SENATE BILL NO. 321

INTRODUCED BY JERGESON, BARDANOUVE, HIRSCH, RAPP-SVRCEK, ASAY, SCHYE, YELLOWTAIL, LYBECK

IN THE SENATE

FEBRUARY 11,	1987	INT	RODUCED	AND	REFERRED	то	COMMITTEE
		ON	AGRICULI	URE,	LIVESTO	CK S	IRRIGATION.

- FEBRUARY 18, 1987 COMMITTEE RECOMMEND BILL DO NOT PASS. REPORT ADOPTED.
- FEBRUARY 19, 1987 ON MOTION, RECONSIDER ADOPTION OF ADVERSE COMMITTEE REPORT. BILL PRINTED AND PLACED ON SECOND READING.

FEBRUARY 20, 1987 PRINTING REPORT.

- FEBRUARY 21, 1987 SECOND READING, DO PASS AS AMENDED.
- FEBRUARY 23, 1987 ENGROSSING REPORT.

THIRD READING, PASSED. AYES, 41; NOES, 8.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 24, 1987

MARCH 19, 1987

COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.

INTRODUCED AND REFERRED TO COMMITTEE

ON AGRICULTURE, LIVESTOCK & IRRIGATION.

MARCH 27, 1987 ON MOTION, TAKEN FROM SECOND READING AND REREFERRED TO COMMITTEE ON APPROPRIATIONS.

MARCH 28, 1987 COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.

MARCH 30, 1987	SECOND READING, CONCURRED IN.
	ON MOTION, RULES SUSPENDED AND BILL PLACED ON THIRD READING THIS DAY.
	THIRD READING, CONCURRED IN. AYES, 91; NOES, 7.
	RETURNED TO SENATE WITH AMENDMENTS.
1	IN THE SENATE
APRIL 3, 1987	RECEIVED FROM HOUSE.
	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 4, 1987	THIRD READING, AMENDMENTS CONCURRED IN.
	SENT TO ENROLLING.

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INTRODUCED BY Jorg and Barbara 1 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE RIGHT 4 5 TO MEDIATION OF AGRICULTURAL INDEBTEDNESS; AUTHORIZING THE 6 DEPARTMENT OF AGRICULTURE TO PROVIDE MEDIATION SERVICES; 7 GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; PROVIDING FOR PAYMENT OF FEES TO DEFRAY THE COSTS OF MEDIATION: AMENDING 8 SECTIONS 80-13-102, 80-13-201 THROUGH 80-13-203, 80-13-211, 9 AND 80-13-212, MCA, AND SECTION 15, CHAPTER 9, SPECIAL LAWS 10 11 OF MARCH 1986; AND PROVIDING AN EFFECTIVE DATE AND A 12 TERMINATION DATE."

13

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

15 NEW SECTION. Section 1. Legislative findings. The 16 legislature finds that the agricultural sector of the 17 state's economy is under severe financial stress due to low 18 farm commodity prices, continuing high interest rates, and **geduced** net farm income. The suffering agricultural economy 19 20 also adversely affects the economic conditions for 21 businesses in rural communities. The legislature further 22 finds that hundreds of this state's farmers are unable to 23 meet current interest and principal payments on mortgages 24 and other loan obligations and are threatened with the loss of their farmland, equipment, crops, and livestock through 25



1 mortgage and lien foreclosures, cancellation of contracts for deed, and other debt collections. Therefore, the 2 3 legislature finds that an economic emergency exists that requires an orderly process for the adjustment of 4 5 agricultural indebtedness to preserve the general welfare of 6 the citizens of Montana. Section 2. Section 80-13-102, MCA, is amended to read: 7 "80-13-102. (Temporary) Definitions. As used in this 8 chapter, unless the context indicates otherwise, the 9 10 following definitions apply: 11 (1) "Agricultural production" means the production of 12 livestock, poultry, field crops, fruit, or other animal and 13 vegetable matter for food or fiber. 14 (2) "Agricultural property" means: 15 (a) real property that is principally used for agricultural production; and 16 (b) personal property that is part of an agricultural 17 18 production operation or used as security to finance such an operation, including equipment, crops, livestock, and the 19 20 proceeds of any security. 21 (3) "Department" means the department of agriculture 22 provided for in 2-15-3001.

23 (4) "Farmer" means a person who owns or operates a
24 farm or ranch primarily for the purpose of agricultural
25 production.

-2- INTRODUCED BILL ST3 321

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1 (5) "Mediator" means a person authorized under 2 80-13-202 to serve--as--a--negotiator assist in mediation between a farmer and a creditor. 3 (6)--"Peer-counselor"-means-a-person-who-is-or-has-been 4 involved--in-production-agriculture-and-who-has-been-trained 5 through-the-department-and-others--in--financial--counseling 6 7 and-mediation-or-negotiation-techniques-and-who-works-to-aid financially-distressed-farmers-through-this-programв 9 +7+-- "Program"--means--the--agricultural-assistance-and 10 counseling-program-provided-for-in-80-13-103fBt(6) (a) "Secured creditor" means: 11 tat(i) the holder of a mortgage on agricultural 12 property; 13 (b)(ii) a vendor of a contract for deed of agricultural 14 property: 15 fef(iii) a person with a statutory lien or a perfected 16 17 security interest in agricultural property; or (d)(iv) a judgment creditor with a judgment against a 18 19 debtor engaged in agricultural production. 20 (b) The term applies to creditors described in 21 subsection (6)(a) who are: (i) the United States or an agency of the United 22 23 States; (ii) corporations, partnerships, or other business 24 25 entities; and

(iii) individuals. 1 2 +9+(7) "Unsecured creditor" means a person who: (a) does not have a perfected security interest in 3 4 agricultural property; and 5 (b) extends credit without--a--perfected--security interest to a farmer for the purchase of goods or services 6 used in agricultural production. (Terminates July 1, 7 1987--sec. 15, Ch. 9, Sp. L. March 1986.)" 8 NEW SECTION. Section 3. Right to mediation -- notice 9 10 -- applicability. (1) A creditor desiring to initiate a proceeding to enforce a debt against agricultural property 11 that is real estate, to terminate a contract for deed to 12 purchase agricultural property, to enforce a secured 13 interest in agricultural property, or to garnish, levy on, 14 execute on, seize, or attach agricultural property shall 15 serve a notice on the farmer advising him of the right to 16 mediation under this chapter. Such notice must include 17 information concerning the procedure for requesting 18 mediation. A creditor shall file with the department a copy 19 of any notice served upon a farmer pursuant to this section. 20 21 The creditor may not commence the proceeding until the creditor and the farmer have completed mediation or until 22 the creditor receives a mediation release. 23

(2) This section does not apply to any proceedinginvolving agricultural property with a fair market value of

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1	less than \$20,000.	1	(b) financial statements and pro forma cash flow
2	Section 4. Section 80-13-201, MCA, is amended to read:	2	statements on the respective farmer;
3	"80-13-201. (Temporary) Voluntary-mediation Mediation	3	(c) statements regarding the status of the farmer's
4	<u>request</u> filing procedure dismissal-of-requests. (1) A	4	loan performance;
5	Within 14 days following service of notice under [section	5	(d) the name and title of the representative of the
6	<u>3], a</u> farmer who-is-in-danger-of-foreclosure-on-agricultural	б	creditor authorized to enter into a binding mediation
7	property or a secured creditor may request mediation of the	7	agreement; and
8	farmer's indebtedness by filing a request for mediation with	8	(e) any additional information the department may
9	the department on a form prescribed by the department.	9	require.
10	(2) In filing or responding to a mediation request,	10	(4) A farmer or secured creditor who agreesto
11	the farmer shall provide:	11	participate-in is a party to mediation shall authorize the
12	(a) the name and address of each secured and unsecured	12	release to the department of any information held by a
13	creditor;	13	creditor.
14	(b) the amount owed to each creditor;	14	(5)Upon-receipt-ofaproperlycompletedmediation
15	(c) the amount of the periodic installment payments	15	request-form7-the-department-shall-direct-a-mediator-to-meet
16	due each creditor;	16	with-the-farmer-and-secured-creditor-to-assist-in-mediation-
17	(d) any financial statements and pro forma cash flow	17	An-unsecured-creditor-may-participate-in-mediation-between-a
18	statements, including those related to any nonfarm	18	farmer-andsecured-creditor-if-each-party-agrees-or-if-the
19	activities; and	19	mediatordeterminesthatanunsecuredcreditorisa
20	(e) any additional information the department may	20	necessary-party-to-the-mediation-
21	require.	21	(6) Subjecttothe-provisions-of-subsection- (7), -the
22	(3) In filing or responding to a mediation request, a	22	departmentshallimmediatelyterminateanattemptat
23	secured creditor shall provide:	23	mediationanddismiss-the-mediation-request-if-at-any-time
24	(a) information pertaining to the basis of the credit	24	it-finds-that;
25	determination;	25	(a) a-secured-creditor-does-not-agreetoparticipate

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1 in-mediation-requested-by-the-farmer;-or 2 tb)--the--farmer--does--not-agree-to-participate-in-any 3 mediation-requested-by-a-secured-creditor-4 17)--If-the-mediation-request-involves--more--than--one secured--creditor--and--any--one--creditor-does-not-agree-to 5 6 participate-in-mediation-the-department-shall--dismiss--the 7 mediation--request--only--insofar--as--it--relates--to--that а creditor: (Terminates July 1, 1987--sec. 15, Ch. 9, Sp. L. 9 March 1986.)" 10 NEW SECTION. Section 5. Waiver of right to mediation.

A farmer or creditor who fails to file a timely mediation request waives the right to mediation provided for under this chapter. The department shall notify a creditor, stating that the creditor may proceed in an action against agricultural property because the farmer has failed to file a mediation request.

17 NEW SECTION. Section 6. Credit analyst. After receiving a request for mediation, the department may refer 18 19 the farmer to a credit analyst who is knowledgeable in 20 agricultural and financial matters. The credit analyst shall 21 assist the farmer in the preparation of financial 22 information that will be required at the initial mediation 23 meeting.

24 <u>NEW SECTION.</u> Section 7. Initial mediation meeting - 25 notice. Upon receipt of a properly completed mediation

request form that includes the information required in 3 2 80-13-201, the department shall serve a mediation meeting notice to the farmer and each creditor, specifying a time 3 and place for an initial mediation meeting. After serving Δ such notice, the department shall appoint a mediator to meet 5 with the farmer and the secured creditor to assist in 6 mediation. An unsecured creditor may participate in 7 mediation between a farmer and secured creditor if each 8 party agrees or if the mediator determines that an unsecured 9 10 creditor is a necessary party to the mediation.

NEW SECTION. Section 8. Effect of mediation meeting notice -- stay of action. (1) Upon service of a mediation meeting notice, neither the farmer nor the creditor may take any further legal action in court concerning the farmer's indebtedness to that creditor until the mediator has signed a release order as provided for in [section 9]. Such release order is final and is not subject to an appeal.

