

CHAPTER 1143**FARM MEDIATION SERVICE***H.F. 2404*

AN ACT relating to mediation assistance, by expanding the responsibilities of the farm mediation service, granting additional authority to the farm mediation service, extending the date of repeal for certain provisions, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. LEGISLATIVE FINDINGS AND DECLARATION.

The general assembly finds that mediation is a simple nonbureaucratic means of resolving disputes between parties. Although the overall economy of the state has improved since the enactment of the farm crisis program, 1986 Iowa Acts, chapter 1214, the agricultural sector still suffers from financial stress. Therefore the general assembly declares that it is necessary to extend programs enacted in 1986 to provide legal assistance to farmers suffering financial distress and to provide farmer-creditor mediation services.

The general assembly also finds that the independence and isolation of farm residents poses special obstacles in dispute resolution. Legal proceedings may be a costly, time-consuming, and inefficient means of settling disputes in which a farm resident is a party. Disputes may be better resolved in an informal setting where understanding and accommodation may replace a formal and adversarial proceeding. Therefore the general assembly declares that farm mediation should be expanded to include more disputes between farm residents and opposing parties.

Sec. 2.

Sections 3 through 6 and section 8 of this Act, and sections 13.20 through 13.24 are created as a separate subchapter of chapter 13.

Sec. 3. NEW SECTION. 13.11 FARM ASSISTANCE PROGRAM COORDINATOR.

1. The attorney general or the attorney general's designee shall serve as the farm assistance program coordinator. The coordinator has the powers and duties specified in this subchapter.

2. The farm assistance program coordinator shall contract with a nonprofit organization chartered in this state to provide mediation services as provided in chapters 654A and 654B. The contract shall be awarded to the organization by July 1, 1990. The contract may be terminated by the coordinator upon written notice and for good cause. The organization awarded the contract is designated as the farm mediation service for the duration of the contract. The organization may, upon approval by the coordinator, provide mediation services other than as provided by law. The farm mediation service is not a state agency for the purposes of chapters 19A, 20, and 25A.

Sec. 4. NEW SECTION. 13.12 CONFIDENTIALITY.

1. Meetings of the farm mediation service are closed meetings and are not subject to chapter 21.

2. Verbal or written information relating to the mediation process and transmitted between a party to a dispute and the farm mediation service, including a mediator or the mediation staff, or any other person present during any stage of the mediation process conducted by the service, whether reflected in notes, memoranda, or other work products in the case files, is a confidential communication. Mediators and staff members shall not be examined in any judicial or administrative proceeding regarding confidential communications and are not subject to judicial or administrative process requiring the disclosure of confidential communications.

3. Confidentiality is also protected as provided in section 654A.13.

Sec. 5. NEW SECTION. 13.13 RULES AND FORMS – FEES.

The farm mediation service shall recommend rules to the farm assistance coordinator. The coordinator shall adopt rules pursuant to chapter 17A to set the compensation of mediators and to implement this subchapter and chapters 654A and 654B.

The rules shall provide for an hourly mediation fee not to exceed twenty-five dollars per hour per party. The hourly mediation fee may be waived for any party demonstrating financial hardship upon application to the farm mediation service.

The compensation of a mediator shall be no more than twenty-five dollars per hour, and all parties shall contribute an equal amount of the cost.

The coordinator shall adopt voluntary mediation application and mediation request forms.

Sec. 6. NEW SECTION. 13.14 LIMITATION ON LIABILITY – IMMUNITY FROM SPECIAL ACTIONS.

1. A member of the farm mediation staff, including a mediator, employee, or agent of the service, or member of a board for the service, is not liable for civil damages for a statement or decision made in the process of mediation, unless the member acts in bad faith, with malicious purpose, or in a manner exhibiting willful and wanton disregard of human rights, safety, or property.

2. A judicial action which seeks an injunction, mandamus, or similar equitable relief shall not be brought against the farm mediation service, including a mediator, employee, or agent of the service, or a member of a board for the service until completion of the mediation process.

Sec. 7. Section 13.20, Code 1989, is amended to read as follows:

13.20 AUTHORITY TO CONTRACT FOR LEGAL ASSISTANCE PROGRAM.

The farm ~~erisis~~ assistance program coordinator, provided in ~~section 654A.2~~ this subchapter, shall contract with an eligible nonprofit organization to provide legal assistance to financially distressed farmers. The contract shall be awarded within thirty days after May 30, 1986. The contract may be terminated by the coordinator upon written notice and for good cause.

