

HOUSE BILL 358

Introduced by Elliott, et al.

1/23	Introduced
1/24	Referred to Agriculture, Livestock & Irrig.
1/25	Fiscal Note Requested
1/31	Fiscal Note Received
2/01	Hearing
2/02	Fiscal Note Printed
2/10	Hearing
2/14	Committee Report--Bill Passed as Amended
2/16	2nd Reading Do Pass Motion Failed

1 *House* BILL NO. *358*
 2 INTRODUCED BY *Elliott, Craig Peterson, Chad Zook,*
 3 *Vannoy, Blanton, Rank, Dittus, L. Nelson, Jackson,*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE RIGHT *Alvord, Stephens, Connolly,*
 5 TO MEDIATION OF AGRICULTURAL INDEBTEDNESS; REQUIRING BOTH *Leht*
 6 THE BORROWER AND LENDER TO MEDIATE IN GOOD FAITH IN THE
 7 EVENT THAT EITHER PARTY REQUESTS MEDIATION; MAKING PERMANENT
 8 THE AGRICULTURAL ASSISTANCE AND COUNSELING PROGRAM; GRANTING
 9 THE DEPARTMENT RULEMAKING AUTHORITY; AMENDING SECTIONS
 10 80-13-102, 80-13-201 THROUGH 80-13-203, 80-13-211, AND
 11 80-13-212, MCA; REPEALING SECTION 15, CHAPTER 9, SPECIAL
 12 LAWS OF MARCH 1986; SECTIONS 4 AND 5, CHAPTER 481, LAWS OF
 13 1987; AND SECTIONS 7 AND 11, CHAPTER 605, LAWS OF 1987; AND
 14 PROVIDING AN EFFECTIVE DATE."
 15

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

17 NEW SECTION. **Section 1.** Legislative findings. The
 18 legislature finds that the agricultural and financial
 19 sectors of the state's economy are under severe financial
 20 stress due to low farm commodity prices, drought, continuing
 21 high interest rates, and reduced net farm income, and the
 22 suffering agricultural economy adversely affects the
 23 economic conditions for all businesses in rural communities.
 24 The legislature further finds that hundreds of this state's
 25 farmers are unable to meet current interest and principal

1 payments on mortgages and other loan obligations and are
 2 threatened with the loss of their farmland, equipment,
 3 crops, and livestock through mortgage and lien foreclosures,
 4 cancellation of contracts for deed, and other debt
 5 collections. Therefore, the legislature finds that an
 6 economic emergency exists that requires an orderly process
 7 for the adjustment of agricultural indebtedness to preserve
 8 the general welfare of Montana.

9 **Section 2.** Section 80-13-102, MCA, is amended to read:

10 "**80-13-102. {Temporary}- Definitions.** As used in this
 11 chapter, unless the context indicates otherwise, the
 12 following definitions apply:

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

16 (2) "Agricultural property" means:

17 (a) real property that is principally used for
 18 agricultural production; and

19 (b) personal property that is part of an agricultural
 20 production operation or used as security to finance such an
 21 operation, including equipment, crops, livestock, and the
 22 proceeds of any security.

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

25 (4) "Farmer" means a person who owns or operates a

1 farm or ranch primarily for the purpose of agricultural
2 production.

3 (5) "Mediator" means a person authorized under
4 80-13-202 to assist in mediation between a farmer and a
5 creditor.

6 (6) (a) "Secured creditor" means:

7 (i) the holder of a mortgage on agricultural property;

8 (ii) a vendor of a contract for deed of agricultural
9 property;

10 (iii) a person with a statutory lien or a perfected
11 security interest in agricultural property; or

12 (iv) a judgment creditor with a judgment against a
13 debtor engaged in agricultural production.

14 (b) The term applies to creditors described in
15 subsection (6)(a) who are:

16 (i) the United States or an agency of the United
17 States;

18 (ii) corporations, partnerships, or other business
19 entities; or

20 (iii) individuals.

21 (7) "Unsecured creditor" means a person who:

22 (a) does not have a perfected security interest in
23 agricultural property; and

24 (b) extends credit to a farmer for the purchase of
25 goods or services used in agricultural production.

1 ~~{Terminates July 17, 1989--sec--47-Ch--4817-H--1987--sec--77~~
2 ~~Ch--6057-H--1987--}~~"

3 NEW SECTION. Section 3. Right to mediation -- notice
4 -- applicability. (1) (a) A creditor shall serve a notice on
5 the farmer advising him of the right to mediation under this
6 chapter before initiating a proceeding to:

7 (i) enforce a debt against agricultural property that
8 is real estate;

9 (ii) terminate a contract for deed to purchase
10 agricultural property;

11 (iii) enforce a secured interest in agricultural
12 property; or

13 (iv) garnish, levy on, execute on, seize, or attach
14 agricultural property.

15 (b) The notice must include information concerning the
16 procedure for requesting mediation. A creditor shall file
17 with the department a copy of any notice served upon a
18 farmer pursuant to this section. The creditor may not
19 commence the proceeding until the creditor and the farmer
20 have completed mediation or until the creditor receives a
21 mediation release.

22 (2) This section does not apply to any proceeding
23 involving agricultural property with a fair market value of
24 less than \$20,000.

25 Section 4. Section 80-13-201, MCA, is amended to read:

1 ~~"80-13-201. {Temporary}--Voluntary-mediation~~ Mediation
 2 ~~request -- filing procedure ---dismissal-of-requests.~~ (1) A
 3 ~~Within 14 days following service of notice under [section~~
 4 ~~3], a farmer who-is-in-danger-of-foreclosure-on-agricultural~~
 5 ~~property~~ or a secured creditor may request mediation of the
 6 farmer's indebtedness by filing a request for mediation with
 7 the department on a form prescribed by the department.
 8 (2) In filing or responding to a mediation request,
 9 the farmer shall provide:
 10 (a) the name and address of each secured and unsecured
 11 creditor;
 12 (b) the amount owed to each creditor;
 13 (c) the amount of the periodic installment payments
 14 due each creditor;
 15 (d) any financial statements and pro forma cash flow
 16 statements, including those related to any nonfarm
 17 activities; and
 18 (e) any additional information the department may
 19 require.
 20 (3) In filing or responding to a mediation request, a
 21 secured creditor shall provide:
 22 (a) information pertaining to the basis of the credit
 23 determination;
 24 (b) financial statements and pro forma cash flow
 25 statements on the respective farmer;

1 (c) statements regarding the status of the farmer's
 2 loan performance;
 3 (d) the name and title of the representative of the
 4 creditor authorized to enter into a binding mediation
 5 agreement; and
 6 (e) any additional information the department may
 7 require.
 8 (4) A farmer or secured creditor who ~~agrees--to~~
 9 ~~participate-in~~ is a party to mediation shall authorize the
 10 release to the department of any information held by a
 11 creditor.
 12 ~~{5}--Upon receipt of--a--properly--completed--mediation~~
 13 ~~request-form, the department shall direct a mediator to meet~~
 14 ~~with the farmer and secured creditor to assist in mediation.~~
 15 ~~An unsecured creditor may participate in mediation between a~~
 16 ~~farmer and secured creditor if each party agrees or if the~~
 17 ~~mediator determines that an unsecured creditor is a~~
 18 ~~necessary party to the mediation.~~
 19 ~~{6}--Subject to the provisions of subsection {7}, the~~
 20 ~~department shall immediately terminate an attempt at~~
 21 ~~mediation and dismiss the mediation request if at any time~~
 22 ~~it finds that:~~
 23 ~~{a}--a secured creditor does not agree to participate~~
 24 ~~in mediation requested by the farmer; or~~
 25 ~~{b}--the farmer does not agree to participate in any~~

mediation-requested-by-a-secured-creditor-

{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
creditor.--{Terminates-July-1, 1989--sec.--4, Ch.--481,--E.
1987-}

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 act]. 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.

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

NEW SECTION. Section 7. Initial mediation meeting -- notice. Upon receipt of a properly completed mediation request form that includes the information required in 80-13-201, the department shall serve a mediation meeting

notice to the farmer and each creditor, specifying a time and place for an initial mediation meeting. After serving the notice, the department shall appoint a mediator to meet with the farmer and the secured creditor. An unsecured creditor may participate in mediation between a farmer and secured creditor if each party agrees or if the mediator determines that an unsecured 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]. A 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 a delay may not cause any person to lose any legal rights and all applicable statutes of limitations must toll.