(2) Proof of service of a mediation meeting notice is
effective in any court in this state to obtain a continuance
or delay, except that such delay may not cause any person to
lose any legal rights and all applicable statutes of
limitations must toll.

23 <u>NEW SECTION.</u> Section 9. Mediation -- good faith
 24 requirement -- release order. (1) The mediator shall
 25 commence mediation within 14 days following service of a

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1 mediation meeting notice.

2 (2) If the farmer and the creditor have acted in good 3 faith to mediate, the mediator shall sign a release order after 45 calendar days have elapsed following commencement Δ of mediation. However, the mediator in his discretion may 5 declare that either party has failed to act in good faith 6 7 during the mediation and may extend the 45-day period 8 accordingly, provided that the mediator notifies the farmer 9 and the creditor that days have been lost because either 10 party has failed to act in good faith as provided in 11 [section 10].

12 (3) Once the 45-day period provided for in subsection
13 (2) has ended, no mediation may continue beyond 10 days if
14 either the farmer or the creditor serves notice that further
15 mediation would not be effective.

16 <u>NEW SECTION.</u> Section 10. Obligation of good faith.
17 (1) A farmer and a creditor who are parties to mediation
18 under this chapter shall act in good faith with respect to
19 mediation. A farmer or a creditor does not act in good faith
20 if he:

(a) fails on a regular or continuing basis to attend
and participate in mediation sessions without good cause;

(b) does not provide full information regarding his
financial obligations to other parties;

25 (c) fails to designate a representative to participate

1 in mediation with adequate authority to fully settle, 2 compromise, or otherwise mediate the matter; or 3 (d) demonstrates other behavior that evidences lack of 4 good faith to mediate. (2) A failure to reduce, restructure, refinance, or 5 6 forgive debt does not, in itself, evidence a lack of good 7 faith by the creditor. 8 Section 11. Section 80-13-202, MCA, is amended to 9 read: "80-13-202. (Temporary) Duties and requirements of 10 11 mediators -- prohibitions, (1) A mediator must be gualified to provide the services required under this chapter. A 12 13 mediator must be an impartial person knowledgeable in agricultural and financial matters. 14 15 (2) In carrying out his properly authorized duties, the mediator shall: 16 17 (a) listen to the farmer and any creditor desiring to 18 be heard: 19 (b) attempt to negotiate an agreement that: (i) extends the term of credit; 20 21 (ii) reduces the dollar amount of payments under credit: or 22 23 (iii) permits the farmer to continue in agricultural production and provides reasonable security to the creditor; 24

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25

and

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(c) advise, counsel, and assist the farmer and the 1 creditor in attempting to arrive at a satisfactory 2 agreement. 3 (3) A mediator may attempt to: 4 (a) arrange mutually agreed upon forbearance from 5 litigation, rescheduled or renegotiated debt, voluntary 6 sale, or other liquidation of any agricultural property; and 7 (b) obtain assistance from any public or private 8 agency. 9 (4) A mediator may not: 10 11 (a) advise a farmer or creditor about the law; or 12 (b) assist a farmer or creditor in reserving or establishing legal rights. (Terminates July 1, 1987--sec. 13 14 15, Ch. 9, Sp. L. March 1986.)" Section 12. Section 80-13-203, MCA, is amended to 15 16 read: 17 "80-13-203. (Temporary) Mediation agreement. (1) If an agreement is reached between the farmer and a creditor, the 18 mediator shall draft a written mediation agreement to be 19 20 signed by the farmer and the creditor. 21 (2) A farmer and any creditor who are parties to a 22 mediation agreement and creditors who have filed claim forms as provided in [section 13] and have not objected to the 23 mediation agreement: 24 25 (a) are bound by the terms of the agreement; -11-

1 (b) may enforce the mediation agreement as a legal contract: and 2 (c) may use the mediation agreement as a defense 3 against an action contrary to the mediation agreement. đ

(Terminates July 1, 1987--sec. 15, Ch. 9, Sp. L. March 5 6 1986.)"

7 NEW SECTION. Section 13. Creditor not attending mediation meeting -- claim form -- objection to agreement. 8 9 (i) Unless he files a claim form, a creditor who is served notice of a mediation meeting as provided for in [section 7] 10 11 is subject to and bound by a mediation agreement if he does 12 not attend mediation meetings. In lieu of attending a 13 mediation meeting, a creditor may file a notice of claim and proof of claim on a claim form with the mediator before the 14 15 scheduled meeting. By filing a claim form, the creditor agrees to be bound by a mediation agreement reached during 16 17 mediation unless an objection is filed as provided in subsection (2). The mediator shall notify each creditor who 18 19 has filed a claim form of the terms of any mediation agreement. 20

(2) A creditor who has filed a claim form may serve a 21 22 written objection to the terms of a mediation agreement to the mediator and the farmer within 10 days after receiving 23 24 notice of the agreement. If a creditor files an objection to the terms of an agreement, the mediator shall meet with the 25

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farmer and creditor within 10 days after receiving the 1 objection and attempt to mediate a new agreement. 2 3 Section 14. Section 80-13-211, MCA, is amended to read: 4 5 "80-13-211. (Temporary) Confidentiality of records. (1) All materials, data, and information received by the 6 7 department or its agent with respect regard to any request В filed aspect of mediation under $\theta\theta$ - ±3 - 2θ this chapter are 9 confidential and are not subject to examination or 10 disclosure as public information. 11 (2) No official, employee, or agent of the department may knowingly disclose any materials, data, or information 12 13 concerning a any aspect of mediation request without the 14 consent of the farmer and the creditor. (Terminates July 1. 1987--sec. 15, Ch. 9, Sp. L. March 1986.)" 15 16 Section 15. Section 80-13-212, MCA, is amended to 17 read: 18 "80-13-212. (Temporary) Closed meetings. Meetings 19 between-a-farmer-and-any-creditor conducted by--a--mediator 20 under this chapter are not open to public participation and are not subject to the provisions of the open meeting law 21 22 contained in 2-3-203. (Terminates July 1, 1987--sec. 15, Ch. 9, Sp. L. March 1986.)" 23

24 <u>NEW SECTION.</u> Section 16. Mediator immunity from suit.
 25 A mediator is immune from civil liability for actions

1 occurring within the scope of his authorized duties. NEW SECTION. Section 17. Fees 2 and expenses of 3 mediation. (1) The department shall assess and collect fees to defray the costs of mediation. 4 5 (2) All parties to mediation shall contribute equally 6 to the payment of the costs of mediation. 7 NEW SECTION. Section 18. Adoption of rules. (1) The R department shall adopt rules to set the compensation of mediators and credit analysts, except that the compensation 9 10 of mediators may not exceed \$20 an hour. 11 (2) The department may adopt any other rules necessary 12 for the administration of this chapter. 13 Section 19. Section 15, Chapter 9, Special Laws of 14 March 1986, is amended to read: 15 "Section 15. Effective date -- termination. (1) This 16 act is effective on passage and approval. and-terminates 17 (2) Sections 1, 3 through 5, 9, 12, and 14 terminate 18 July 1, 1987. 19 (3) Sections 2, 6 through 8, 10, 11, and 13 terminate 20 July 1, 1991." 21 NEW SECTION. Section 20. Effective date --termination. This act is effective July 1, 1987, and 22 23 terminates July 1, 1991. -End-

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STATE OF MONTA)- FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB321, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an Act entitled: "An act providing for the right to mediation of agricultural indebtedness; authorizing the Department of Agriculture to provide mediation services; granting the department rulemaking authority; providing for payment of fees to defray the costs of mediation; amending Sections 80-13-102, 80-13-201 through 80-13-203, 80-13-211 and 80-13-212, MCA, and Section 15, Chapter 9, Special Laws of March 1986; and providing an effective date and a termination date.

ASSUMPTIONS:

- 1. 10% of Montana farms experiencing serious financial difficulties 25% of those will face danger of foreclosure per year. Results in case load of 600 clients/year. (Department of Agriculture estimate)
- 2. Total cost of mediation borne by creditors and borrowers participating in mediation. No net General Fund impact if all receivables are collected after initial start up phase to develop program (coordinate develop-ment, train mediators/financial analysts, etc.)
- 3. General Fund appropriation for full program cost, all fees collected revert back to General Fund.
- 4. Assume payment in advance of mediation services. Reimburse client/creditor if overpayment, bill client/creditor if underpayment.
- 5. Assume 5% of total receivable becomes uncollectable which would result in a General Fund impact of \$35,625/year.
- 6. Assume 80% of the clients will receive credit analysis assistance. Analysts will assess debt restructuring options, etc.
- 7. Train 15-20 credit analysts and 25-30 mediators/year. Retain 15-20 credit analysts and 40 mediators.
- 8. 2,33 FTE administrative staff estimated.

FISCAL IMPACT:

Expenditures:			FY8	8	FY89			
	Currer	t Law	Proposed Law	Difference	Curre	<u>nt Law</u>	Proposed Law	Difference
Personal Services	\$	0	\$ 65,240	\$ 65,240	\$	0	\$ 65,153	\$ 65,153
Operating Expense		0	600,440	600,440		0	600,440	600,440
Equipment	<u></u>	0	700	700		0	0	0
TOTAL	\$	0	\$ 666,380	\$ 666,380	\$	0	\$ 665,593	\$ 665,593
Funding:					. N.			·
General Fund*	\$	0	\$ 666,380	\$ 666,380	\$	0	\$ 665,593	\$ 665,593
Revenues:								
Service Fees**	\$	0	\$ 630,755	\$ 630,755	\$	0	\$ 629,968	\$ 629,968

*Funding assumes that 5% of total receivables become uncollectable. **Fees collected would revert to the general fund.

DATE DAVID L. HUNTER, BUDGET DIRECTOR

Office of Budget and Program Planning

DATE SPONSOR

Fiscal Note for SB321, as introduced.

50th Legislature LC 0564/01 COMMITTEE ON AGRICULTURE LIVESTOCK & IRRIGATION RECOMMEND DO NOT PASS ON MOTION, PRINTED AND PLACED ON SECOND READING nate BILL NO 1 INTRODUCED BY (Jon ann 2 3 fam Juck A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE RIGHT 4 TO MEDIATION OF AGRICULTURAL INDEBTEDNESS; AUTHORIZING THE 5 DEPARTMENT OF AGRICULTURE TO PROVIDE MEDIATION SERVICES; 6 7 GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; PROVIDING FOR PAYMENT OF FEES TO DEFRAY THE COSTS OF MEDIATION; AMENDING 8 Q SECTIONS 80-13-102, 80-13-201 THROUGH 80-13-203, 80-13-211, 10 AND 80-13-212, MCA, AND SECTION 15, CHAPTER 9, SPECIAL LAWS 11 OF MARCH 1986: AND PROVIDING AN EFFECTIVE DATE AND A 12 TERMINATION DATE."

