

House File 2404 substituted 3/7 (p. 423)

FILED FEB 14 1990

SENATE FILE **2331**
BY COMMITTEE ON AGRICULTURE
Approved (p. 517)
(SUCCESSOR TO SF 2194)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to mediation assistance, by expanding the
2 responsibilities of the farm mediation service, granting
3 additional authority to the farm mediation service, extending
4 the date of repeal for certain provisions, and providing an
5 effective date.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

7

SENATE FILE 2331

S-5382

- 1 Amend Senate File 2331 as follows:
- 2 1. Page 2, line 31, by striking the word "twenty-
- 3 five" and inserting the following: "thirty-five".
- 4 2. Page 3, line 1, by striking the word "twenty-
- 5 five" and inserting the following: "thirty-five".
- 6 3. Page 10, by striking lines 24 and 25, and
- 7 inserting the following:
- 8 "Notwithstanding this chapter, a person shall not
- 9 begin a".
- 10 4. Title page, line 3, by inserting after the
- 11 word "service," the following: "increasing certain
- 12 fees,".

By JAMES RIORDAN

S-5382 FILED MARCH 7, 1990
ADOPTED *(p. 923)*

SF 2331

22
23

1 Section 1. LEGISLATIVE FINDINGS AND DECLARATION.

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

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

21 Sec. 2.

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

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

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

31 2. The farm assistance program coordinator shall contract
32 with a nonprofit organization chartered in this state to
33 provide mediation services as provided in chapters 654A and
34 654B. The contract shall be awarded to the organization by
35 July 1, 1990. The contract may be terminated by the

1 coordinator upon written notice and for good cause. The
2 organization awarded the contract is designated as the farm
3 mediation service for the duration of the contract. The
4 organization may, upon approval by the coordinator, provide
5 mediation services other than as provided by law. The farm
6 mediation service is not a state agency for the purposes of
7 chapters 19A, 20, and 25A.

8 Sec. 4. NEW SECTION. 13.12 CONFIDENTIALITY.

9 1. Meetings of the farm mediation service are closed
10 meetings and are not subject to chapter 2i.

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

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

24 Sec. 5. NEW SECTION. 13.13 RULES AND FORMS -- FEES.

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

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

35 The compensation of a mediator shall be no more than

1 twenty-five dollars per hour, and all parties shall contribute
2 an equal amount of the cost.

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

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

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

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

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

21 13.20 AUTHORITY TO CONTRACT FOR LEGAL ASSISTANCE PROGRAM.

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

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

31 This subchapter is repealed on July 1, 1993.

32 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.

1 Sec. 10. Section 654A.1, Code 1989, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 6. "Farm mediation service" means the
4 organization selected pursuant to section 13.11.

5 Sec. 11. Section 654A.9, Code 1989, is amended by adding
6 the following new subsection:

7 NEW SUBSECTION. 6. Determine whether a creditor has
8 participated in at least one mediation meeting. In order to
9 be considered a participant, the creditor or creditor's
10 representative must attend the meeting and the representative
11 during the meeting must demonstrate a knowledge of the debt
12 and have authority to act on behalf of the creditor in
13 negotiating to restructure the debt. In making the
14 determination that the creditor or representative has
15 participated, the mediator shall consider the degree to which
16 the creditor or representative discussed the debt, stated a
17 position about restructuring the debt, and cooperated in the
18 exchange of information relating to the debt. However, this
19 subsection does not require the creditor to restructure the
20 debt in order to receive a mediation release.

21 Sec. 12. Section 654A.11, subsection 3, Code Supplement
22 1989, is amended to read as follows:

23 3. If the borrower waives mediation, or if a mediation
24 agreement is not reached, the borrower and the creditors may
25 sign a statement prepared by the mediator that mediation was
26 waived or that the parties did not reach an agreement. If any
27 party does not sign the statement, the mediator shall sign the
28 statement. The statement constitutes a mediation release.
29 Unless the borrower waives mediation, a creditor shall not
30 receive a mediation release until the ~~creditor has~~
31 participated mediator has approved the creditor's
32 participation in at least one mediation meeting.

