator AND NECESSARY STAFF to	6	departme
implement and manage the program;	7	(2)
(d) provide training for interested and qualified	8	the farm
persons, INCLUDING PEER COUNSELORS, to assist farmers	9	(a)
needing help with farm financial management problems;	10	creditor
(e) establish a toll-free telephone line to receive	11	(b)
requests for assistance, counseling, and referral of	12	(c)
services; and	13	due each
(f) compile a directory of services available through	14	<u>(D)</u>
the program.	15	STATEMEN
(2) The department may:	16	ACTIVITI
(a) establish an advisory board to assist the	17	(d)
department in determining policy and in developing plans for	18	require
administration of the program; and	19	(3
(b) adopt rules necessary for the administration of	20	SECURED
the program.	21	<u>(A</u>
Section 5. Gifts and grants. The department may accept	22	DETERMIN
monetary or in-kind contributions, gifts, and grants	23	<u>(B</u>
provided to support the program.	24	STATEME
Section 6. Voluntary mediation filing procedure	25	<u>(C</u>
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al of requests. (1) A farmer who is in danger of foreclosure7--of--who--has--received--a--notice-of wre; on agricultural property or a secured creditor lest mediation of the farmer's indebtedness by filing est with the department on a form prescribed by the nt. In filing OR RESPONDING TO a mediation request, mer shall provide: the name and address of each secured and unsecured r;) the amount owed to each creditor;) the amount of the periodic installment payments h creditor; and) ANY FINANCIAL STATEMENTS AND PRO FORMA CASH FLOW NTS, INCLUDING THOSE RELATED TO ANY NONFARM IES; AND (E) any additional information the department may) IN FILING OR RESPONDING TO A MEDIATION REQUEST, A CREDITOR SHALL PROVIDE:) INFORMATION PERTAINING TO THE BASIS OF THE CREDIT NATION;) FINANCIAL STATEMENTS AND PRO FORMA CASH FLOW NTS ON THE RESPECTIVE FARMER;) STATEMENTS REGARDING THE STATUS OF THE FARMER'S

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l	LOAN PERFORMANCE;	1	mediation requested by a secured creditor.
2	(D) THE NAME AND TITLE OF THE REPRESENTATIVE OF THE	2	<pre>t6;(7) If the mediation request involves more than one</pre>
3	CREDITOR AUTHORIZED TO ENTER INTO A BINDING MEDIATION	3	secured creditor and any one creditor does not agree to
4	AGREEMENT; AND	4	participate in mediation, the department shall dismiss the
5	(E) ANY ADDITIONAL INFORMATION THE DEPARTMENT MAY	5	mediation request only insofar as it relates to that
6	REQUIRE.	6	creditor.
7	(3)(4) A farmer requesting OR SECURED CREDITOR WHO	7	Section 7. Duties and requirements of mediators. (1) A
8	AGREES TO PARTICIPATE IN mediation shall authorize the	8	mediator must be qualified to provide the services required
9	release to the department of any information held by a	9	under [this act]. A mediator must be an impartial person
10	creditor.	10	knowledgeable in agricultural and financial matters.
11	<pre>(4)(5) Upon receipt of a properly completed mediation</pre>	11	In carrying out his properly authorized duties,
12	request form, the department oritsagentshallevaluate	12	the mediator shall:
13	eachrequestandmay SHALL direct a mediator to meet with	13	(a) listen to the farmer and any creditor desiring to
14	the farmer and secured creditor to assist in mediation. An	14	be heard;
15	unsecured creditor may participate in mediation between a	15	(b) attempt to negotiate an agreement that:
16	farmer and secured creditor if each party agrees OR IF THE	16	(i) extends the term of credit;
17	MEDIATOR DETERMINES THAT AN UNSECURED CREDITOR IS A	17	(ii) reduces the dollar amount of payments under
18	NECESSARY PARTY TO THE MEDIATION.	18	credit; or
19	<pre>{5}(6) Subject to the provisions of subsection (6)</pre>	19	(iii) permits the farmer to continue in agricultural
20	(7), the department shall immediately terminate an attempt	20	production and provides reasonable security to the creditor;
21	at mediation and dismiss the mediation request if at any	21	and
22	time it finds that:	22	(c) advise, counsel, and assist the farmer and
23	(a) a secured creditor does not agree to participate	23	creditor in attempting to arrive at a satisfactory
24	in mediation requested by the farmer; or	24	agreement.
25	(b) the farmer does not agree to participate in any	25	(3) A mediator may attempt to:

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HB 11

(a) arrange mutually agreed upon forebearance from
 litigation, rescheduled or renegotiated debt, voluntary
 sale, or other liquidation of any agricultural property; and
 (b) obtain assistance from any public or private
 agency.