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Montana Legislative Council

-2- SECOND READING SB-321

1 (5) "Mediator" means a person authorized under 2 80-13-202 to serve--as--a--negotiator assist in mediation 3 between a farmer and a creditor. 4 f61--"Peer-counselor"-means-a-person-who-is-or-has-been 5 involved--in-production-sericulture-and-who-has-been-trained 6 through-the-department-and-others--in--financial--counseling 7 and-mediation-or-negotiation-techniques-and-who-works-to-aid 8 financially-distressed-farmers-through-this-program-9 (7)--"Program"--means--the--agricultural-assistance-and 10 counseling-program-provided-for-in-80-13-103-11 (8)(6) (a) "Secured creditor" means: 12 fat(i) the holder of a mortgage on agricultural 13 property; (b)(ii) a vendor of a contract for deed of agricultural 14 15 property; 16 (c)(iii) a person with a statutory lien or a perfected 17 security interest in agricultural property; or (d)(iv) a judgment creditor with a judgment against a 18 19 debtor engaged in agricultural production. (b) The term applies to creditors described in 20 21 subsection (6)(a) who are: (i) the United States or an agency of the United 22 23 States; (ii) corporations, partnerships, or other business 24 entities; and 25

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.1 in-mediation-requested-by-the-farmer;-or 2 (b)--the--farmer--does--not-agree-to-participate-in-any 3 mediation-requested-by-a-secured-creditor-4 (7)--If-the-mediation-request-involves--more--than--one secured--creditor--and--any--one--creditor-does-not-agree-to 5 6 participate-in-mediation;-the-department-shall--dismiss--the mediation--request--only--insofar--as--it--relates--to--that 7 8 creditor. (Terminates July 1, 1987--sec. 15, Ch. 9, Sp. L. 9 March 1986.)" 10 NEW SECTION. Section 5. Waiver of right to mediation. 11 A farmer or creditor who fails to file a timely mediation 12 request waives the right to mediation provided for under

13 this chapter. The department shall notify a creditor, 14 stating that the creditor may proceed in an action against 15 agricultural property because the farmer has failed to file 16 a mediation request.

17 NEW SECTION. Section 6. Credit analyst. After 18 receiving a request for mediation, the department may refer 19 the farmer to a credit analyst who is knowledgeable in 20 agricultural and financial matters. The credit analyst shall 21 assist the farmer in the preparation of financial 22 information that will be required at the initial mediation 23 meeting.

24 NEW SECTION. Section 7. Initial mediation meeting --25 notice. Upon receipt of a properly completed mediation

request form that includes the information required in 1 2 80-13-201, the department shall serve a mediation meeting notice to the farmer and each creditor, specifying a time З 4 and place for an initial mediation meeting. After serving such notice, the department shall appoint a mediator to meet 5 6 with the farmer and the secured creditor to assist in 7 mediation. An unsecured creditor may participate in mediation between a farmer and secured creditor if each 8 9 party agrees or if the mediator determines that an unsecured 10 creditor is a necessary party to the mediation.

11 . NEW SECTION. Section 8. Effect of mediation meeting 12 notice -- stay of action. (1) Upon service of a mediation 13 meeting notice, neither the farmer nor the creditor may take 14 any further legal action in court concerning the farmer's 15 indebtedness to that creditor until the mediator has signed 16 a release order as provided for in [section 9]. Such release 17 order is final and is not subject to an appeal.

18 (2) Proof of service of a mediation meeting notice is 19 effective in any court in this state to obtain a continuance 20 or delay, except that such delay may not cause any person to 21 lose any legal rights and all applicable statutes of 22 limitations must toll.

23 NEW SECTION. Section 9. Mediation -boop faith 24 requirement -- release order. (1) The mediator shall 25 commence mediation within 14 days following service of a

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1 mediation meeting notice.

(2) If the farmer and the creditor have acted in good 2 3 faith to mediate, the mediator shall sign a release order 4 after 45 calendar days have elapsed following commencement of mediation. However, the mediator in his discretion may 5 б declare that either party has failed to act in good faith during the mediation and may extend the 45-day period 7 accordingly, provided that the mediator notifies the farmer 8 and the creditor that days have been lost because either 9 party has failed to act in good faith as provided in 10 [section 10]. 11

(3) Once the 45-day period provided for in subsection
(2) has ended, no mediation may continue beyond 10 days if
either the farmer or the creditor serves notice that further
mediation would not be effective.

16 <u>NEW SECTION.</u> Section 10. Obligation of good faith.
17 (1) A farmer and a creditor who are parties to mediation
18 under this chapter shall act in good faith with respect to
19 mediation. A farmer or a creditor does not act in good faith
20 if he:

21 (a) fails on a regular or continuing basis to attend22 and participate in mediation sessions without good cause;

(b) does not provide full information regarding hisfinancial obligations to other parties;

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25 (c) fails to designate a representative to participate

in mediation with adequate authority to fully settle,
 compromise, or otherwise mediate the matter; or

3 (d) demonstrates other behavior that evidences lack of4 good faith to mediate.

5 (2) A failure to reduce, restructure, refinance, or
6 forgive debt does not, in itself, evidence a lack of good
7 faith by the creditor.

8 Section 11. Section 80-13-202, MCA, is amended to 9 read:

10 "80-13-202. (Temporary) Duties and requirements of 11 mediators <u>-- prohibitions</u>. (1) A mediator must be qualified 12 to provide the services required under this chapter. A 13 mediator must be an impartial person knowledgeable in 14 agricultural and financial matters.

15 (2) In carrying out his properly authorized duties,16 the mediator shall:

17 (a) listen to the farmer and any creditor desiring to18 be heard;

19 (b) attempt to negotiate an agreement that:

20 (i) extends the term of credit;

21 (ii) reduces the dollar amount of payments under 22 credit; or

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

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

(3) A mediator may attempt to:

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

10 (4) A mediator may not:

4

11 (a) advise a farmer or creditor about the law; or

12 (b) assist a farmer or creditor in reserving or
13 establishing legal rights. (Terminates July 1, 1987--sec.
14 15, Ch. 9, Sp. L. March 1986.)"

15 Section 12. Section 80-13-203, MCA, is amended to 16 read:

17 "80-13-203. (Temporary) Mediation agreement. (1) If an 18 agreement is reached between the farmer and a creditor, the 19 mediator shall draft a written mediation agreement to be 20 signed by the farmer and the creditor.

(2) A farmer and any creditor who are parties to a
 mediation agreement and creditors who have filed claim forms
 as provided in [section 13] and have not objected to the
 mediation agreement:

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

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

3 (c) may use the mediation agreement as a defense 4 against an action contrary to the mediation agreement. 5 (Terminates July 1, 1987--sec. 15, Ch. 9, Sp. L. March 6 1986.)"

NEW SECTION. Section 13. Creditor not attending 7 mediation meeting -- claim form -- objection to agreement. 8 (1) Unless he files a claim form, a creditor who is served q notice of a mediation meeting as provided for in [section 7] 10 is subject to and bound by a mediation agreement if he does 11 not attend mediation meetings. In lieu of attending a 12 mediation meeting, a creditor may file a notice of claim and 13 proof of claim on a claim form with the mediator before the 14 scheduled meeting. By filing a claim form, the creditor 15 agrees to be bound by a mediation agreement reached during 16 17 mediation unless an objection is filed as provided in subsection (2). The mediator shall notify each creditor who 18 19 has filed a claim form of the terms of any mediation 20 agreement.

(2) A creditor who has filed a claim form may serve a written objection to the terms of a mediation agreement to the mediator and the farmer within 10 days after receiving notice of the agreement. If a creditor files an objection to the terms of an agreement, the mediator shall meet with the

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farmer and creditor within 10 days after receiving the
 objection and attempt to mediate a new agreement.

3 Section 14. Section 80-13-211, MCA, is amended to 4 read:

5 "80-13-211. (Temporary) Confidentiality of records. 6 (1) All materials, data, and information received by the 7 department or its agent with respect regard to any request 8 filed aspect of mediation under 80-13-201 this chapter are 9 confidential and are not subject to examination or 10 disclosure as public information.

11 (2) No official, employee, or agent of the department 12 may knowingly disclose any materials, data, or information 13 concerning a <u>any aspect of</u> mediation request without the 14 consent of the farmer and the creditor. (Terminates July 1, 15 1987--sec. 15, Ch. 9, Sp. L. March 1986.)"

16 Section 15. Section 80-13-212, MCA, is amended to 17 read:

18 "80-13-212. (Temporary) Closed meetings. Meetings 19 between-a-farmer-and-any-creditor conducted by--a--mediator 20 <u>under this chapter</u> are not open to public participation and 21 are not subject to the provisions of the open meeting law 22 contained in 2-3-203. (Terminates July 1, 1987--sec. 15, 23 Ch. 9, Sp. L. March 1986.)"

24 <u>NEW SECTION.</u> Section 16. Mediator immunity from suit.
 25 A mediator is immune from civil liability for actions

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1 occurring within the scope of his authorized duties.

2 <u>NEW SECTION.</u> Section 17. Fees and expenses of 3 mediation. (1) The department shall assess and collect fees 4 to defray the costs of mediation.

5 (2) All parties to mediation shall contribute equally6 to the payment of the costs of mediation.

7 <u>NEW SECTION.</u> Section 18. Adoption of rules. (1) The 8 department shall adopt rules to set the compensation of 9 mediators and credit analysts, except that the compensation 10 of mediators may not exceed \$20 an hour.

11 (2) The department may adopt any other rules necessary 12 for the administration of this chapter.

13 Section 19. Section 15, Chapter 9, Special Laws of14 March 1986, is amended to read:

15 "Section 15. Effective date -- termination. (1) This

16 act is effective on passage and approval_ and-terminates

17 (2) Sections 1, 3 through 5, 9, 12, and 14 terminate
 18 July 1, 1987.

19 <u>(3) Sections 2, 6 through 8, 10, 11, and 13 terminate</u> 20 <u>July 1, 1991.</u>"

21NEW SECTION.Section 20.Effectivedate--22termination.This act is effectiveJuly 1, 1987, and

23 terminates July 1, 1991.