NEW SECTION. Section 9. Mediation -- good faith requirement -- release order. (1) The mediator shall commence mediation within 14 days following service of a mediation meeting notice.

(2) If the farmer and the creditor have acted in good

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

10 (3) Once the 45-day period provided for in subsection
 11 (2) has ended, mediation may not continue beyond 10 days if
 12 either the farmer or the creditor serves notice that further
 13 mediation would not be effective.

14 NEW SECTION. **Section 10.** Obligation of good faith.

15 (1) A farmer and a creditor who are parties to mediation
 16 under [this act] shall act in good faith with respect to
 17 mediation. A farmer or a creditor does not act in good faith
 18 if he:

19 (a) fails to attend and participate in an initial
 20 mediation session without good cause;

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

23 (c) fails to designate a representative to participate
 24 in mediation with adequate authority to fully settle,
 25 compromise, or otherwise mediate the matter; or

1 (d) demonstrates other behavior that evidences lack of
 2 good faith to mediate.

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

6 **Section 11.** Section 80-13-202, MCA, is amended to
 7 read:

8 "80-13-202. ~~(Temporary)~~-- Duties and requirements of
 9 mediators -- prohibitions. (1) A mediator must be qualified
 10 to provide the services required under this chapter. A
 11 mediator must be an impartial person knowledgeable in
 12 agricultural and financial matters.

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

15 (a) listen to the farmer and any creditor desiring to
 16 be heard;

17 (b) attempt to negotiate an agreement that:

18 (i) extends the term of credit;

19 (ii) reduces the dollar amount of payments under
 20 credit; or

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

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

1 agreement.

2 (3) A mediator may attempt to:

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

6 (b) obtain assistance from any public or private
7 agency.

8 (4) A mediator may not:

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

10 (b) assist a farmer or creditor in reserving or
11 establishing legal rights. (Terminates July 17, 1989--sec 47
12 Ch--4817-B--1987--)"

13 **Section 12.** Section 80-13-203, MCA, is amended to
14 read:

15 "80-13-203. (Temporary)- Mediation agreement. (1) If
16 an agreement is reached between the farmer and a creditor,
17 the mediator shall draft a written mediation agreement to be
18 signed by the farmer and the creditor.

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

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

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

1 (c) may use the mediation agreement as a defense
2 against an action contrary to the mediation agreement.
3 ~~(Terminates July 17, 1989--sec 47--Ch--4817-B--1987--)~~"

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

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

25 **Section 14.** Section 80-13-211, MCA, is amended to

1 read:

2 "80-13-211. ~~{Temporary}~~-- Confidentiality of records.

3 (1) All materials, data, and information received by the
4 department or its agent with respect regard to any request
5 filed aspect of mediation under 80-13-201 [this act] are
6 confidential and are not subject to examination or
7 disclosure as public information.

8 (2) No official, employee, or agent of the department
9 may knowingly disclose any materials, data, or information
10 concerning a any aspect of mediation request without the
11 consent of the farmer and the creditor. ~~{Terminates-July-17-~~
12 ~~1989--sec-47-Ch-4817-B-1987-}~~"

13 **Section 15.** Section 80-13-212, MCA, is amended to

14 read:

15 "80-13-212. ~~{Temporary}~~-- Closed meetings. Meetings
16 ~~between-a-farmer-and-any-creditor~~ conducted ~~by--a--mediator~~
17 under [this act] are not open to public participation and
18 are not subject to the provisions of the open meeting law
19 contained in 2-3-203. ~~{Terminates-July-17-1989--sec-47-Ch-~~
20 ~~4817-B-1987-}~~"

21 NEW SECTION. **Section 16.** Adoption of rules. (1) The
22 department shall adopt rules to set the compensation of
23 mediators and credit analysts. The compensation of
24 mediators may not exceed \$20 an hour.

25 (2) The department may adopt any other rules necessary

1 for the administration of [this act].

2 NEW SECTION. **Section 17.** Extension of authority. Any
3 existing authority to make rules on the subject of the
4 provisions of [this act] is extended to the provisions of
5 [this act].