Sec. 8. NEW SECTION. 13.25 REPEAL OF FARM MEDIATION AND LEGAL ASSISTANCE PROVISIONS.

This subchapter is repealed on July 1, 1993.

Sec. 9. Section 654A.1, subsection 2, Code 1989, is amended to read as follows:

2. "Coordinator" means the farm ~~erisis~~ assistance program coordinator provided in section ~~654A.2~~ 13.11.

Sec. 10. Section 654A.1, Code 1989, is amended by adding the following new subsections: **NEW SUBSECTION. 6.** "Farm mediation service" means the organization selected pursuant to section 13.11.

NEW SUBSECTION. 7. "Participate" or "participation" means attending a mediation meeting, and discussing issues, stating a position regarding restructuring, and exchanging information, relating to any of the following: a debt against agricultural property which is real estate under chapter 654; a forfeiture of a contract to purchase agricultural property under chapter 656; a secured interest in agricultural property under chapter 554; or a garnishment, levy, execution, seizure, or attachment of agricultural property; all as referenced in section 654A.6.

Sec. 11. Section 654A.11, subsection 3, Code Supplement 1989, is amended to read as follows:

3. a. If the borrower waives mediation, or if a mediation agreement is not reached, the borrower and the creditors may sign a statement prepared by the mediator that mediation was waived or that the parties did not reach an agreement. If any party does not sign the statement, the mediator shall sign the statement. The statement constitutes a mediation release. ~~Unless the borrower waives mediation, a creditor shall not receive a mediation release until the creditor has participated in at least one mediation meeting.~~

b. The mediator shall issue a mediation release unless the creditor fails to participate in at least one mediation meeting. The mediator shall issue a mediation release if the borrower waives or fails to participate in at least one mediation meeting, regardless of participation by the creditor. The creditor or borrower may be represented by another person, if the person participates in mediation and has authority to discuss the debt on behalf of the creditor or

borrower. This section does not require the creditor or borrower to reach an agreement, including restructuring a debt in order to receive a mediation release.

Sec. 12. Section 654A.11, subsection 4, Code Supplement 1989, is amended by striking the subsection and inserting in lieu thereof the following:

4. The mediator shall promptly notify a creditor by certified mail of a denial to issue a mediation release and the reasons for the denial. The notice shall state that the creditor has seven days from the date that the notice is delivered to appeal the mediator's decision to the administrative head of the mediation service, pursuant to procedures adopted by the service. The notice shall state that the creditor may also request another mediation meeting. The action for judicial review shall be brought in equity, and the action shall be limited to whether, based on clear and convincing evidence, the decision of the administrative head is an abuse of discretion. The action may be brought either in the district court of Polk county or in the district court in which the farmer or creditor resides. Upon reversing the decision by the service, the court shall order that the service issue the mediation release.

Sec. 13. Section 654A.13, subsection 2, Code Supplement 1989, is amended by striking the subsection.

Sec. 14. Section 654A.13, subsection 3, unnumbered paragraph 1, Code Supplement 1989, is amended by striking the paragraph.

Sec. 15. NEW SECTION. 654A.16 REPEAL OF CHAPTER.

This chapter is repealed on July 1, 1993.

Sec. 16. NEW SECTION. 654B.1 DEFINITIONS.

1. "Care and feeding contract" means an agreement, either oral or written, between a farm resident and the owner of livestock, under which the farm resident agrees to act as a feeder by promising to care for and feed the livestock on the farm resident's premises.

2. "Dispute" means a controversy between a person who is a farm resident and another person, which arises from a claim eligible to be resolved in a civil proceeding in law or equity, if the claim relates to either of the following:

a. The performance of either person under a care and feeding contract, if both persons are parties to the contract.

b. An action of one person which is alleged to be a nuisance interfering with the enjoyment of the other person.

3. "Farmland" means agricultural land that is principally used for farming as defined in section 172C.1.

4. "Farm mediation service" means the organization selected pursuant to section 13.11.

5. "Farm resident" means a person holding an interest in farmland, in fee, under a real estate contract, or under a lease, if the person manages farming operations on the land. A farm resident includes a natural person, or any corporation, trust, or limited partnership as defined in section 172C.1.

6. "Mediation release" means an agreement or statement signed by all parties or by less than all the parties and the mediator pursuant to section 654B.8.

7. "Nuisance" means an action injurious to health, indecent, or offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property, including but not limited to nuisances defined in section 657.2, subsections 1 through 5, and 7.