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SB 0321/02

1	SENATE BILL NO. 321	1
2	INTRODUCED BY JERGESON, BARDANOUVE, HIRSCH,	2
3	RAPP-SVRCEK, ASAY, SCHYE, YELLOWTAIL, LYBECK	3
4		4
5	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE-RISHT	5
6	TO MEDIATION OF AGRICULTURAL INDEBTEDNESS; AUTHORIZING THE	6
7	DEPARTMENT OF AGRICULTURE TO PROVIDE MEDIATION SERVICES;	7
8	GRANTING-THE-D2PARTMENT-RULEMAKING-AUTHORITY;~PROVIDINGFOR	8
9	PAYMENTOFPEES-TO-DEPRAY-THE-COSTS-OF-MEDIATION; AMENDING	9
10	SECTION 80-13-102, 80-13-201THROUGH80-13-2037	10
11	80-13-2117AND80-13-2127 MCA, AND SECTION 15, CHAPTER 9,	11
12	SPECIAL LAWS OF MARCH 1986; AND PROVIDING AN EFFECTIVE DATE	12
13	AND A TERMINATION DATE."	13
14		14
15	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	15
16	<u>NEW-SECTION.</u> Section-ltbegislativefindingsThe	16
17	legislaturefindsthattheagriculturalsectorofthe	17
18	state'seconomy-is-under-severe-financial-stress-due-to-low	18
19	farm-commodity-prices;-continuing-high-interestrates;and	19
20	reducednet-farm-incomeThe-suffering-agricultural-economy	20
21	alsoadverselyaffectstheeconomicconditionsfor	21
22	businessesinruralcommunitiesThe-legislature-further	22

finds-that-hundreds-of-this-state's-farmers--are--unable--to meet--current--interest--and-principal-payments-on-mortgages and-other-toan-obligations-and-are-threatened-with-the--toss



1	oftheirfarmland;-equipment;-crops;-and-livestock-through
2	mortgage-and-lien-foreclosures;cancellationofcontracts
3	fordeed7andotherdebtcollectionsTherefore7the
4	legislature-finds-that-aneconomicemergencyexiststhat
5	requiresanorderlyprocessfortheadjustmentof
б	agricultural-indebtedness-to-preserve-the-general-welfare-of
7	the-citizens-of-Montana.
8	Section 1. Section 80-13-102, MCA, is amended to read:
9	"80-13-102. (Temporary) Definitions. As used in this
10	chapter, unless the context indicates otherwise, the
11	following definitions apply:
12	(1) "Agricultural production" means the production of
13	livestock, poultry, field crops, fruit, or other animal and
14	vegetable matter for food or fiber.
15	(2) "Agricultural property" means:
16	(a) real property that is principally used for
17	agricultural production; and
18	(b) personal property that is part of an agricultural
19	production operation or used as security to finance such an
20	operation, including equipment, crops, livestock, and the
21	proceeds of any security.
22	(3) "Department" means the department of agriculture
23	provided for in 2-15-3001.
24	(4) "Farmer" means a person who owns or operates a
25	farm or ranch primarily for the purpose of agricultural

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1	production.	1	entities; and
2	(5) "Mediator" means a person authorized under	2	(iii) individuals.
3	80-13-202 to serve-as-a-negotiator assist in mediation	3	<pre>(7) "Unsecured creditor" means a person who:</pre>
4	between a farmer and a creditor.	4	(a) does not have a perfected security interest in
5	(6)"Peer-counselor"-means-a-person-who-is-or-has-been	5	agricultural property; and
6	involvedin-production-agriculture-and-who-has-been-trained	6	(b) extends credit withoutaperfectedsecurity
7	through-the-department-and-othersinfinancialcounseling	7	interest to a farmer for the purchase of goods or services
8	and-mediation-or-negotiation-techniques-and-who-works-to-aid	8	used in agricultural production. (Terminates July 1,
9	financially-distressed-farmers-through-this-program;	9	1987sec. 15, Ch. 9, Sp. L. March 1986.)"
10	(7)"Program"meanstheagricultural-assistance-and	10	<u>NEW-SECTION:</u> Section-3:Right-to-mediationnotice
11	counseling-program-provided-for-in-80-13-103-	11	applicability(1)Acreditor-desiring-to-initiate-a
12	<pre>(8)(6) (a) "Secured creditor" means:</pre>	12	proceeding-to-enforce-a-debt-againstagriculturalproperty
13	$fa_{j(i)}$ the holder of a mortgage on agricultural	13	thatisrealestate;to-terminate-a-contract-for-deed-to
14	property;	14	purchaseagriculturalproperty7toenforceasecured
15	<pre>tb;(ii) a vendor of a contract for deed of agricultural</pre>	15	interestinagricultural-property;-or-to-garnish;-levy-on;
16	property;	16	execute-on;-seize;-orattachagriculturalpropertyshall
17	<pre>(iii) a person with a statutory lien or a perfected</pre>	17	serveanoticeon-the-farmer-advising-him-of-the-right-to
18	security interest in agricultural property; or	18	mediation-underthischapterSuchnoticemustinclude
19	<pre>fd)(iv) a judgment creditor with a judgment against a</pre>	19	informationconcerningtheprocedureforrequesting
20	debtor engaged in agricultural production.	20	mediationA-creditor-shall-file-with-the-department-acopy
21	(b) The term applies to creditors described in	21	of-any-notice-served-upon-a-farmer-pursuant-to-this-section-
22	subsection (6)(a) who are:	22	Thecreditormaynotcommencetheproceeding-until-the
23	(i) the United States or an agency of the United	23	creditor-and-the-farmer-have-completedmediationoruntil
24	States;	24	the-creditor-receives-a-mediation-release.
25	(ii) corporations, partnerships, or other business	25	f2)Thissectiondoesnotapplyto-any-proceeding
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1	involving-agricultural-property-with-a-fair-market-valueof
2	tess-than-\$207000+
3	Section-4Section-80-13-2017-MEA7-is-amended-to-read:
4	"88-13-201(Temporary)Voluntary-mediation Mediation
5	requestfiling-proceduredismissal-of-requests(1)-A
6	Within-14-days-following-service-ofnoticeunderfsection
7	<u>3]7-a</u> farmer-who-is-in-danger-of-foreclosure-on-agricultural
8	property-or-a-secured-creditor-may-request-mediation-of-the
9	farmer ¹ 9-indebtedness-by-filing-a-request <u>for-mediation</u> with
10	the-department-on-a-form-prescribed-by-the-department-
11	+2+In-filing-or-responding-toamediationrequest;
12	the-farmer-shall-provide:
13	(a)the-name-and-address-of-each-secured-and-unsecured
14	ereditor;
15	<pre>the-amount-owed-to-each-creditor;</pre>
16	<pre>(c)theamountofthe-periodic-installment-payments</pre>
17	due-each-creditor;
18	(d) any-financial-statements-and-pro-formacashflow
19	statements;includingthoserelatedtoanynonfarm
20	activities;-and
21	te;anyadditionalinformationthedepartmentmay
22	requirer
23	(3)Infiling-or-responding-to-a-mediation-request,-a
24	secured-creditor-shall-provide:
25	ta;information-pertaining-to-the-basis-of-thecredit

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1	determination;
2	<pre>tb}financialstatementsandproformacashflow</pre>
3	statements-on-the-respective-farmer;
4	{c}statements-regarding-the-statusofthefarmer*s
5	loan-performance;
6	(d)thenameandtitle-of-the-representative-of-the
7	creditorauthorizedtoenterintoabindingmediation
8	agreement;-and
9	<pre>(e)anyadditionalinformationthedepartmentmay</pre>
10	require.
11	(4)Afarmerorsecuredcreditorwhoagreesto
12	participatein <u>is-a-party-to</u> mediation-shall-authorize-the
13	release-to-the-departmentofanyinformationheldbya
14	creditor.
15	<pre>f5}Uponreceiptofaproperly-completed-mediation</pre>
16	request-form;-the-department-shall-direct-a-mediator-to-meet
17	with-the-farmer-and-secured-creditor-to-assist-in-mediation;
18	An-unsecured-creditor-may-participate-in-mediation-between-a
19	farmer-and-secured-creditor-if-each-party-agrees-orifthe
20	mediatordeterminesthatanunsecuredcreditorisa
21	necessary-party-to-the-mediation-
22	(6)Subject-to-the-provisions-of-subsection(7);the
23	departmentshallimmediatelyterminateanattemptat
24	mediation-and-dismiss-the-mediation-request-if-atanytime
25	it-finds-that:

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1	<pre>(a)asecuredcreditor-does-not-agree-to-participate</pre>
2	in-mediation-requested-by-the-farmer;-or
3	<pre>(b)the-farmer-does-not-agree-toparticipateinany</pre>
4	mediation-requested-by-a-secured-creditor.
5	(7)Ifthemediationrequest-involves-more-than-one
6	secured-creditor-and-any-onecreditordoesnotagreeto
7	participateinmediation;-the-department-shall-dismiss-the
8	mediationrequestonlyinsofarasitrelatestothat
9	creditor{Terminates-July-1-1987sec15Ch97-Spb-
10	March-1986.)*
11	<u>NEW-SECTIOn-</u> -Section-SWaiver-of-right-to-mediation;
12	A-farmer-or-creditor-who-fails-to-fileatimelymediation
13	requestwaivestherightto-mediation-provided-for-under
14	thischapterThedepartmentshallnotifyacreditor7
15	statingthatthe-creditor-may-proceed-in-an-action-against
16	agricultural-property-because-the-farmer-has-failed-tofile
17	a-mediation-request:
18	<u>NEW-SECTION-</u> -Section-6CreditanalystAfter
19	receiving-a-request-for-mediation7-the-department-mayrefer
20	thefarmertoacreditanalystwho-is-knowledgeable-in
21	agricultural-and-financial-mattersThe-credit-analyst-shall
22	assistthefarmerinthepreparationoffinancial
23	informationthatwill-be-required-at-the-initial-mediation
24	meeting.
25	NEW-SECTIONSection-7Initial-mediation-meeting

1	noticeUponreceiptofaproperly-completed-mediation
2	request-formthatincludestheinformationrequiredin
3	80-13-2017thedepartmentshall-serve-a-mediation-meeting
4	notice-to-the-farmer-and-each-creditoryspecifyingatime
5	andplaceforan-initial-mediation-meetingAfter-serving
6	such-notice;-the-department-shall-appoint-a-mediator-to-meet
7	with-the-farmerandthesecuredcreditortoassistin
8	mediationAnunsecuredcreditormayparticipatein
9	mediation-between-a-farmerandsecuredcreditorifeach
10	party-agrees-or-if-the-mediator-determines-that-an-unsecured
11	creditor-is-a-necessary-party-to-the-mediation-
12	<u>NEW-SECTION</u> Section-8Effectofmediation-meeting
13	noticestay-of-action(1)-Upon-service-ofamediation
14	meeting-notice7-neither-the-farmer-nor-the-creditor-may-take
15	anyfurtherlegalaction-in-court-concerning-the-farmer's
16	indebtedness-to-that-creditor-until-the-mediator-hassigned
17	a-release-order-as-provided-for-in-{section-9};-Such-release
18	order-is-final-and-is-not-subject-to-an-appeal;
19	{2}Proofof-service-of-a-mediation-meeting-notice-is
20	effective-in-any-court-in-this-state-to-obtain-a-continuance
21	or-delay7-except-that-such-delay-may-not-cause-any-person-to
22	toseanylegalrightsandallapplicablestatutesof
23	limitations-must-toll-
24	NEW-SBCTIONSection-9Mediationgoodfaith
25	requirementreleaseorder(l)Themediatorshall

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commence--mediation--within--14--days-following-service-of-a 1 2 mediation-meeting-notice-3 faith--to--mediate;--the-mediator-shall-sign-a-release-order 4 after-45-calendar-days-have-elapsed--following--commencement 5 of--mediation---Howevery--the-mediator-in-his-discretion-may 6 7 declare-that-either-party-has-failed-to-act--in--good--faith during--the--mediation--and--may--extend--the--45-day-period 8 9 accordingly7-provided-that-the-mediator-notifies-the--farmer and--the--creditor--that--days-have-been-lost-because-cither 10 party-has-failed--to--act--in--good--faith--as--provided--in 11 12 {section-10]; 13 +3+--Once--the-45-day-period-provided-for-in-subsection (2)-has-ended_-no-mediation-may-continue-beyond-10--days--if 14 15 either-the-farmer-or-the-creditor-serves-notice-that-further mediation-would-not-be-effective-16 17 NEW-SECTION---Section-10---Obligation--of--good--faith-18 +1+-A-farmer-and-a-creditor-who--are--parties--to--mediation under--this--chapter-shall-act-in-good-faith-with-respect-to 19 20 mediation--A-farmer-or-a-creditor-does-not-act-in-good-faith if-he-21

22 tat--fails-on-a-regular-or-continuing-basis--to--attend
23 and-participate-in-mediation-sessions-without-good-cause;
24 (b)--does--not--provide--full-information-regarding-his
25 financial-obligations-to-other-parties; <u>OR</u>

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1	<pre>{c}fails-to-designate-a-representative</pre>	-to-participate
2	inmediationwithadequateauthorityto-	-fullysettle;
3	compromise;-or-otherwise-mediate-the-matter;-	or <u>-</u>
4	{d}demonstrates-other-behavior-that-ev	idences-lack-of
5	good-faith-to-mediate;	
6	(2)Afailuretoreduce7-restructure	7-refinance7-or
7	forgive-debt-does-not7-in-itself7-evidence-a-	-łackofgood
8	faith-by-the-creditor.	
9	Section-11Section80-13-2027MCA7	isamendedto
10	readt	
11	#80-13-202{Temporary}Butiesandr	equirementsof
12	mediatorsprohibitions{1}-A-mediator-mu	st-be-qualified
13	toprovidetheservicesrequiredunder(this-chapter-A
14	mediatormustbeanimpartialpersonkno	owłedgeabłein
15	agricultural-and-financial-matters	
16	<pre>(2)Incarryingouthis-properly-aut)</pre>	norized-duties,
17	the-mediator-shall.	
18	<pre>(a)listen-to-the-farmer-and-any-credite</pre>	or-desiringto
19	be-heard;	
20	{b}attempt-to-negotiate-an-agreement-th	nat:
21	(i)extends-the-term-of-credit;	
22	<pre>tit)-reducesthedollaramountofp</pre>	aymentsunder
23	credit;-or	
24	(iii)-permits-the-farmer-tocontinuein	agricultural
25	production-and-provides-reasonable-security-te	-the-creditor;
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1	and	1	ta)are-bound-by-the-terms-of-the-agreement;
2	<pre>(c)advise7counsel7andassistthe-farmer-and the</pre>	2	<pre>tb;mayenforcethemediationagreement-as-a-legal</pre>
3	creditorinattemptingtoarriveatasatisfactory	3	contract;-and
4	agreement.	4	(c)may-usethemediationagreementasadefense
5	t3;A-mediator-may-attempt-to:	5	againstanactioncontrarytothemediation-agreement;
6	<pre>ta}arrangemutuallyagreeduponforbearancefrom</pre>	6	(Terminates-July-17-1987sec157Ch97SpLMarch
7	litigationrescheduledorrenegotiateddebtvoluntary	7	1986
8	sale;-or-other-liquidation-of-any-agricultural-property;-and	8	NEW-SECTION,Section-13Creditornotattending
9	<pre>tb}obtainassistancefromanypublicorprivate</pre>	9	mediation-meetingclaim-formobjectiontoagreement.
10	øgency ,	10	(1)Unlesshe-files-a-claim-form;-a-creditor-who-is-served
11	<u>f4)A-mediator-may-not:</u>	11	notice-of-a-mediation-meeting-as-provided-for-in-{section-7}
12	<u>ta}advise-a-farmer-or-creditor-about-the-law;-or</u>	12	is-subject-to-and-bound-by-a-mediation-agreement-if-hedocs
13	<pre>(b)assistafarmerorcreditorinreservingor</pre>	13	notattendmediationmeetingsInlieuofattending-a
14	establishinglegalrights(Perminates-July-17-1987sec-	14	mediation-meeting;-a-creditor-may-file-a-notice-of-claim-and
15	±5,-Ch9,-SpLMarch-±986.}"	15	proof-of-claim-on-a-claim-form-with-the-mediator-beforethe
16	Section-12Section80-13-2037MEA7isamendedto	16	scheduledmeetingByfilingaclaim-form-the-creditor
17	read:	17	agrees-to-be-bound-by-a-mediation-agreementreachedduring
18	#80-13-203(Temporary)Mediationagreement(1)-If	18	mediationunlessanobjectionisfiledasprovided-in
19	an-agreement-is-reached-between-the-farmer-andaereditor;	19	subsection-(2)The-mediator-shall-notify-each-creditorwho
20	the-mediator-shall-draft-a-written-mediation-agreement-to-be -	20	hasfiledaclaimformofthetermsof-any-mediation
21	signed-by-the-farmer-and-the-creditor-	21	agreement:
22	(2)Afarmerandanycreditor-who-are-parties-to-a	22	(2)A-creditor-who-has-filed-a-claim-form-may-servea
23	mediation-agreement- <u>and-creditors-who-have-filed-claim-forms</u>	23	writtenobjectionto-the-terms-of-g-mediation-agreement-to
24	as-provided-in-fsection-l3f-and-havenotobjectedtothe	24	the-mediator-and-the-farmer-within-10-daysafterreceiving
25	mediation-agreement:	25	notice-of-the-agreementIf-a-creditor-files-an-objection-to

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1	theterms-of-an-agreementy-the-mediator-shall-meet-with-the
2	farmer-and-creditorwithin10daysafterreceivingthe
3	objection-and-attempt-to-mediate-a-new-agreement;
4	Section-14Section80-13-2117MCA7isamendedto
5	read:
6	B0-13-211(Temporary)Confidentialityofrecords
7	<pre>(1)Allmaterials;data;and-information-received-by-the</pre>
8	department <u>or-its-agent</u> with-respect <u>regard</u> toanyrequest
9	filed aspectof-mediation under-80-13-201 this-chapter are
10	confidentialandarenotsubjecttoexaminationor
11	disclosure-as-public-information-
12	12)Noofficial,-employee,-or-agent-of-the-department
13	may-knowingly-disclose-any-materials7-data7orinformation
14	concerninga <u>anyaspectof</u> mediation-request-without-the
15	consent-of-the-farmer-and-the-creditor;{Terminates-July-1;
16	1987sec157-Ch97-SpbMarch-1986.}"
17	Section-15Section80-13-212MCAisamendedto
· 18	readt
19	#80-13-212(Temporary)ClosedmeetingsMeetings
20	between-a-farmer-and-any-creditor-conductedbyamediator
21	underthis-chapter are-not-open-to-public-participation-and
22	are-not-subject-to-the-provisions-of-theopenmeetinglaw
23	containedin2-3-203(Terminates-July-1,-1987sec15,
24	Ch97-SpbMarch-1986-}"
25	NEW-SECTIONSection-16Mediator-immunity-from-suit-

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1 A-mediator--is--immune--from--civil--liability--for--actions 2 occurring-within-the-scope-of-his-suthorized-duties. NEW-SECTION---Section-17---Pees----and----expenses---of 3 4 to-defray-the-costs-of-mediation-5 {2}--All-parties-to-mediation-shall-contribute--equally 6 7 to-the-payment-of-the-costs-of-mediation-8 department-shall-adopt-rules--to--set--the--compensation--of 9 mediators--and-credit-analysts,-except-that-the-compensation 10 11 of-mediators-may-not-exceed-\$20-an-hour-(2)--The-department-may-adopt-any-other-rules-necessary 12 13 for-the-administration-of-this-chapter-14 Section 2. Section 15, Chapter 9, Special Laws of March 1986, is amended to read: 15 "Section 15. Effective date -- termination. (1) This 16 act is effective on passage and approval. and-terminates 17 (2) Sections 1, 3 through 5, 9_7-12_7 and 14 terminate 18 July 1, 1987. 19 20 (3) Sections 27 AND 6 through 87--187--117-and 13 terminate July 1, 1991 1989." 21 NEW SECTION. Section 3. Effective 22 date termination. This act is effective July 1, 1987, and 23 terminates July 1, 1991 1989. 24

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ı	SENATE BILL NO. 321	1	andother-loan-obligations-and-are-threatened-with-the-loss
2	INTRODUCED BY JERGESON, BARDANOUVE, HIRSCH,	2	of-their-farmlandy-equipmenty-cropsy-andlivestockthrough
3	RAPP-SVRCEK, ASAY, SCHYE, YELLOWTAIL, LYBECK	3	mortgageandlienforeclosuresy-cancellation-of-contracts
4		4	fordeed7andotherdebtcollectionsTherefore7the
5	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE-RIGHT	5	legislature-findsthataneconomic-emergency-exists-that
6	TO MEDIATION OF AGRICULTURAL INDEBTEDNESS: AUTHORIZING THE	6	requires-an-orderly-processfortheadjustmentof
7	DEPARTMENT OF AGRICULTURE TO PROVIDE MEDIATION SERVICES;	7	agricultural-indebtedness-to-preserve-the-general-welfare-of
, 8	GRANTING-THE-DEPARTMENT-RULEMAKING-AUTHORITY7-PROVIDINGPOR	8	the-citizens-of-Montana-
_		9	Section 1. Section 80-13-102, MCA, is amended to read:
9	PAYMENTOP-FERS-TO-DEFRAY-THE-COSTS-OF-MEDIATION; PROVIDING	10	"80-13-102. (Temporary) Definitions. As used in this
10	FOR PAYMENT OF FEES TO DEFRAY THE COSTS OF MEDIATION;	11	
11	APPROPRIATING MONEY; AMENDING SECTION 80-13-102,	12	chapter, unless the context indicates otherwise, the following definitions apply:
12	00-13-201-9HR0UGH-00-13-2037-00-13-2117-AND-00-13-2127 MCA,		
13	AND SECTION 15, CHAPTER 9, SPECIAL LAWS OF MARCH 1986; AND	13	 "Agricultural production" means the production of
14	PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."	14	livestock, poultry, field crops, fruit, or other animal and
15		15	vegetable matter for food or fiber.
16	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	16	(2) "Agricultural property" means:
17	<u>NEW-SECTION-</u> Section-1BegislativefindingsThe	17	(a) real property that is principally used for
18	legislaturefindsthattheagriculturalsectorofthe	18	agricultural production; and
19	state ¹ s-economy-is-under-severe-financial-stress-due-tolow	19	(b) personal property that is part of an agricultural
20	farmcommodityprices;-continuing-high-interest-rates;-and	20	production operation or used as security to finance such an
21	reduced-net-farm-incomeThe-suffering-agriculturaleconomy	21	operation, including equipment, crops, livestock, and the
22	alsoadverselyaffectstheeconomicconditionsfor	22	proceeds of any security.
23	businesses-in-ruralcommunitiesThelegislaturefurther	23	(3) "Department" means the department of agriculture
24	findsthathundredsof-this-state's-farmers-are-unable-to	24	provided for in 2-15-3001.
25	meet-current-interest-and-principalpaymentsonmortgages	25	(4) "Farmer" means a person who owns or operates a
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1	farm or ranch primarily for the purpose of agricultural	1	(ii) corporations, partnerships, or other business
2	production.	2	entities; and
3	(5) "Mediator" means a person authorized under	3	<u>(iii) individuals.</u>
4	80-13-202 to serveasanegotiator assist in mediation	4	<pre>f9;(7) "Unsecured creditor" means a person who:</pre>
5	between a farmer and a creditor.	5	(a) does not have a perfected security interest in
6	(6)"Peer-counselor"-means-a-person-who-is-or-has-been	6	agricultural property; and
7	involved-in-production-agriculture-and-who-has-beentrained	7	(b) extends credit withoutaperfectedsecurity
8	throughthedepartmentand-others-in-financial-counseling	8	interest to a farmer for the purchase of goods or services
9	and-mediation-or-negotiation-techniques-and-who-works-to-aid	9	used in agricultural production. (Terminates July 1,
10	financially-distressed-farmers-through-this-program-	10	1987sec. 15, Ch. 9, Sp. L. March 1986.)"
11	(7)"P rogram"-means-theagriculturalassistanceand	11	<u>NEW-SECTION:</u> Section-3:Rightto-mediationnotice
12	counseling-program-provided-for-in-80-13-103-	12	applicability
13	<pre>(6) (a) "Secured creditor" means:</pre>	13	proceedingtoenforce-a-debt-against-agricultural-property
14	<pre>(a)(i) the holder of a mortgage on agricultural</pre>	14	that-is-real-estate,-to-terminate-acontractfordeedto
15	property;	15	purchaseagriculturalproperty;toenforceasecured
16	<pre>(ii) a vendor of a contract for deed of agricultural</pre>	16	interest-in-agricultural-property;-or-to-garnish;levyon;
17	property;	17	executeonseizeorattach-agricultural-property-shall
18	<pre>(iii) a person with a statutory lien or a perfected</pre>	18	serve-a-notice-on-the-farmer-advising-him-oftherightto
19	security interest in agricultural property; or	19	mediationunderthischapterSuchnoticemust-include
20	<pre>fd;(iv) a judgment creditor with a judgment against a</pre>	20	informationconcerningtheprocedureforrequesting
21	debtor engaged in agricultural production.	21	mediationA-creditor-shall-file-with-the-department-a-copy
22	(b) The term applies to creditors described in	22	of-any-notice-served-upon-a-farmer-pursuant-to-this-section.
23	<pre>subsection (6)(a) who are:</pre>	23	The-creditor-maynotcommencetheproceedinguntilthe
24	(i) the United States or an agency of the United	24	creditorandthefarmer-have-completed-mediation-or-until
25	States;	25	the-creditor-receives-a-mediation-release.

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-or-until

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1	(2)This-section-doesnotapplytoanyproceeding
2	involvingagricultural-property-with-a-fair-market-value-of
3	tess-than-\$20,000.
4	Section-4Section-80-13-201,-MCAis-amended-to-read:
5	B0-13-201(Temporary)-Voluntary-mediation <u>Mediation</u>
6	requestfiling-proceduredismissal-of-requests
7	<u>Within-14daysfollowing-service-of-notice-under-fsection</u>
8	<u>3];-a</u> farmer-who-is-in-danger-of-foreclosure-on-agricultural
9	property-or-a-secured-creditor-may-request-mediation-ofthe
10	farmer's-indebtedness-by-filing-a-request <u>for-mediation</u> with
11	the-department-on-a-form-prescribed-by-the-department.
12	(2)infilingorresponding-to-a-mediation-request;
13	the-farmer-shall-provide;
14	(a)the-name-and-address-of-each-secured-and-unsecured
15	creditor;
16	tb;the-amount-owed-to-each-creditor;
17	<pre>(c)the-amount-of-theperiodicinstallmentpayments</pre>
18	due-each-creditor;
19	(d)anyfinancialstatements-and-pro-forma-cash-flow
20	statements;includingthoserelatedtoanynonfarm
21	activities; and
22	<pre>fe)anyadditionalinformationthedepartmentmay</pre>
23	require:
24	(3)In-filing-or-responding-to-a-mediation-request,a
25	secured-creditor-shall-provide:

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1	(a)informationpertaining-to-the-basis-of-the-credit
2	determination;
3	(b)financialstatementsandproformacashfiow
4	statements-on-the-respective-farmer;
5	<pre>(c)statementsregardingthestatus-of-the-farmeris</pre>
6	toan-performance;
7	(d)the-name-and-title-of-therepresentativeofthe
8	creditorauthorizedto-~enterintoa-~bindingmediation
9	agreement;-and
10	<pre>tetanyadditionalinformationthedepartmentmay</pre>
11	require-
12	(4)Afarmerorsecuredcreditorwhoagreesto
13	participate-in is-a-party-to mediation-shallauthorizethe
14	releasetothedepartmentofanyinformation-held-by-a
15	creditor.
16	(5)Upon-receipt-ofaproperlycompletedmediation
17	request-form7-the-department-shall-direct-a-mediator-to-meet
18	with-the-farmer-and-secured-creditor-to-assist-in-mediation-
19	An-unsecured-creditor-may-participate-in-mediation-between-a

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21 22

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(6)--Subject--to--the-provisions-of-subsection-(7);-the

farmer--and--secured-creditor-if-each-party-agrees-or-if-the

mediator--determines--that--an--unsecured--creditor---is---a

department--shall--immediately--terminate--an---attempt---at

mediation--and--dismiss-the-mediation-request-if-at-any-time

necessary-party-to-the-mediation-

1	it-finds-that:
2	<pre>tata-secured-creditor-does-not-agreetoparticipate</pre>
3	in-mediation-requested-by-the-farmer;-or
4	(b)thefarmerdoesnot-agree-to-participate-in-any
5	mediation-requested-by-a-secured-creditor-
6	(7) If-the-mediation-request-involvesmorethanone
7	securedcreditorandanyonecreditor-does-not-agree-to
8	participate-in-mediationy-the-department-shalldistissthe
9	mediationrequestonlyinsofarasitrelatestothat
10	creditor{Perminates-July-17-1987sec;-157-Ch;-97-Sp;5;
11	March-1986.j"
12	<u>NEW-SECTION</u> Section-5Waiver-of-right-to-mediation;
13	Afarmerorcreditor-who-fails-to-file-a-timely-mediation
14	request-waives-the-right-tomediationprovidedforunder
15	thischapterThedepartmentshallnotifyacreditor;
16	stating-that-the-creditor-may-proceed-in-anactionagainst
17	agriculturalproperty-because-the-farmer-has-failed-to-file
18	a-mediation-request;
19	<u>NEW-SECTION</u> Section-6CreditanalystAfter
20	receivinga-request-for-mediation;-the-department-may-refer
21	the-farmer-to-acreditanalystwhoisknowledgeablein
22	agricultural-and-financial-mattersThe-credit-analyst-shall
23	assistthefarmerinthepreparationoffinancial
24	information-that-will-be-required-at-theinitialmediation
25	meeting:

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1	NBW-SBCTIONSection-7Initialmediation-meeting
2	noticeUpon-receiptofaproperlycompletedmediation
3	requestformthatincludestheinformationrequired-in
4	00-13-2017-the-department-shall-serveamediationmeeting
5	noticetothefarmer-and-each-creditory-specifying-a-time
6	and-place-for-an-initial-mediationmeetingAfterserving
7	such-notice;-the-department-shall-appoint-a-mediator-to-meet
8	withthefarmerandthesecuredcreditorto-assist-in
9	mediationAnunsecuredcreditormayparticipatein
10	mediationbetweenafarmerandsecured-creditor-if-each
11	party-agrees-or-if-the-mediator-determines-that-an-unsecured
12	creditor-is-a-necessary-party-to-the-mediation-
13	NEW-SECTION,Section-8Effect-ofmediationmeeting
14	noticestay-of-action{1}-Upon-service-of-a-mediation
15	meeting-notice;-neither-the-farmer-nor-the-creditor-may-take
16	any-further-legal-action-in-courtconcerningthefarmer's
17	indebtednessto-that-creditor-until-the-mediator-has-signed
18	a-release-order-as-provided-for-in-{section-9}Such-release
19	order-is-final-and-is-not-subject-to-an-appeal;
20	t2)Proof-of-service-of-a-mediation-meeting-noticeis
21	effective-in-any-court-in-this-state-to-obtain-a-continuance
22	or-delay-except-that-such-delay-may-not-cause-any-person-to
23	loseanylegalrightsandallapplicablestatutesof
24	limitations-must-toll;
25	NEW-SECTIONSection-9Mediationgoodfaith

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1 requirement				
3mediation-meting-noticer3in-mediation-with-adequate-mathematiker-storefully-smither4(2)Ifthe-fammer-and-the-creditor-name acted-in-good6compromiser-or-otherwise-mediater-store-thet-wither-sector-fully-smither5faith-to-mediater-atter-a	1	requirementreleaseorder{l}Themediatorshall	1	financial-obligations-to-other-parties; OR
4(2)ifthe-farmer-and-the-creditor-have-actual-in-good4Compromiser-or-otherwise-mediate-the-matter;-or_5faith-to-mediater-the-mediater-alay-have-slapsed-following-commencement6(d)demonstrates-other-behavior-that-evidences-lack-of6after-45calendar-days-have-slapsed-following-commencement6good-faith-to-mediater7of-mediater-that-either-in-this-discretion-may7(d)demonstrates-other-behavior-that-evidences-lack-of-good8declare-that-either-party-has-failed-to-act-in-good-faith8forgive-debt-doesmoty-in-itself,-evidence-a-lack-of-good9daring-the-mediation-and-may-extend-the-45-day-period9faith-by-the-creditor.10accordingiyr-provided-that-the-mediater-notifies-the-farmer10Section-11:-Section-80-13-2027HEAy	2	commence-mediation-within-14-daysfollowingserviceofa	2	{c}fails-to-designate-a-representative-to-participate
5 faith-to-mediator-shall-sign-an-release-order 5 (d)demonstrates-other-behavior-that-evidences-lack-of 6 after45calendar-days-have-elapsed-following-commencement 6 good-faith-to-mediater 7 of-mediation-nicevers, the mediator in-this-discretion-may 7 (d)demonstrates-other-behavior-that-evidences-lack-of-good 8 declarethateitherparty-has-failed-to-act-in-good-faith 8 forgivedebtdoesnot, in-itself, evidence-a-lack-of-good 9 during-themediationmay-andther45-dayperiod 9 faith-by-the-creditor, 10 accordingityprovided-that-the-mediator-notifies the-farmer 10 Section-litSection -80-lid-2027KEAisamendedto 11 and-the-creditor-that-days-havebeen-lostbecauseeither 11 reads 12 partyhasfailedtoactin-goodfaithes-provided-in 12 mediatorareprovided-in 13 13 teaction-lobmadiation-may-continue-berondie-days-if 13 mediator	3	mediation-meeting-notice-	3	inmediationwithadequateauthoritytofullysettle;
6after-45-calendar-days-have-elapsed-following-commencement6good-faith-to-mediater7of-mediation-Envever,-the-mediator-inhis-discretion-may7(2)A-failure-to-reducer,-restructure,-refinancer-or8declarethateitherpaty-has-faited-to-act-in-good-faith8forgivedebtdesnoty-in-itselfy-evidence-a-lack-of-good9during-themediationand-mayextendthe45-dayperiod9faith-by-the-creditor.10accordinglyyprovided-that-the-mediator-notifies-the-farmer10Section-1080-13-202yNCAyisamendedto11and-the-creditor-that-days-havebeen-lostbecauseeither11read:12patyhan-failedto-act-in-good-faith-as-provided-in12#00-13-202y(temporary)Dutiesandrequirementsof13isection-10)+13mediatorsprohibitions(t)+A-mediator-must-be-qualified14(3)Once-the-5-day-period-provided-for-in-subsection14to-provide-theservicesrequiredunderthischapterA15(2)hasendedy-no-mediation-may-contine-beyond-10-days-ifmediator-must-beanimpartialpersonknowledgeablein16either-the-farmer-or-the-creditor-serves-notice-that-further16apricultural-and-financial-matters.16NEM-SEUTIONSectioninsObligation-ofgoodfaithr18the-mediator-shail:19thA-faiteoh-the-farmerandscreditor-does-not-act-in-good-faithr19(a)listento-the-farmerand-any-creditor-desiring-to16NEM-SEUTIONSectioninsObligation-ofgoodfaithr18the-mediator-shail:19thdatesh	4	(2)Ifthe-farmer-and-the-creditor-have-acted-in-good	4	compromise;-or-otherwise-mediate-the-matter;-or-
a data target and the target and target and the target and target and the target and target	5	faith-to-mediate;-the-mediator-shall-signareleaseorder	5	{d}demonstrates-other-behavior-that-evidences-lack-of
8 declarethateitherparty-has-failed-to-act-in-good-faith 8 forgivedebtdoesnoty-in-itselfy-evidence-a-lack-of-good 9 during-themediationandmayextendthe45-dayperiod 9 faith-by-the-creditor 10 accordinglyyprovided-that-the-mediator-notifies-the-farmer 10 Section-1000-13-202yMCAyisamendedto 11 and-the-creditor-that-days-havebeen-lostbeenuseeither 11 read: 12 partyhas-failed-toactingood-faithas-provided-in 12 #00-13-202yMCAyisamendedto 13 isection-101; 13 mediatorsprohibitionsfileandrequirementsof 14 (3)Once-the-45-day-period-provided-for-insubaction 14 to-provide-theservicesrequiredunderthischapteryA 15 (2)hasendedy-no-mediation-may-continue-beyond-i0-days-if mediatorsprovide-finantinimpartialpersonknowledgeablein 16 ether-the-farmer-or-the-creditor-serves-notice-that-further 16 agriculturai-and-financial-matters 18 NEM-SBETIONSection-10,Obligation-of-good-faith. 18 the-mediator-shall: 19 (1)Afarmer-or-a-creditor-who-are-parties-to-mediation 19 (4)listento-the-farmer and-any-creditor-desiring-to 20 under-thisch	6	after45calendar-days-have-elapsed-following-commencement	6	good-faith-to-mediate.
9during-themediationandmay-extendthe45-dayperiod9faith-by-the-creditor.10accordingiyyprovided-that-the-mediator-notifies-the-farmer10Section-llySection86-ll-202yMCAyismendedto11and-the-creditor-that-days-havebeenloatbecauseeither11read:12partyhasfaitedtoactingoodfaithmay-provided-in12#00-ll-202y(Temporary)Dutiesandrequirementsof13fsection-l0y-13mediatorsprovide-theservicesrequiredunderthischapteryA14(3)Once-the-45-day-period-provided-for-insubsection14to-provide-theservicesrequiredunderthischapteryA16(2)hasendedy-non-mediation-may-continue-beyond-10-days-if16mediatormust-be-gamerialpersonknowledgeablein16either-the-farmer-or-the-creditor-serves-notice-that-further16agricultural-and-financial-matters,18NEW-SECTIONSection-10ofgoodfaith-18the-mediator-shali:19(1)Afarmerandacceditor-who-are-parties-to-mediation19(a)listento-the-farmer-and-any-creditor-desiring-to20under-this-chapter-shall-act-in-good-faith-withrespectto20be-heardy21mediationa-gregular-or-continuing-basis-to-attend23(i)-retucesthedoilatan-agreement-that;22(j)failsona-regular-or-continuing-basis-to-attend23(ii)-retucesthedoilatanountofpaymentsunder23(a)-failsona-regular-or-continuing-basis-to-attend23(iii)-permitsthefarmerto-continue-in-agricultural <t< td=""><td>7</td><td>of-mediationHoweverthe-mediator-inhisdiscretionmay</td><td>7</td><td>(2)A-failure-to-reduce;restructure;refinance;or</td></t<>	7	of-mediationHoweverthe-mediator-inhisdiscretionmay	7	(2)A-failure-to-reduce;restructure;refinance;or
10accordinglyyprovided-that-the-mediator-notifies-the-farmer10Section-ll:Section80-ll-202yMCA7isamendedto11and-the-creditor-that-days-havebecauseeither11read:12partyhanfailedtoactingoodfaithas-provided-in12"80-ll-202v(Temporary)Butiesandrequirementsof13fsection-l0;13mediatorsprohibitionsflip-A-mediator-must-be-qualified14(3)Once-the-45-day-period-provided-for-insubsection14to-provide-theservicesrequiredunderthischapterA15(2)hasendedy-no-mediation-may-continue-beyond-l0-days-if15mediatormust-beanimpartialpersonknowledgeablein16either-the-farmer-or-the-creditor-serves-notice-that-further16agricultural-and-financial-matters;17mediation-would-not-be-effective:17(2)in-carrying-out-hisproperlyauthorizedduties;18 <u>NEW-SUGVION</u> Section-10ofgoodfaith;18the-mediator-shall;19(1)Afarmeranda-creditor-who-are-parties-to-mediation19(a)listento-the-farmerand-any-creditor-desiring-to20under-this-chapter-shall-act-in-good-faith21(b)attempt-to-negotiate-an-agreement-that;21mediationA farmer-or-a-regular-or-continuing-basis-to-attend23(i)-reuteesthedollaramountofpaymentsunder23(a)failsona-regular-or-continuing-basis-to-attend23(ii)-permitsthefarmerto-continue-in-agricultural24and-participate-in-mediation-sessions-without-good-cause;24credit;-or25(b)	8	declarethateitherparty-has-failed-to-act-in-good-faith	8	forgivedebtdoesnot7-in-itself7-evidence-a-lack-of-good
11and-the-creditor-that-days-havebeen-lost-becauseeither11read:12party-hasfailed-toactingoodfaithas-provided-in12"00-13-202r(Temporary)Dutiesandrequirementsof13fsection-107.13mediatorsprohibitionsfith-A-mediator-must-be-qualified14(3)Once-the-45-day-period-provided-for-insubsection14to-provide-theservicesrequiredunderthischapterA15(2)hasendedy-no-mediation-may-continue-beyond-10-days-if15mediator-mustbeanimpartialpersonknowledgeablein16either-the-farmer-or-the-creditor-serves-notice-that-further16agricultural-and-financial-matters,17mediation-would-not-be-effective:17f2?-in-carrying-out-hisproperlyauthorizeddutiesy18NEW-SUCTION:Section-10;Obligationofgoodfaith;18the-mediator-shall;19(t)A-farmerand-s-creditor-who-arce-parties-to-mediation19(a)listento-the-farmer-and-any-creditor-desiring-to20under-this-chapter-shall-act-in-good-faith withrespectto20be-heard;21mediation:-A-farmer-or-acreditor-does-not-act-in-good-faith21(b)attempt-to-negotiate-an-agreement-that;22tiextends-the-term-of-credit;3(ii)-reducesthedoilaramountofpaymentsunder23(a)fails-ona-regular-or-continuing-basis-to-attend23(ii)-reducesthedoilaramountofpaymentsunder24and-participate-in-mediation-sessions-without-good-cause;25(iii)-permitsthefarmerto-continue-in-agricultural24(b	9	during-themediationandmayextendthe45-dayperiod	9	faith-by-the-creditor.
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20under-this-chapter-shall-act-in-good-faith-withrespectto20be-heard;21mediationA-farmer-or-a-creditor-does-not-act-in-good-faith21(b)attempt-to-negotiate-an-agreement-that;22if-her22(i)extends-the-term-of-credit;23(a)failsona-regular-or-continuing-basis-to-attend23(ii)-reducesthedollaramountofpaymentsunder24and-participate-in-mediation-sessions-without-good-cause;24credit;-or25(b)does-not-provide-fullinformationregardinghis25(iii)-permitsthefarmerto-continue-in-agricultural	19	(1)Afarmeranda-creditor-who-are-parties-to-mediation	. 19	fa)listento-the-farmer-and-any-creditor-desiring-to
22 if-her 22 (i)extends-the-term-of-credit; 23 (a)failsona-regular-or-continuing-basis-to-attend 23 (ii)-reducesthedollaramountofpaymentsunder 24 and-participate-in-mediation-sessions-without-good-cause; 24 credit;-or 25 (b)does-not-provide-fullinformationregardinghis 25 (iii)-permitsthefarmerto-continue-in-agricultural	20	under-this-chapter-shall-act-in-good-faith-withrespectto	20	
23 {a}failsona-regular-or-continuing-basis-to-attend 23 {ii}-reducesthedollaramountofpaymentsunder 24 and-participate-in-mediation-sessions-without-good-cause; 24 credit;-or 25 {b}does-not-provide-fullinformationregardinghis 25 {iii}-permitsthefarmerto-continue-in-agricultural	21	mediationA-farmer-or-a-creditor-does-not-act-in-good-faith	21	(b)attempt-to-negotiate-an-agreement-that:
24 and-participate-in-mediation-sessions-without-good-cause; 24 credit;-or 25 {b}does-not-provide-fullinformationregardinghis 25 {iii}-permitsthefarmerto-continue-in-agricultural	22	if-he:	22	ti)extends-the-term-of-credit;
24 and-participate-in-mediation-sessions-without-good-cause; 24 credit;-or 25 {b}does-not-provide-fullinformationregardinghis 25 {iii}-permitsthefarmerto-continue-in-agricultural	23	(a)failsona-regular-or-continuing-basis-to-attend	23	(ii)-reducesthedollaramountofpaymentsunder
	24	and-participate-in-mediation-sessions-without-good-cause;	24	
-9- SB 321 -10- SP 321	25	<pre>(b)does-not-provide-fullinformationregardinghis</pre>	25	(iii)-permitsthefarmerto-continue-in-agricultural
		-9- SB 321		-10-

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1	production-and-provides-reasonable-security-to-the-creditor;	1
2	and	2
3	te;advise;-counsel;-and-assistthefarmerand the	3
4	creditorinattemptingtoarriveatasatisfactory	4
5	agreement	5
6	+3)A-mediator-may-attempt-to:	6
7	<pre>ta)arrangemutuallyagreeduponforbearancefrom</pre>	7
8	litigationrescheduledorrenegotiateddebt	8
9	sale7-or-other-liquidation-of-any-agricultural-property;-and	9
10	tb;obtainassistancefromanypublicorprivate	10
11	agency-	11
12	<u>f4}A-mediator-may-not:</u>	12
13	tayadvise-a-farmer-or-creditor-about-the-law;-or	13
14	<u> </u>	14
15	establishing-legal-rights{TerminatesJuly1,1987sec.	15
16	15,-Ch9,-SpLMarch-1986-)"	16
17	Section-12Section80-13-203MCAisamendedto	17
18	readt	18
19	#80-13-203(Temporary)-Mediation-agreement+1)if	19
20	anagreementis-reached-between-the-farmer-and-a-creditor;	20
21	the-mediator-shall-draft-a-written-mediation-agreement-to-be	21
22	signed-by-the-farmer-and-the-creditor-	22
23	(2) A-farmer-and-any-creditor-whoarepartiestoa	23
24	mediation-agreement-and-creditors-who-have-filed-claim-forms	24
25	asprovidedin{section13}-and-have-not-objected-to-the	25

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1	mediation-agreement:
2	ta)are-bound-by-the-terms-of-the-agreement;
3	<pre>(b)may-enforce-the-mediationagreementasalegal</pre>
4	contract;-and
5	<pre>tc}mayusethemediationagreementasa-defense</pre>
6	against-anactioncontrarytothemediationagreement.
7	(TerminatesJulyl1987secl57Ch97-SpbMarch
8	±986-;)"
9	NEW-SECTIONSection-13Creditornotattending
10	mediationmeetingclaim-formobjection-to-agreement-
11	{1}-Unless-he-files-a-claim-form₇-a-creditor-whoisserved
12	notice-of-a-mediation-meeting-as-provided-for-in-{section-7}
13	issubject-to-and-bound-by-a-mediation-agreement-if-he-does
14	not-attendmediationmeetingsInlieuofattendinga
15	mediation-meeting;-a-creditor-may-file-a-notice-of-claim-and
16	proofof-claim-on-a-claim-form-with-the-mediator-before-the
17	scheduled-meetingBy-filingaclaimform7thecreditor
18	agreestobe-bound-by-a-mediation-agreement-reached-during
19	mediation-unlessanobjectionisfiledasprovidedin
20	subsection{2}The-mediator-shall-notify-each-creditor-who
21	has-filed-aclaimformofthetermsofanymediation
22	agreement
23	{2}Acreditor-who-has-filed-a-claim-form-may-serve-a
24	written-objection-to-the-terms-of-a-mediationagreementto
25	themediatorand-the-farmer-within-18-days-after-receiving

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1	notice-of-the-agreementIf-a-creditor-files-an-objection-to
2	the-terms-of-an-agreement;-the-mediator-shall-meet-withthe
3	farmerandcreditorwithin10daysafter-receiving-the
4	objection-and-attempt-to-mediate-a-new-agreement;
5	Section-14Section80-13-2117MCA7isamendedto
6	read:
7	B0-13-211(Pemporary)Confidentialityofrecords
8	<pre>tly-All-materials;-data;-andinformationreceivedbythe</pre>
9	department orits-agent with-respect regard to-any-request
10	filed aspect-of-mediation under-80-13-201 thischapter are
11	confidentialandarenotsubjecttoexaminationor
12	disclosure-as-public-information-
13	{2}No-official;-employee;-or-agent-of-thedepartment
14	mayknowinglydisclose-any-materialsy-data;-or-information
15	concerning-a <u>any-aspect-of</u> mediationrequestwithoutthe
16	consent-of-the-farmer-and-the-creditor(Terminates-July-17
17	1987sec157-Ch97-SpbMarch-1986.)"
18	Section-15Section80-13-212,MCA,isamendedto
19	read:
20	B0-13-212(Temporary) ClosedmeetingsMeetings
21	betweena-farmerand-any-creditor-conducted-by-a-mediator
22	under-this-chapter are-not-open-to-public-participationand
23	arenotsubjectto-the-provisions-of-the-open-meeting-law
24	contained-in-2-3-203(Perminates-July11987sec157
25	Ch9SpbMarch-1986-)"

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1	<u>NEW-BBCTION-</u> Section-16Mediator-immunity-from-suit:			
2	Amediatorisimmunefromcivilliabilityfor-actions			
3	occurring-within-the-scope-of-his-authorized-duties.			
4	<u>NEW-SECTION:</u> Section-17Peesandexpensesof			
5	mediation{1}-The-department-shall-assess-and-collect-fees			
6	to-defray-the-costs-of-mediation.			
7	<pre>+2+Allparties-to-mediation-shall-contribute-equally</pre>			
8	to-the-payment-of-the-costs-of-mediation.			
9	<u>NEW-SECTION.</u> Section-18Adoption-of-rules(1)The			
10	departmentshalladoptrulestoset-the-compensation-of			
11	mediators-and-credit-analysts;-except-that-thecompensation			
12	of-mediators-may-not-exceed-\$20-an-hour-			
13	<pre>(2)The-department-may-adopt-any-other-rules-necessary</pre>			
14	for-the-administration-of-this-chapter.			
15	NEW SECTION. Section 2. Fees and expenses of			
16	mediation. The department may assess and collect fees to			
17	defray the costs of providing mediation services under this			
18	chapter.			
19	NEW-SECTIONSECTION-3APPROPRIATIONEXPENDITURE			
20	OFFEESAUTHORIEBD			
21	GENERAL-FUND-TO-THE-DEPARTMENT-OFAGRICULTURETHESUMOP			
22	\$507000FORTHEBIENNIUMENDINGJUNE307-19897-FOR-THE			
23	PURPOSE-OF-PROVIDING-MEDIATION-SERVICES.			
24	<u>+2}IN-ADDITIONTOTHEAPPROPRIATIONCONTAINEDIN</u>			
25	SUBSECTION+1+THERE-IS-APPROPRIATED-TO-THE-DEPARTMENT-OF			

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SB 321

1 2 SECTION--2--FOR-EACH-YEAR-OF-THE-BIENNIUM7-SUCH-FEES-MUST-BE 3 APPLIED-TOWARD-THE-COSTS-OF-PROVIDING-MEDIATION--UNDER--THIS <u>A64-</u> 4 5 NEW SECTION. SECTION 3. CODIFICATION INSTRUCTION. 6 SECTION 2 IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF 7 TITLE 80, CHAPTER 13, PART 2, AND THE PROVISIONS OF TITLE 8 80, CHAPTER 13, PART 2, APPLY TO SECTION 2. 9 Section 4. Section 15, Chapter 9, Special Laws of 10 March 1986, is amended to read: 11 "Section 15. Effective date -- termination. (1) This 12 act is effective on passage and approval. and-terminates 13 (2) Sections 1, 3 through 5, 97-127 and 14 terminate 14 July 1, 1987. 15 (3) Sections 27 AND 6 through 87--187--117-and 13 16 terminate July 1, 1991 1989." 17 NEW SECTION. Section 5. Effective date --18 termination. This act is effective July 1, 1987, and 19 terminates July 1, ±99± 1989. -End-

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STANDING COMMITTEE REPORT

HOUSE

March 18

_ 19 87

Mr. Speaker: We, the committee on ____AGRICULTURE, LIVESTOCK & IRRIGATION

SENATE BILL 321 report

do pass do not pass **K** be concurred in be not concurred in Xxas amended □ statement of intent attached

Chairman

REP. DUANE W. COMPTON

Title, line 9. 1. Following: "; Insert: "PROVIDING FOR PAYMENT OF FEES TO DEFRAY THE COSTS OF MEDIATION; APPROPRIATING MONEY;"

Page 14, line 14. 2.

Following: line 13

Insert: "NEW SECTION. Section 2. Fees and expenses of mediation. The department may assess and collect fees to defray the costs of providing mediation services under this chapter.

SECTION. Section 3. NEW Appropriation expenditure of fees authorized. (1) There is appropriated from the general fund to the department of agriculture the sum of \$50,000 for the biennium ending June 30, 1989, for the purpose of providing mediation services.

(2) In addition to the appropriation contained in subsection (2), there is appropriated to the department of agriculture \$25,000 in available fees collected under [section 2] for each year of the biennium. Such fees must be applied toward the costs of providing mediation under this act."

SECTION. Codification NEW Section 4. instruction. Section 2 is intended to be codified as an integral part of Title 80, chapter 13, part 2, and the provisions of Title 80, chapter 13, part 2, apply to section 2.

Renumber: subsequent sections

_reading copy (_____

Rep. Ted Schye will carry SB 321 on the House floor.

STANDING COMMITTEE REPORT

HOUSE		<u>March 28</u> 19 <u>_87</u>			
Mr. Speaker: We, the committee on HOUSE_APPROPRIATIONS					
reportSENATE BILL 321					
☐ do pass ☐ do not pass	xx be concurred in ☐ be not concurred in 	x as amended statement of intent attached Malassa Chairman			

1. Committee Report from the Committee on Agriculture, Livestock, and Irrigation dated March 18, 1987, be further amended as follows: l. Amendment 2. Strike: New Section 3 in its entirety Renumber: subsequent sections.

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