6 NEW SECTION. **Section 18.** Repealer. Section 15,
7 Chapter 9, Special Laws of March 1986; sections 4 and 5,
8 Chapter 481, Laws of 1987; and sections 7 and 11, Chapter
9 605, Laws of 1987, are repealed.

10 NEW SECTION. **Section 19.** Codification instruction.
11 [Sections 1, 3, 5 through 10, 13, and 16] are intended to be
12 codified as an integral part of Title 80, chapter 13, and
13 the provisions of Title 80, chapter 13, apply to [sections
14 1, 3, 5 through 10, 13, and 16].

15 NEW SECTION. **Section 20.** Effective date. [This act]
16 is effective July 1, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB358, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

HB358 would establish the right to mediation of agricultural indebtedness, requiring both the borrower and lender to mediate in good faith in the event that either party requests mediation; and make permanent the Agricultural Assistance and Counseling Program.

ASSUMPTIONS:

1. The Dept. of Agriculture will train six (6) new financial consultants and ten new mediators who will provide contract services by geographical area and also receive travel reimbursement.
2. There will be 300 mediation cases per year and 300 financial consultations per year, primarily in response to mediation requests, for a total of 600 cases per year at \$300 each.
3. The department will charge fees prior to service and during service delivery; and the federal fees paid will be eligible for use as state matching for the federal mediation grant.
4. Contracts will be continued with the Service Corps of Retired Executives and the Montana Association of Churches to provide peer counseling assistance; travel and communications expenses will be paid for approximately 40 peer counselors who will provide volunteer services.
5. The federal grant will continue to be available and, in comparison with HB273, the amount of the grant will increase because most of the services will meet the definition of mediation and there is 50% federal matching funds for mediation and administrative costs.
6. Current law is shown as zero because the legislation sunsets July 1, 1989.

FISCAL IMPACT:

Dept. of Agriculture

Expenditures:

Personal Services
Operating Expenses
Total

Current
Law

-0-
-0-
-0-

FY90

Proposed

Law

\$ 38,687
289,350
\$328,037

Difference

\$ 38,687
289,350
\$328,037

Current

Law

-0-
-0-
-0-

FY91

Proposed

Law

\$ 39,446
288,850
\$328,296

Difference

\$ 39,446
288,850
\$328,296

Funding:

General Fund
State Special - Fees
Federal Revenue
Total

-0-
-0-
-0-
-0-

\$ 10,000
180,000
138,037
\$328,037

\$ 10,000
180,000
138,037
\$328,037

-0-
-0-
-0-
-0-

-0-
\$180,000
148,296
\$328,296

-0-
\$180,000
148,296
\$328,296

Ray Shackleford
RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

1/31/89
DATE

JIM ELLIOTT
JIM ELLIOTT, PRIMARY SPONSOR

2/1/89
DATE

Fiscal Note for HB358, as introduced

APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
& IRRIGATION

HOUSE BILL NO. 358

INTRODUCED BY ELLIOTT, CODY, PETERSON, CLARK,
VINCENT, BLOTKAMP, PECK, GUTHRIE, L. NELSON, BACHINI,
BOYLAN, EUDAILY, STEPPLER, CONNELLY, SCHYE, DAVIS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE RIGHT TO MEDIATION OF AGRICULTURAL INDEBTEDNESS; REQUIRING BOTH THE BORROWER AND LENDER TO MEDIATE IN GOOD FAITH IN THE EVENT THAT EITHER PARTY REQUESTS MEDIATION; MAKING PERMANENT THE AGRICULTURAL ASSISTANCE AND COUNSELING PROGRAM; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; AMENDING SECTIONS 80-13-102, 80-13-201 THROUGH 80-13-203, 80-13-211, AND 80-13-212, MCA; REPEALING SECTION 15, CHAPTER 9, SPECIAL LAWS OF MARCH 1986; SECTIONS 4 AND 5, CHAPTER 481, LAWS OF 1987; AND SECTIONS 7 AND 11, CHAPTER 605, LAWS OF 1987; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1.** Legislative findings. The legislature finds that the agricultural and financial sectors of the state's economy are under severe financial stress due to low farm commodity prices, drought, continuing high interest rates, and reduced net farm income, and the suffering agricultural economy adversely affects the economic conditions for all businesses in rural communities.

The legislature further finds that hundreds of this state's farmers are unable to meet current interest and principal payments on mortgages and other loan obligations and are threatened with the loss of their farmland, equipment, crops, and livestock through mortgage and lien foreclosures, cancellation of contracts for deed, and other debt collections. Therefore, the legislature finds that an economic emergency exists that requires an orderly process for the adjustment of agricultural indebtedness to preserve the general welfare of Montana.

Section 2. Section 80-13-102, MCA, is amended to read:

"80-13-102. ~~{Temporary}~~ Definitions. As used in this chapter, unless the context indicates otherwise, the following definitions apply:

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

(2) "Agricultural property" means:

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

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

~~{2}~~(3) "Department" means the department of

1 agriculture provided for in 2-15-3001.

2 ~~{3}{4}~~ "Farmer" means a person who owns or operates a
3 farm or ranch primarily for the purpose of agricultural
4 production.

5 (5) "Mediator" means a person authorized under
6 80-13-202 to assist in mediation between a farmer and a
7 creditor.

8 (6) (a) "Secured creditor" means:

9 (i) the holder of a mortgage on agricultural property;

10 (ii) a vendor of a contract for deed of agricultural
11 property;

12 (iii) a person with a statutory lien or a perfected
13 security interest in agricultural property; or

14 (iv) a judgment creditor with a judgment against a
15 debtor engaged in agricultural production.

16 (b) The term applies to creditors described in
17 subsection (6)(a) who are:

18 (i) the United States or an agency of the United
19 States;

20 (ii) corporations, partnerships, or other business
21 entities; or

22 (iii) individuals.

23 (7) "Unsecured creditor" means a person who:

24 (a) does not have a perfected security interest in
25 agricultural property; and

1 (b) extends credit to a farmer for the purchase of
2 goods or services used in agricultural production.
3 ~~{Terminates July 17, 1989--sec--47--Ch--4817-b7-19877--sec--77~~
4 ~~Ch--6057-b7-19877}~~

5 **NEW SECTION. Section 3. Right to mediation -- notice**
6 **-- applicability. (1) (a) A creditor shall serve a notice on**
7 **the farmer advising him of the right to mediation under this**
8 **chapter before initiating a proceeding to:**

9 **(i) enforce a debt against agricultural property that**
10 **is real estate;**

11 **(ii) terminate a contract for deed to purchase**
12 **agricultural property;**

13 **(iii) enforce a secured interest in agricultural**
14 **property; or**

15 **(iv) garnish, levy on, execute on, seize, or attach**
16 **agricultural property.**

17 **(b) The notice must include information concerning the**
18 **procedure for requesting mediation. A creditor shall file**
19 **with the department a copy of any notice served upon a**
20 **farmer pursuant to this section. The creditor may not**
21 **commence the proceeding until the creditor and the farmer**
22 **have completed mediation or until the creditor receives a**
23 **mediation release.**

24 **(2) This section does not apply to any proceeding**
25 **involving agricultural property with a fair market value of**

less than \$20,000.

Section 4. Section 80-13-201, MCA, is amended to read:

"80-13-201. ~~{Temporary}~~--Voluntary-mediation Mediation request -- filing procedure ---dismissal-of-requests. (1) A Within 14 days following service of notice under [section 3], a farmer ~~who-is-in-danger-of-foreclosure-on-agricultural~~ property or a secured creditor may request mediation of the farmer's indebtedness by filing a request for mediation 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;

(d) any financial statements and pro forma cash flow statements, including those related to any nonfarm activities; and

(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 determination;

(b) financial statements and pro forma cash flow statements on the respective farmer;

(c) statements regarding the status of the farmer's loan performance;

(d) the name and title of the representative of the creditor authorized to enter into a binding mediation agreement; and

(e) any additional information the department may require.

(4) A farmer or secured creditor who agrees--to participate-in is a party to mediation shall authorize the release to the department of any information held by a creditor.

~~{5}--Upon receipt of--a--properly--completed--mediation request form, the department shall direct a mediator to meet with the farmer and secured creditor to assist in mediation. An unsecured creditor may participate in mediation between a farmer--and--secured creditor if each party agrees or if the mediator--determines--that--an--unsecured--creditor---is---a necessary party to the mediation.~~

~~{6}--Subject--to--the provisions of subsection {7}, the department--shall--immediately--terminate--an---attempt---at mediation--and--dismiss the mediation request if at any time it finds that:~~

~~{a}--a secured creditor does not agree--to--participate~~

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
5 secured creditor and any one creditor does not agree to
6 participate in mediation, the department shall dismiss the
7 mediation request only insofar as it relates to that
8 creditor. (Terminates July 1, 1989 sec. 4, Ch. 481, B.
9 1987.)"

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 act]. WITHIN 7 DAYS OF THE EXPIRATION OF THE TIME
14 LIMIT FOR THE FILING OF A MEDIATION REQUEST, The THE
15 department shall notify a creditor, stating that the
16 creditor may proceed in an action against agricultural
17 property because the farmer has failed to file a mediation
18 request.

19 **NEW SECTION. Section 6. Credit analyst. After**

20 receiving a request for mediation, the department may refer
21 the farmer to a credit analyst who is knowledgeable in
22 agricultural and financial matters. The credit analyst shall
23 assist the farmer in the preparation of financial
24 information that will be required at the initial mediation
25 meeting.

1 **NEW SECTION. Section 7. Initial mediation meeting --**

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

13 **NEW SECTION. Section 8. Effect of mediation meeting**

14 notice -- stay 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 court concerning the farmer's
17 indebtedness to that creditor until the mediator has signed
18 a release order as provided for in [section 9]. A release
19 order is final and is not subject to an appeal.

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

25 **NEW SECTION. Section 9. Mediation -- good faith**

1 requirement -- release order. (1) The mediator shall
2 commence mediation within 14 days following service of a
3 mediation meeting notice.

4 (2) If the farmer and the creditor have acted in good
5 faith to mediate, the mediator shall sign a release order
6 after 45 calendar days have elapsed following commencement
7 of mediation. However, the mediator in his discretion may
8 declare that either party has failed to act in good faith
9 during the mediation and may extend the 45-day period
10 accordingly, provided that the mediator notifies the farmer
11 and the creditor that days have been lost because either
12 party has failed to act in good faith as provided in
13 [section 10]. THE FARMER AND THE CREDITOR ARE ENTITLED TO AT
14 LEAST 45 DAYS OF NEGOTIATIONS IN GOOD FAITH.

15 (3) Once the 45-day period provided for in subsection
16 (2) has ended, mediation may not continue beyond 10 days if
17 either the farmer or the creditor serves notice that further
18 mediation would not be effective. AT THE END OF 10 DAYS, THE
19 MEDIATOR SHALL SIGN A RELEASE ORDER ALLOWING THE CREDITOR TO
20 INITIATE AN ACTION AGAINST THE BORROWER.

21 NEW SECTION. Section 10. Obligation of good faith.

22 (1) A farmer and a creditor who are parties to mediation
23 under [this act] shall act in good faith with respect to
24 mediation. A farmer or a creditor does not act in good faith
25 if he:

1 (a) fails to attend and participate in an initial
2 mediation session without good cause;

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

5 (c) fails to designate a representative to participate
6 in mediation with adequate authority to fully settle,
7 compromise, or otherwise mediate the matter; or

8 (d) demonstrates other behavior that evidences lack of
9 good faith to mediate.

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

13 **Section 11.** Section 80-13-202, MCA, is amended to
14 read:

15 **"80-13-202. ~~Temporary~~-- Duties and requirements of**
16 **mediators -- prohibitions.** (1) A mediator must be qualified
17 to provide the services required under this chapter. A
18 mediator must be an impartial person knowledgeable in
19 agricultural and financial matters.

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

22 (a) listen to the farmer and any creditor desiring to
23 be heard;

24 (b) attempt to negotiate an agreement that:

25 (i) extends the term of credit;

1 (ii) reduces the dollar amount of payments under
2 credit; or

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

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

9 (3) A mediator may attempt to:

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

13 (b) obtain assistance from any public or private
14 agency.

15 (4) A mediator may not:

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

17 (b) assist a farmer or creditor in reserving or
18 establishing legal rights. ~~{Terminates July 1, 1989--sec. 47~~
19 ~~Ch. 481, B. 1987.}~~"

20 **Section 12.** Section 80-13-203, MCA, is amended to
21 read:

22 **"80-13-203. ~~{Temporary}~~ Mediation agreement.** (1) If
23 an agreement is reached between the farmer and a creditor,
24 the mediator shall draft a written mediation agreement ~~to be~~
25 ~~signed by the farmer and the creditor.~~ THE FARMER AND THE

1 CREDITOR HAVE 7 DAYS TO REVIEW THE AGREEMENT AND REQUEST
2 MODIFICATIONS. THE MEDIATOR SHALL DRAFT THE FINAL WRITTEN
3 MEDIATION AGREEMENT TO BE SIGNED BY THE FARMER AND THE
4 CREDITOR.

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

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

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

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

14 ~~{Terminates July 1, 1989--sec. 47--Ch. 481, B. 1987.}~~"

15 NEW SECTION. Section 13. Creditor's optional
16 attendance at mediation meeting -- claim form -- objection
17 to agreement. (1) Unless he files a claim form, a creditor
18 who is served notice of a mediation meeting as provided for
19 in [section 7] is subject to and bound by a mediation
20 agreement if he does not attend mediation meetings. In lieu
21 of attending a mediation meeting, a creditor may file a
22 notice of claim and proof of claim on a claim form with the
23 mediator before the scheduled meeting. By filing a claim
24 form, the creditor agrees to be bound by a mediation
25 agreement reached during mediation unless an objection is

1 filed as provided in subsection (2). The mediator shall
2 notify each creditor who has filed a claim form of the terms
3 of any mediation agreement.

4 (2) A creditor who has filed a claim form may serve a
5 written objection to the terms of a mediation agreement upon
6 the mediator and the farmer within 10 days after receiving
7 notice of the agreement. If a creditor files an objection
8 to the terms of an agreement, the mediator shall meet with
9 the farmer and creditor within 10 days after receiving the
10 objection and attempt to mediate a new agreement.

11 **Section 14.** Section 80-13-211, MCA, is amended to
12 read:

13 **"80-13-211. ~~{Temporary}~~-- Confidentiality of records.**

14 (1) All materials, data, and information received by the
15 department or its agent with respect regard to any request
16 filed aspect of mediation under ~~80-13-201~~ [this act] are
17 confidential and are not subject to examination or
18 disclosure as public information.

19 (2) No official, employee, or agent of the department
20 may knowingly disclose any materials, data, or information
21 concerning a any aspect of mediation request without the
22 consent of the farmer and the creditor. ~~{Terminates July 1,~~
23 ~~1989--sec.-47-Ch.-4817-B7-1987-}~~"

24 **Section 15.** Section 80-13-212, MCA, is amended to
25 read:

1 **"80-13-212. ~~{Temporary}~~-- Closed meetings.** Meetings
2 ~~between-a-farmer-and-any-creditor~~ conducted ~~by--a--mediator~~
3 under [this act] are not open to public participation and
4 are not subject to the provisions of the open meeting law
5 contained in 2-3-203. ~~{Terminates July 1, 1989--sec.-47-Ch.-~~
6 ~~4817-B7-1987-}~~"

7 **NEW SECTION. Section 16.** Adoption of rules. (1) The
8 department shall adopt rules to set the compensation of
9 mediators and credit analysts. The compensation of
10 mediators may not exceed \$20 an hour.

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

13 **NEW SECTION. Section 17.** Extension of authority. Any
14 existing authority to make rules on the subject of the
15 provisions of [this act] is extended to the provisions of
16 [this act].

17 **NEW SECTION. Section 18.** Repealer. Section 15,
18 Chapter 9, Special Laws of March 1986; sections 4 and 5,
19 Chapter 481, Laws of 1987; and sections 7 and 11, Chapter
20 605, Laws of 1987, are repealed.

21 **NEW SECTION. Section 19.** Codification instruction.
22 [Sections 1, 3, 5 through 10, 13, and 16] are intended to be
23 codified as an integral part of Title 80, chapter 13, and
24 the provisions of Title 80, chapter 13, apply to [sections
25 1, 3, 5 through 10, 13, and 16].

HB 0358/02

1 NEW SECTION. **Section 20.** *Effective date.* [This act]
2 is effective July 1, 1989.

-End-