8. "Other party" means any person having a dispute with a farm resident.

9. "Participate" or "participation" means attending a mediation meeting, and having knowledge about and discussing issues concerning a subject relating to a dispute.

Sec. 17. NEW SECTION. 654B.2 VOLUNTARY MEDIATION PROCEEDINGS.

A farm resident or other party may request mediation of a dispute by applying to the farm mediation service. The farm mediation service shall make voluntary mediation application forms

available. The farm mediation service shall evaluate each request and may direct a mediator to meet with the farm resident and other party to assist in mediation.

Sec. 18. NEW SECTION. 654B.3 MANDATORY MEDIATION PROCEEDINGS.

1. A person who is a farm resident, or other party desiring to initiate a civil proceeding to resolve a dispute, shall file a request for mediation with the farm mediation service. The person shall not begin the proceeding until the person receives a mediation release, or until the court determines after notice and hearing that one of the following applies:

a. The time delay required for the mediation would cause the person to suffer irreparable harm.

b. The dispute involves a claim which has been brought as a class action.

2. Upon receipt of the request for mediation, the farm mediation service shall conduct an initial consultation with each party to the dispute privately and without charge. Mediation may be waived after the initial consultation, if the parties agree.

3. Unless mediation is waived by the parties to the dispute, the parties shall file with the farm mediation service information required by the service to conduct mediation.

Sec. 19. NEW SECTION. 654B.4 INITIAL MEDIATION MEETING.

1. Unless both parties to the dispute waive mediation, within twenty-one days after receiving a mediation request, the farm mediation service shall send a mediation meeting notice to all parties to the dispute setting a time and place for an initial mediation meeting between the parties and a mediator directed by the farm mediation service to assist in mediation. An initial mediation meeting shall be held within twenty-one days of the issuance of the mediation meeting notice.

2. If a person receives a mediation meeting notice under this section, the person shall not continue civil proceedings based on a claim relating to a dispute subject to this chapter, unless the court determines after notice and hearing that one of the following applies:

a. The time delay required for the mediation would cause the person to suffer irreparable harm.

b. The dispute involves a claim which has been brought as a class action.

3. At the meeting, a party to the dispute may be represented by counsel or appear with a consultant to assist the party in mediation.

Sec. 20. NEW SECTION. 654B.5 DUTIES OF THE MEDIATION SERVICE.

1. The farm mediation service, with the assistance of knowledgeable persons, shall provide a program to train mediators to assist in the mediation of nuisance disputes.

2. At the initial mediation meeting and subsequent meetings, the mediator shall:

a. Listen to all involved parties.

b. Attempt to mediate between all involved parties.

c. Encourage compromise and workable solutions.

d. Advise, counsel, and assist the parties in attempting to arrive at an agreement for the future conduct of relations among them.

Sec. 21. NEW SECTION. 654B.7 MEDIATION PERIOD.

The mediator may call mediation meetings during the mediation period, which is up to forty-two days after the farm mediation service received the mediation request. However, if all parties consent, mediation may continue after the end of the mediation period.

Sec. 22. NEW SECTION. 654B.8 MEDIATION RELEASE.

1. If an agreement is reached between all parties, the mediator shall draft a written mediation agreement, have it signed by the parties, and submit the agreement to the farm mediation service.

2. a. The mediator shall issue a mediation release unless the other party desiring to initiate a civil proceeding to resolve the dispute fails to participate in at least one mediation meeting. The mediator shall issue a mediation release if the farm resident waives or fails to participate in at least one mediation meeting, regardless of participation by the other party. A party

to a dispute may be represented by another person, if the person participates in mediation and has authority to discuss the dispute on behalf of the party being represented. This section does not require a party to reach an agreement. This section does not require a person to change a position, alter an activity which is a subject of the dispute, or restructure a contract in order to receive a mediation release.

b. The mediator shall promptly notify a party by certified mail of a denial to issue a mediation release and the reasons for the denial. The notice shall state that the party has seven days from the date that the notice is delivered to appeal the mediator's decision, pursuant to procedures adopted by the service. After a final decision by the farm mediation service, the party may seek an action for judicial review pursuant to section 654B.10.

3. The parties to the mediation agreement may enforce the mediation agreement as a legal contract. The agreement constitutes a mediation release.