33 Sec. 13. Section 654A.11, subsection 4, Code Supplement
34 1989, is amended by striking the subsection and inserting in
35 lieu thereof the following:

1 4. A mediator shall grant or deny approval of the
2 creditor's participation in a mediation meeting. The
3 mediation service shall promptly notify the creditor in
4 writing by certified mail of a denial of approval and the
5 reasons for the denial. The notice shall state that the
6 creditor has seven days from the date that the notice is
7 delivered to appeal the mediator's decision to the
8 administrative head of the mediation service, pursuant to
9 procedures adopted by the service. The notice shall state
10 that the creditor may also request another mediation meeting.
11 The action for judicial review shall be brought in equity, and
12 the action shall be limited to whether, based on clear and
13 convincing evidence, the decision of the administrative head
14 is an abuse of discretion. The action may be brought either
15 in the district court of Polk county or in the district court
16 in which the farmer or creditor resides. Upon reversing the
17 decision by the service, the court shall order that the
18 service issue the mediation release.

19 Sec. 14. Section 654A.13, subsection 2, Code Supplement
20 1989, is amended by striking the subsection.

21 Sec. 15. Section 654A.13, subsection 3, unnumbered
22 paragraph 1, Code Supplement 1989, is amended by striking the
23 paragraph.

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

25 This chapter is repealed on July 1, 1993.

26 Sec. 17. NEW SECTION. 654B.1 DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

25 Sec. 18. NEW SECTION. 654B.2 VOLUNTARY MEDIATION
26 PROCEEDINGS.

27 A farm resident or other party may request mediation of a
28 dispute by applying to the farm mediation service. The farm
29 mediation service shall make voluntary mediation application
30 forms available. The farm mediation service shall evaluate
31 each request and may direct a mediator to meet with the farm
32 resident and other party to assist in mediation.

33 Sec. 19. NEW SECTION. 654B.3 MANDATORY MEDIATION
34 PROCEEDINGS.

35 1. A person who is a farm resident or other party desiring

1 to initiate a civil proceeding to resolve a dispute shall file
2 a request for mediation with the farm mediation service. The
3 person shall not begin the proceeding until the person
4 receives a mediation release, or until the court determines
5 after notice and hearing that one of the following applies:

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

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

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

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

19 Sec. 20. NEW SECTION. 654B.4 INITIAL MEDIATION MEETING.

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

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

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

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

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

6 Sec. 21. NEW SECTION. 654B.5 DUTIES OF THE MEDIATION
7 SERVICE.

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

11 At the initial mediation meeting and subsequent meetings,
12 the mediator shall:

13 1. Listen to all involved parties.

14 2. Attempt to mediate between all involved parties.

15 3. Encourage compromise and workable solutions.

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

19 Sec. 22. NEW SECTION. 654B.6 PARTICIPATION IN MEDIATION.

20 1. The mediator shall determine whether a party making a
21 claim against another in the dispute has participated in at
22 least one mediation meeting. In order to be considered a
23 participant, the party or the party's representative must
24 attend the meeting and the representative during the meeting
25 must demonstrate a knowledge of the dispute and have authority
26 to act on behalf of the party being represented. In making
27 the determination that a person has participated, the mediator
28 shall consider the degree to which the person discussed the
29 dispute, stated a position about the dispute, and cooperated
30 in the exchange of information relating to the dispute.
31 However, this subsection does not require any person to change
32 a position, alter an activity which is a subject of the
33 dispute, or restructure a contract in order to receive a
34 mediation release.

35 2. The mediator shall grant or deny approval of the

1 party's participation in a mediation meeting. The mediator
2 shall promptly notify the party in writing by certified mail
3 of a denial and the reasons for the denial. The notice shall
4 state that the party has seven days from the date that notice
5 is delivered to appeal the mediator's decision, pursuant to
6 procedures adopted by the service. After a final decision by
7 the farm mediation service, the party may seek an action for
8 judicial review pursuant to section 654B.10.

9 Sec. 23. NEW SECTION. 654B.7 MEDIATION PERIOD.

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

15 Sec. 24. NEW SECTION. 654B.8 MEDIATION RELEASE.

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

20 2. The parties to the mediation agreement may enforce the
21 mediation agreement as a legal contract. The agreement
22 constitutes a mediation release.

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

32 Sec. 25. NEW SECTION. 654B.9 EXTENSION OF DEADLINES.

33 Upon petition by all parties, the farm mediation service
34 may, for good cause, extend a deadline imposed by section
35 654B.4 or section 654B.7 for up to thirty days.

1 Sec. 26. NEW SECTION. 654B.10 JUDICIAL REVIEW.

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

11 Sec. 27. NEW SECTION. 654B.11 EFFECT OF MEDIATION.

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

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

21 Sec. 28. NEW SECTION. 654B.12 REPEAL OF CHAPTER.

22 This chapter is repealed on July 1, 1993.

23 Sec. 29. NEW SECTION. 657.10 MEDIATION NOTICE.

§382 24 Notwithstanding this chapter, a person required under
25 chapter 654B to participate in mediation, shall not begin a
26 proceeding subject to this chapter until the person receives a
27 mediation release under section 654B.8, or until the court
28 determines after notice and hearing that one of the following
29 applies:

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

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

34 Sec. 30.

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

1 subsection.

2 Sec. 31. FUTURE REPEALS.

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

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

5 Sec. 32. REPEALS.

6 1. Sections 654A.2 and 654A.3, Code 1989, are repealed.

7 2. Sections 654A.14 and 654A.15, Code Supplement 1989, are
8 repealed.

9 3. 1986 Iowa Acts, chapter 1214, section 29, as amended by
10 1989 Iowa Acts, chapter 108, section 1, is repealed.

11 Sec. 33. EXISTING FARM MEDIATION SERVICE CONTRACTS.

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

16 Sec. 34. EFFECTIVE DATE.

17 1. Except as provided in subsection 2, all sections of
18 this Act, being deemed of immediate importance, take effect
19 upon enactment.

20 2. Sections 30 and 31 of this Act take effect on July 1,
21 1993.

22 EXPLANATION

23 This bill relates to farm mediation. The name of the
24 position within the attorney general's office designated to
25 select a farm mediation organization is changed from the farm
26 crisis program coordinator to the farm assistance program
27 coordinator. Provisions relating to the coordinator, and
28 confidentiality of information, rules and forms, and liability
29 of the organization (the farm mediation service) are
30 transferred from chapter 654A to chapter 13. Chapter 654A
31 retains provisions relating to creditor and debtor mediation.
32 The bill provides that the farm mediation service may provide
33 mediation services in addition to services provided by
34 statute.

35 The bill creates a new chapter, 654B, which provides for

1 mediation in disputes arising between a person who is a farm
2 resident and another person, which arise from a claim eligible
3 to be resolved in a civil proceeding in law or equity, if the
4 claim relates to the performance of either person under a
5 contract for the care and feeding of livestock, or the claim
6 relates to an action of one person which is alleged to be a
7 nuisance.

8 The new chapter contains provisions similar to creditor-
9 debtor mediation under chapter 654A. A person may request
10 voluntary mediation proceedings. A person desiring to
11 initiate a dispute regarding a contract or nuisance must file
12 a request for mediation. A mediation meeting is mandatory,
13 unless waived by parties to the dispute. An initial mediation
14 meeting must be held within twenty-one days of the issuance of
15 a mediation meeting notice. A party to the dispute cannot
16 proceed with a civil claim regarding the dispute until
17 obtaining a mediation release. A court may determine that
18 mediation should not proceed if a time delay would cause
19 irreparable harm or the dispute involves a claim which is
20 brought as a class action suit. The mediator may call
21 mediation meetings up to forty-two days after the farm
22 mediation service received a mediation request. The bill
23 provides for the issuing of a mediation release. It provides
24 for extension of deadlines under the chapter if all parties
25 agree.

26 The bill provides that under mediation both for creditors
27 and debtors and for nuisances and contracts, the mediator must
28 certify that the party making a claim in a civil proceeding
29 participated in mediation. It also provides for judicial
30 review of decisions made by the mediation service. Judicial
31 review must be brought in equity and is limited to whether the
32 decision by the administrative head of the service represents
33 an abuse of discretion.

34 The bill provides for the training of mediators engaged in
35 mediating nuisance disputes.

1 The bill extends the repeal of provisions relating to farm
2 mediation and legal assistance until July 1, 1993.

3 The bill takes effect upon enactment.

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