6 Section 8. Mediation agreement. (1) If an agreement is
7 reached between the farmer and a creditor, the mediator
8 shall draft a written mediation agreement to be signed by
9 the farmer and the creditor.

10 (2) A farmer and any creditor who are parties to a 11 mediation agreement:

12 (a) are bound by the terms of the agreement;

13 (b) may enforce the mediation agreement as a legal 14 contract; and

15 (c) may use the mediation agreement as a defense16 against an action contrary to the mediation agreement.

17 Section 9. Unsuccessful mediation. If a mediation 18 agreement cannot be reached, the mediator shall recommend to 19 the department that the mediation be concluded and the 20 mediation request be dismissed.

Section 10. Confidentiality of records. (1) All materials, data, and information received by the department with respect to any request filed under [section 6] are confidential and are not subject to examination or disclosure as public information. (2) No official, employee, or agent of the department
 may knowingly disclose any materials, data, or information
 concerning a mediation request without the consent of the
 farmer and the creditor.

5 Section 11. Closed meetings. Meetings between a farmer 6 and any creditor conducted by a mediator are not open to 7 public participation and are not subject to the provisions 8 of the open meeting law contained in 2-3-203.

SECTION 12. WAIVER OF IMMUNITY. ALL PARTIES WHO 9 10 VOLUNTARILY ENTER INTO THE MEDIATION PROCESS AS DESCRIBED IN [THIS ACT] SHALL WAIVE THEIR RIGHT TO TAKE CIVIL ACTION 11 AGAINST THE STATE OF MONTANA AND ITS DESIGNATED MEDIATOR AND 12 13 THEREBY RELEASE THE STATE AND ITS DESIGNATED MEDIATOR FROM CIVIL LIABILITY FOR ACTIONS OCCURRING WITHIN THE SCOPE OF 14 THE MEDIATION SERVICES. 15 16 SECTION 13. SEVERABILITY. IF A PART OF THIS ACT IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID 17 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN 18 19 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE 20 INVALID APPLICATIONS. 21 22 Section 14. Appropriation. There is appropriated from the general fund to the department of agriculture for the 23 biennium ending June 30, 1987, the sum of \$350,000 to 24

25 administer [this act].

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- 1 Section 15. Effective date -- termination. This act is
- 2 effective on passage and approval and terminates July 1,
- 3 1987.

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-End-

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49th Legislature Special Session 3/86

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HB 0011/si

 1
 STATEMENT OF INTENT

 2
 HOUSE BILL 11

 3
 House Appropriations Committee

5 A statement of intent is required for this bill because 6 it contains a delegation of authority to allow the 7 department of agriculture to adopt rules necessary for the 8 administration of an agricultural assistance and counseling 9 program.

10 It is the intent of the legislature that the department 11 of agriculture establish an emergency program fulfilling the 12 purpose stated in section 1. Under such program, the 13 department must provide to financially distressed farmers 14 and ranchers the types of assistance enumerated in section 15 3.

16 To the best extent possible, the department should first utilize the available services of the cooperative 17 18 extension service, state agencies, private businesses, professional organizations, volunteer groups, and other 19 persons having knowledge and experience in providing the 20 type of assistance and counseling required by this bill. The 21 cooperative extension service and other state agencies 22 23 should cooperate with the department of agriculture in 24 providing needed services.

In contracting for services mandated in section 3, the



department should ensure that contracted personnel are
 properly qualified and trained to provide assistance.
 Moreover, the department should establish a procedure to
 monitor the delivery of services and to guarantee the proper
 expenditure of public funds.

All contracts for services should be issued on a fair 6 and impartial basis. In addition, all contracts should 7 contain a clause requiring insurance against liability for 8 the negligence of personnel in providing assistance or 9 10 counseling to financially distressed farmers and ranchers. 11 In devising an agricultural assistance and counseling 12 program, the department should examine the various financial 13 counseling, debt mediation, and other programs established in many states to aid agricultural producers who are in 14 serious financial trouble. Specifically, the department 15 16 should consider the success of similar programs in North Dakota, South Dakota, Iowa, Illinois, Minnesota, Missouri, 17 18 and Kansas.

-2- THIRD READING

49th Legislature Special Session 3/86

HOUSE BILL NO. 11 1 2 INTRODUCED BY HOLLIDAY, SCHULTZ, ASAY, GALT, VINCENT, 3 JACK MOORE, DARKO, LYBECK, KEYSER, COBB, ERNST, HANSON, 4 WEEDING, RAPP-SVRCEK, CONOVER, NEUMAN, HOWE, BENGTSON, 5 LANE, THOFT, DONALDSON, RANEY, CODY, ABRAMS, HAND 6 BY REQUEST OF THE INTERIM SUBCOMMITTEE 7 ON AGRICULTURAL PROBLEMS 8 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN 9 AGRICULTURAL ASSISTANCE AND COUNSELING PROGRAM TO AID 10 11 FINANCIALLY DISTRESSED FARMERS: PROVIDING FOR FINANCIAL 12 COUNSELING, AND FARM MANAGEMENT TRAINING CONSULTING, LEGAL INFORMATION SERVICES, VOLUNTARY DEBT MEDIATION, 13 MENTAL 14 HEALTH ASSISTANCE, SUPPORT COUNSELING, AND REFERRAL 15 SERVICES: AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO ADMINISTER THE PROGRAM; APPROPRIATING FUNDS; AND PROVIDING 16 17 AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE." 18 19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 20 Section 1. Purpose. It is the declared purpose of 21 [this act] to establish an emergency program to directly 22 assist individual farmers who are financially distressed by

23 providing them assistance and counseling to manage farm 24 credit problems, to avoid OR MITIGATE forced liquidation or 25 farm foreclosure, and to cope with the financial stress

resulting from the adverse conditions of agriculture in this 1 state. IT IS A GOAL OF THIS PROGRAM TO MAXIMIZE PROGRAM 2 EFFECTIVENESS BY UTILIZING PEER COUNSELORS 3 AND BY COOPERATING WITH THE PRIVATE SECTOR. 4 5 Section 2. Definitions. As used in [this act], unless the context indicates otherwise, the following definitions 6 7 apply: 8 (1) "Agricultural production" means the production of livestock, poultry, field crops, fruit, or other animal and 9 10 vegetable matter for food or fiber.

(2) "Agricultural property" means:

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12 (a) real property that is principally used for 13 agricultural production; and

(b) personal property that is part of an agricultural 14 production operation or used as security to finance such an 15 operation, including equipment, crops, livestock, and the 16 17 proceeds of any security.

(3) "Department" means the department of agriculture 18 19 provided for in 2-15-3001.

(4) "Farmer" means a person who owns or operates a 20 farm or ranch primarily for the purpose of agricultural 21 22 production.

23 (5) "Mediator" means a person authorized under 24 [section 7] to serve as a negotiator between a farmer and a 25 creditor.

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1	(6) "PEER COUNSELOR" MEANS A PERSON WHO IS OR HAS BEEN	1	(a) financial counseling <u>CONSULTING</u>;
2	INVOLVED IN PRODUCTION AGRICULTURE AND WHO HAS BEEN TRAINED	2	(b) farm management training CONSULTING;
3	THROUGH THE DEPARTMENT AND OTHERS IN FINANCIAL COUNSELING	3	(c) legal <u>INFORMATION</u> services;
4	AND MEDIATION OR NEGOTIATION TECHNIQUES AND WHO WORKS TO AID	4	(d) voluntary debt mediation as provided for in
5	FINANCIALLY DISTRESSED FARMERS THROUGH THIS PROGRAM.	5	[section 6];
6	<pre>+6+(7) "Program" means the agricultural assistance and</pre>	6	<pre>(e) mental health assistance;</pre>
7	counseling program provided for in [section 3].	7	(f) support counseling; and
8	<pre>f77(8) "Secured ceditor" means:</pre>	8	(g) referral services.
9	(a) the holder of a mortgage on agricultural property;	9	Section 4. Powers and duties of department. (1) For
10	(b) a vendor of a contract for deed of agricultural	10	the purpose of administering the program, the department
11	property;	11	shall:
12	(c) a person with a <u>STATUTORY</u> lien or <u>A PERFECTED</u>	12	(a) utilize the services of:
13	security interest in agricultural property; or	13	(I) A NETWORK OF TRAINED PEER COUNSELORS WHO CAN
14	(d) a judgment creditor with a judgment against a	14	DIRECTLY ASSIST PINANCIALLY DISTRESSED FARMERS;
15	debtor engaged in agricultural production.	15	(i)(II) the cooperative extension service <u>AND THE</u>
16	<pre>(0) "Unsecured creditor" means a person who extends</pre>	16	COLLEGE OF AGRICULTURE at Montana state university;
17	credit without <u>A PERFECTED</u> security <u>INTEREST</u> to a farmer for	17	<pre>tity(III) state OR FEDERAL agencies;</pre>
18	the purchase of goods or services used in agricultural	18	<pre>titity(IV) legal service corporations, THE UNIVERSITY OF</pre>
19	production.	19	MONTANA LAW SCHOOL, or private law firms;
20	Section 3. Agricultural assistance and counseling	20	<pre>tiv)(V) community service organizations;</pre>
21	program. (1) The department shall establish an agricultural	21	<pre>tv)(VI) private business;</pre>
22	assistance and counseling program to aid financially	22	<pre>(vi)(VII) professional associations;</pre>
23	distressed farmers in this state.	23	<pre>(vii)(VIII) regional mental health corporations;</pre>
24	(2) Under the program, the department shall make	24	<pre>(viii)(IX) volunteer organizations; and</pre>
25	available to farmers the following types of assistance:	25	(ix)(X) any other person or entity;
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(b) contract for services with qualified personnel,
 including financial <u>PEER</u> counselors, farm management
 specialists, accountants, attorneys, and mental health
 professionals, to provide the assistance required under
 [section 3];

6 (c) hire a coordinator <u>AND NECESSARY STAFF</u> to
7 implement and manage the program;

8 (d) provide training for interested and qualified
9 persons, INCLUDING PEER COUNSELORS, to assist farmers
10 needing help with farm financial management problems;

11 (e) establish a toll-free telephone line to receive 12 requests for assistance, counseling, and referral of 13 services; and

14 (f) compile a directory of services available through15 the program.

16 (2) The department may:

17 (a) establish an advisory board to assist the
18 department in determining policy and in developing plans for
19 administration of the program; and

20 (b) adopt rules necessary for the administration of21 the program.

22 Section 5. Gifts and grants. The department may accept
23 monetary or in-kind contributions, gifts, and grants
24 provided to support the program.

25 Section 6. Voluntary mediation -- filing procedure --

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dismissal of requests. (1) A farmer who is in danger of imminent foreclosure7--of--who--has--received--a--notice-of foreclosure, on agricultural property or a secured creditor may request mediation of the farmer's indebtedness by filing a request with the department on a form prescribed by the department. (2) In filing OR RESPONDING TO a mediation request, the farmer shall provide: (a) the name and address of each secured and unsecured creditor; (b) the amount owed to each creditor; (c) the amount of the periodic installment payments due each creditor; and (D) ANY FINANCIAL STATEMENTS AND PRO FORMA CASH FLOW STATEMENTS, INCLUDING THOSE RELATED TO ANY NONFARM ACTIVITIES; AND (d)(E) any additional information the department may require. (3) IN FILING OR RESPONDING TO A MEDIATION REQUEST, A SECURED CREDITOR SHALL PROVIDE: (A) INFORMATION PERTAINING TO THE BASIS OF THE CREDIT

22 DETERMINATION;

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23 (B) FINANCIAL STATEMENTS AND PRO FORMA CASH FLOW

24 STATEMENTS ON THE RESPECTIVE FARMER;

25 (C) STATEMENTS REGARDING THE STATUS OF THE FARMER'S

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1 LOAN PERFORMANCE;

2 (D) THE NAME AND TITLE OF THE REPRESENTATIVE OF THE 3 CREDITOR AUTHORIZED TO ENTER INTO A BINDING MEDIATION 4 AGREEMENT; AND

5 (E) ANY ADDITIONAL INFORMATION THE DEPARTMENT MAY 6 REQUIRE.

7 (3)(4) A farmer requesting <u>OR SECURED CREDITOR WHO</u>
8 <u>AGREES TO PARTICIPATE IN</u> mediation shall authorize the
9 release to the department of any information held by a
10 creditor.

(4)(5) Upon receipt of a properly completed mediation 11 12 request form, the department or -- its -- agent -- shall -- evaluate each--request--and--may SHALL direct a mediator to meet with 13 the farmer and secured creditor to assist in mediation. An 14 15 unsecured creditor may participate in mediation between a farmer and secured creditor if each party agrees OR IF THE 16 MEDIATOR DETERMINES THAT AN UNSECURED CREDITOR IS A 17 18 NECESSARY PARTY TO THE MEDIATION.

19 (5)(6) Subject to the provisions of subsection (6)
20 (7), the department shall immediately terminate an attempt.
21 at mediation and dismiss the mediation request if at any
22 time it finds that:

23 (a) a secured creditor does not agree to participate24 in mediation requested by the farmer; or

25 (b) the farmer does not agree to participate in any

1 mediation requested by a secured creditor.

2 (6)(7) If the mediation request involves more than one 3 secured creditor and any one creditor does not agree to 4 participate in mediation, the department shall dismiss the 5 mediation request only insofar as it relates to that 6 creditor.

7 Section 7. Duties and requirements of mediators. (1) A
8 mediator must be qualified to provide the services required
9 under [this act]. A mediator must be an impartial person
10 knowledgeable in agricultural and financial matters.

11 (2) In carrying out his properly authorized duties, 12 the mediator shall:

13 (a) listen to the farmer and any creditor desiring to14 be heard;

15 (b) attempt to negotiate an agreement that:

16 (i) extends the term of credit;

17 (ii) reduces the dollar amount of payments under 18 credit; or

19 (iii) permits the farmer to continue in agricultural
20 production and provides reasonable security to the creditor;
21 and

(c) advise, counsel, and assist the farmer and
creditor in attempting to arrive at a satisfactory
agreement.

25 (3) A mediator may attempt to:

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(a) arrange mutually agreed upon forebearance from
 litigation, rescheduled or renegotiated debt, voluntary
 sale, or other liquidation of any agricultural property; and

4 (b) obtain assistance from any public or private5 agency.

6 Section 8. Mediation agreement. (1) If an agreement is
7 reached between the farmer and a creditor, the mediator
8 shall draft a written mediation agreement to be signed by
9 the farmer and the creditor.

10 (2) A farmer and any creditor who are parties to a
 11 mediation agreement:

12 (a) are bound by the terms of the agreement;

13 (b) may enforce the mediation agreement as a legal14 contract; and

15 (c) may use the mediation agreement as a defense16 against an action contrary to the mediation agreement.

17 Section 9. Unsuccessful mediation. If a mediation 18 agreement cannot be reached, the mediator shall recommend to 19 the department that the mediation be concluded and the 20 mediation request be dismissed.

21 Section 10. Confidentiality of records. (1) All 22 materials, data, and information received by the department 23 with respect to any request filed under [section 6] are 24 confidential and are not subject to examination or 25 disclosure as public information.

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1 (2) No official, employee, or agent of the department 2 may knowingly disclose any materials, data, or information 3 concerning a mediation request without the consent of the 4 farmer and the creditor.

5 Section 11. Closed meetings. Meetings between a farmer 6 and any creditor conducted by a mediator are not open to 7 public participation and are not subject to the provisions 8 of the open meeting law contained in 2-3-203.

9 SECTION 12. WAIVER OF IMMUNITY. ALL PARTIES WHO VOLUNTARILY ENTER INTO THE MEDIATION PROCESS AS DESCRIBED IN 10 [THIS ACT] SHALL WAIVE THEIR RIGHT TO TAKE CIVIL ACTION 11 AGAINST THE STATE OF MONTANA AND ITS DESIGNATED MEDIATOR AND 12 13 THEREBY RELEASE THE STATE AND ITS DESIGNATED MEDIATOR FROM 14 CIVIL LIABILITY FOR ACTIONS OCCURRING WITHIN. THE SCOPE OF THE MEDIATION SERVICES. 15 SECTION 13. SEVERABILITY. IF A PART OF THIS ACT IS 16 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID 17 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN 18 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT 19 20 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS. 21 Section 14. Appropriation. There is appropriated from 22 the general fund to the department of agriculture for the 23

24 biennium ending June 30, 1987, the sum of \$350,000 to 25 administer [this act].

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Section 15. Effective date -- termination. This act is
 effective on passage and approval and terminates July 1,
 1987.

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HB 0011/si

1	STATEMENT OF INTENT
2	HOUSE BILL 11
3	House Appropriations Committee

5 A statement of intent is required for this bill because 6 it contains a delegation of authority to allow the 7 department of agriculture to adopt rules necessary for the 8 administration of an agricultural assistance and counseling 9 program.

10 It is the intent of the legislature that the department 11 of agriculture establish an emergency program fulfilling the 12 purpose stated in section 1. Under such program, the 13 department must provide to financially distressed farmers 14 and ranchers the types of assistance enumerated in section 15 3.

To the best extent possible, the department should 16 first utilize the available services of the cooperative 17 extension service, state agencies, private businesses, 18 professional organizations, volunteer groups, and other 19 persons having knowledge and experience in providing the 20 type of assistance and counseling required by this bill. The 21 cooperative extension service and other state agencies 22 should cooperate with the department of agriculture in 23 providing needed services. 24

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In contracting for services mandated in section 3, the



department should ensure that contracted personnel are
 properly qualified and trained to provide assistance.
 Moreover, the department should establish a procedure to
 monitor the delivery of services and to guarantee the proper
 expenditure of public funds.

6 All contracts for services should be issued on a fair 7 and impartial basis. In addition, all contracts should contain a clause requiring insurance against liability for 8 the negligence of personnel in providing assistance or 9 counseling to financially distressed farmers and ranchers. 10 11 In devising an agricultural assistance and counseling program, the department should examine the various financial 12 counseling, debt mediation, and other programs established 13 in many states to aid agricultural producers who are in 14 serious financial trouble. Specifically, the department 15 16 should consider the success of similar programs in North Dakota, South Dakota, Iowa, Illinois, Minnesota, Missouri, 17 and Kansas. 18

-2- REFERENCE BILL HB II

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1 HOUSE BILL NO. 11 resulting from the adverse conditions of agriculture in this 1 2 INTRODUCED BY HOLLIDAY, SCHULTZ, ASAY, GALT, VINCENT, 2 state. IT IS A GOAL OF THIS PROGRAM TO MAXIMIZE PROGRAM 3 JACK MOORE, DARKO, LYBECK, KEYSER, COBB, ERNST, HANSON, EFFECTIVENESS BY UTILIZING PEER COUNSELORS AND BY 3 4 WEEDING, RAPP-SVRCEK, CONOVER, NEUMAN, HOWE, BENGTSON, COOPERATING WITH THE PRIVATE SECTOR. 4 5 LANE, THOFT, DONALDSON, RANEY, CODY, ABRAMS, HAND S Section 2. Definitions. As used in [this act], unless 6 BY REQUEST OF THE INTERIM SUBCOMMITTEE 6 the context indicates otherwise, the following definitions 7 ON AGRICULTURAL PROBLEMS 7 apply: 8 8 (1) "Agricultural production" means the production of 9 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN livestock, poultry, field crops, fruit, or other animal and 9 10 AGRICULTURAL ASSISTANCE AND COUNSELING PROGRAM TO AID vegetable matter for food or fiber. 10 FINANCIALLY DISTRESSED FARMERS; PROVIDING FOR FINANCIAL 11 11 (2) "Agricultural property" means: COUNSELING, AND FARM MANAGEMENT TRAINING CONSULTING, LEGAL 12 12 (a) real property that is principally 13 INFORMATION SERVICES, VOLUNTARY DEBT MEDIATION. MENTAL 13 agricultural production; and 14 HEALTH ASSISTANCE. SUPPORT COUNSELING, AND REFERRAL 14 (b) personal property that is part of an agricultural 15 SERVICES; AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO 15 production operation or used as security to finance such an 16 ADMINISTER THE PROGRAM; APPROPRIATING FUNDS; AND PROVIDING operation, including equipment, crops, livestock, and the 16 17 AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE." 17 proceeds of any security. 18 (3) "Department" means the department of agriculture 18 19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 19 provided for in 2-15-3001. 20 Section 1. Purpose. It is the declared purpose of (4) "Farmer" means a person who owns or operates a 20 21 [this act] to establish an emergency program to directly farm or ranch primarily for the purpose of agricultural 21 22 assist individual farmers who are financially distressed by 22 production.

> (5) "Mediator" person authorized under 23 means а 24 [section 7] to serve as a negotiator between a farmer and a creditor. 25

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providing them assistance and counseling to manage farm

credit problems, to avoid OR MITIGATE forced liquidation or

farm foreclosure, and to cope with the financial stress

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used

for

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1	(6) "PEER COUNSELOR" MEANS A PERSON WHO IS OR HAS BEEN
2	INVOLVED IN PRODUCTION AGRICULTURE AND WHO HAS BEEN TRAINED
3	THROUGH THE DEPARTMENT AND OTHERS IN FINANCIAL COUNSELING
4	AND MEDIATION OR NEGOTIATION TECHNIQUES AND WHO WORKS TO AID
5	FINANCIALLY DISTRESSED FARMERS THROUGH THIS PROGRAM.
6	(6) "Program" means the agricultural assistance and
7	counseling program provided for in [section 3].
8	<pre>(7)(8) "Secured ceditor" means:</pre>
9	(a) the holder of a mortgage on agricultural property;
10	(b) a vendor of a contract for deed of agricultural
11	property;
12	(c) a person with a <u>STATUTORY</u> lien or <u>A PERFECTED</u>
13	security interest in agricultural property; or
14	(d) a judgment creditor with a judgment against a
15	debtor engaged in agricultural production.
16	<pre>(9) "Unsecured creditor" means a person who extends</pre>
17	credit without <u>A PERFECTED</u> security <u>INTEREST</u> to a farmer for
18	the purchase of goods or services used in agricultural
19	production.
20	Section 3. Agricultural assistance and counseling
21	program. (1) The department shall establish an agricultural
22	assistance and counseling program to aid financially
23	distressed farmers in this state.
24	(2) Under the program, the department shall make
25	available to farmers the following types of assistance:
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(a) financial counseling CONSULTING; 1 2 (b) farm management training CONSULTING; 3 (c) legal INFORMATION services; 4 (d) voluntary debt mediation as provided for in 5 [section 6]; 6 (e) mental health assistance; 7 (f) support counseling; and 8 (g) referral services. 9 Section 4. Powers and duties of department. (1) For 10 the purpose of administering the program, the department 11 shall: 12 (a) utilize the services of: 13 (I) A NETWORK OF TRAINED PEER COUNSELORS WHO CAN 14 DIRECTLY ASSIST FINANCIALLY DISTRESSED FARMERS; 15 (i) the cooperative extension service AND THE 16 COLLEGE OF AGRICULTURE at Montana state university; 17 fii;(III) state OR FEDERAL agencies; 18 (±±±±)(IV) legal service corporations, THE UNIVERSITY OF 19 MONTANA LAW SCHOOL, or private law firms; 20 (iv) community service organizations; 21 fv)(VI) private business; 22 tvit(VII) professional associations; 23 {vii;(VIII) regional mental health corporations; 24 {viii)(IX) volunteer organizations; and

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25 (ix)(X) any other person or entity;

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(b) contract for services with qualified personnel,
 including financial <u>PEER</u> counselors, farm management
 specialists, accountants, attorneys, and mental health
 professionals, to provide the assistance required under
 [section 3];

6 (c) hire a coordinator <u>AND NECESSARY STAFF</u> to
7 implement and manage the program;

8 (d) provide training for interested and qualified
9 persons, INCLUDING PEER COUNSELORS, to assist farmers
10 needing help with farm financial management problems;

11 (e) establish a toll-free telephone line to receive 12 requests for assistance, counseling, and referral of 13 services; and

14 (f) compile a directory of services available through15 the program.

16 (2) The department may;

(a) establish an advisory board to assist the
department in determining policy and in developing plans for
administration of the program; and

(b) adopt rules necessary for the administration ofthe program.

22 Section 5. Gifts and grants. The department may accept
23 monetary or in-kind contributions, gifts, and grants
24 provided to support the program.

25 Section 6. Voluntary mediation -- filing procedure --

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1 dismissal of requests. (1) A farmer who is in danger of 2 ٦ foreclosure, on agricultural property or a secured creditor 4 may request mediation of the farmer's indebtedness by filing 5 a request with the department on a form prescribed by the 6 department. 7 (2) In filing OR RESPONDING TO a mediation request, 8 the farmer shall provide: 9 (a) the name and address of each secured and unsecured 10 creditor: 11 (b) the amount owed to each creditor; 12 (c) the amount of the periodic installment payments 13 due each creditor; and 14 (D) ANY FINANCIAL STATEMENTS AND PRO FORMA CASH FLOW 15 STATEMENTS, INCLUDING THOSE RELATED TO ANY NONFARM ACTIVITIES; AND 16 17 (d)(E) any additional information the department may 18 require. (3) IN FILING OR RESPONDING TO A MEDIATION REQUEST, A 19 SECURED CREDITOR SHALL PROVIDE: 20 (A) INFORMATION PERTAINING TO THE BASIS OF THE CREDIT 21 22 DETERMINATION; (B) FINANCIAL STATEMENTS AND PRO FORMA CASH FLOW 23 STATEMENTS ON THE RESPECTIVE FARMER; 24 (C) STATEMENTS REGARDING THE STATUS OF THE FARMER'S 25

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1 LOAN PERFORMANCE; 1 (D) THE NAME AND TITLE OF THE REPRESENTATIVE OF THE 2 2 CREDITOR AUTHORIZED TO ENTER INTO A BINDING MEDIATION 3 3 4 AGREEMENT: AND 4 (E) ANY ADDITIONAL INFORMATION THE DEPARTMENT MAY 5 5 6 REOUIRE. 6 creditor. 7 (3)(4) A farmer requesting OR SECURED CREDITOR WHO 7 8 AGREES TO PARTICIPATE IN mediation shall authorize the 8 9 release to the department of any information held by a 9 10 creditor. 10 11 t4+(5) Upon receipt of a properly completed mediation 11 12 request form, the department or -- its -- agent -- shall -- evaluate 12 each--request--and--may SHALL direct a mediator to meet with 13 13 14 the farmer and secured creditor to assist in mediation. An be heard; 14 15 unsecured creditor may participate in mediation between a 15 farmer and secured creditor if each party agrees OR IF THE 16 16 MEDIATOR DETERMINES THAT AN UNSECURED CREDITOR IS A 17 17 18 NECESSARY PARTY TO THE MEDIATION. credit; or 18 19 (6) Subject to the provisions of subsection (6) 19 20 (7), the department shall immediately terminate an attempt 20 21 at mediation and dismiss the mediation request if at any 21 and 22 time it finds that: 22 23 (a) a secured creditor does not agree to participate 23 24 in mediation requested by the farmer; or agreement. 24 25 (b) the farmer does not agree to participate in any 25

mediation requested by a secured creditor.

(6)(7) If the mediation request involves more than one secured creditor and any one creditor does not agree to participate in mediation, the department shall dismiss the mediation request only insofar as it relates to that

Section 7. Duties and requirements of mediators. (1) A mediator must be qualified to provide the services required under [this act]. A mediator must be an impartial person knowledgeable in agricultural and financial matters.

(2) In carrying out his properly authorized duties, the mediator shall:

(a) listen to the farmer and any creditor desiring to

(b) attempt to negotiate an agreement that:

(i) extends the term of credit;

(ii) reduces the dollar amount of payments under

(iii) permits the farmer to continue in agricultural production and provides reasonable security to the creditor;

(c) advise, counsel, and assist the farmer and creditor in attempting to arrive at a satisfactory

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(3) A mediator may attempt to:

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(a) arrange mutually agreed upon forebearance from
 litigation, rescheduled or renegotiated debt, voluntary
 sale, or other liquidation of any agricultural property; and
 (b) obtain assistance from any public or private
 agency.

6 Section 8. Mediation agreement. (1) If an agreement is
7 reached between the farmer and a creditor, the mediator
8 shall draft a written mediation agreement to be signed by
9 the farmer and the creditor.

10 (2) A farmer and any creditor who are parties to a11 mediation agreement:

12 (a) are bound by the terms of the agreement;

13 (b) may enforce the mediation agreement as a legal 14 contract; and

15 (c) may use the mediation agreement as a defense16 against an action contrary to the mediation agreement.

17 Section 9. Unsuccessful mediation. If a mediation 18 agreement cannot be reached, the mediator shall recommend to 19 the department that the mediation be concluded and the 20 mediation request be dismissed.

21 Section 10. Confidentiality of records. (1) All 22 materials, data, and information received by the department 23 with respect to any request filed under [section 6] are 24 confidential and are not subject to examination or 25 disclosure as public information. 1 (2) No official, employee, or agent of the department 2 may knowingly disclose any materials, data, or information 3 concerning a mediation request without the consent of the 4 farmer and the creditor.

5 Section 11. Closed meetings. Meetings between a farmer and any creditor conducted by a mediator are not open to 6 7 public participation and are not subject to the provisions of the open meeting law contained in 2-3-203. 8 9 SECTION 12. WAIVER OF IMMUNITY. ALL PARTIES WHO 10 VOLUNTARILY ENTER INTO THE MEDIATION PROCESS AS DESCRIBED IN [THIS ACT] SHALL WAIVE THEIR RIGHT TO TAKE CIVIL ACTION 11 AGAINST THE STATE OF MONTANA AND ITS DESIGNATED MEDIATOR AND 12 THEREBY RELEASE THE STATE AND ITS DESIGNATED MEDIATOR FROM 13 CIVIL LIABILITY FOR ACTIONS OCCURRING WITHIN THE SCOPE OF 14 15 THE MEDIATION SERVICES. 16 SECTION 13. SEVERABILITY. IF A PART OF THIS ACT IS 17 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN 18 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT 19 20 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE 21 INVALID APPLICATIONS. Section 14. Appropriation. There is appropriated from 22 the general fund to the department of agriculture for the 23

24 biennium ending June 30, 1987, the sum of \$350,000 to 25 administer [this act].

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Section 15. Effective date -- termination. This act is
 effective on passage and approval and terminates July 1,

3 1987.

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-End-

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