4. If the parties waive mediation, or if a mediation agreement is not reached, the parties may sign a statement prepared by the mediator that mediation was waived or that the parties did not reach an agreement. If any party does not sign the statement, the mediator shall sign the statement. The statement constitutes a mediation release. Unless the farm resident waives mediation, the department shall not receive a mediation release until the party has participated in at least one mediation meeting.

Sec. 23. NEW SECTION. 654B.9 EXTENSION OF DEADLINES.

Upon petition by all parties, the farm mediation service may, for good cause, extend a deadline imposed by section 654B.4 or section 654B.7 for up to thirty days.

Sec. 24. NEW SECTION. 654B.10 JUDICIAL REVIEW.

An action for judicial review shall be brought in equity, and the action shall be limited to whether, based on clear and convincing evidence, the decision by the administrative head of the mediation service is an abuse of discretion. The action may be brought in either the district court of Polk county or in the district court in which the affected farm resident resides. Upon reversing the decision by the service, the court shall order that the service issue a mediation release.

Sec. 25. NEW SECTION. 654B.11 EFFECT OF MEDIATION.

An interest in property, or rights and obligations under a contract are not affected by the failure of a person to obtain a mediation release regardless of its validity.

Time periods relating to a claim, including applicable statutes of limitations, shall be suspended upon filing a mediation request. Time periods affecting a claim in a civil proceeding shall be suspended upon filing a mediation request. The suspension shall terminate upon signing a mediation release.

Sec. 26. NEW SECTION. 654B.12 REPEAL OF CHAPTER.

This chapter is repealed on July 1, 1993.

Sec. 27. NEW SECTION. 657.10 MEDIATION NOTICE.

Notwithstanding this chapter, a person, required under chapter 654B to participate in mediation, shall not begin a proceeding subject to this chapter until the person receives a mediation release under section 654B.8, or until the court determines after notice and hearing that one of the following applies:

a. The time delay required for the mediation would cause the person to suffer irreparable harm.

b. The dispute involves a claim which should be resolved as a class action.

Sec. 28.

Section 554.9501, subsection 6, is amended by striking the subsection.

Sec. 29. FUTURE REPEALS.

1. Sections 654.2C and 656.8, Code 1989, are repealed.

2. Section 657.10 as created in this Act is repealed.

Sec. 30. REPEALS.

1. Sections 654A.2 and 654A.3, Code 1989, are repealed.
2. Sections 654A.14 and 654A.15, Code Supplement 1989, are repealed.
3. 1986 Iowa Acts, chapter 1214, section 29, as amended by 1989 Iowa Acts, chapter 108, section 1, is repealed.

Sec. 31. EXISTING FARM MEDIATION SERVICE CONTRACTS.

This Act does not affect any agreement with the organization selected by the farm crisis program coordinator to be the farm mediation service pursuant to section 654A.3, Code 1989.

Sec. 32. EFFECTIVE DATE.

1. Except as provided in subsection 2, all sections of this Act, being deemed of immediate importance, take effect upon enactment.
2. Sections 28 and 29 of this Act take effect on July 1, 1993.

Approved April 4, 1990

CHAPTER 1144

FINANCING E911 TELEPHONE SERVICE

H.F. 2512

AN ACT altering the statutory monetary limitation on the local option E911 emergency telephone service surcharge, authorizing the Iowa finance authority to issue bonds and notes secured by certain designated sources to finance E911 service nonrecurring and recurring expenses, providing related procedures and conditions, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 477B.6, subsection 1, unnumbered paragraph 2, Code Supplement 1989, is amended to read as follows:

"Should enhanced 911 emergency telephone service be funded, in whole or in part, by a monthly surcharge of (an amount determined by the local joint E911 service board of up to twenty-five cents one dollar) per month per on each telephone access line collected as part of each telephone subscriber's monthly phone bill if provided within (description of the proposed E911 service area)?"

Sec. 2. Section 477B.7, subsection 1, paragraph a, unnumbered paragraph 1, Code Supplement 1989, is amended to read as follows:

To encourage local implementation of E911 service, one source of funding for E911 emergency telephone communication systems shall come from a surcharge of twenty-five cents per month, per access line on each access line subscriber, except as provided in subsection 5, equal to the lowest amount of the following:

One dollar.

An amount less than one dollar, which would fully pay both recurring and nonrecurring costs of the E911 service system within five years from the date the maximum surcharge is imposed.

The maximum monetary limitation approved by referendum.

PARAGRAPH DIVIDED. The surcharge shall be imposed by order of the administrator as follows: