

FEB 13 1990

HOUSE FILE 2404  
BY COMMITTEE ON AGRICULTURE

Place On Calendar

(SUCCESSOR TO HSB 706)  
*Substituted for S.F. 2331 2/7*

Passed House, Date 2/19/90 (p. 467) Passed Senate, Date 3/19/90 (p. 1169)  
Vote: Ayes 89 Nays 6 Vote: Ayes 47 Nays 1

*Passed House as amended by Senate*  
Approved April 4, 1990  
3/21/90 (p. 1281)  
96-0

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, increasing  
4 certain fees, extending the date of repeal for certain  
5 provisions, and providing an effective date.

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

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HF 2404

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 21.

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 thirty-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 thirty-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 ~~crisis~~ 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.

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

34 2. "Coordinator" means the farm ~~crisis~~ assistance program  
35 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 1. 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 2. At the initial mediation meeting and subsequent  
12 meetings, the mediator shall:

13 a. Listen to all involved parties.

14 b. Attempt to mediate between all involved parties.

15 c. Encourage compromise and workable solutions.

16 d. 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.

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

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

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

33    Sec. 30.

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

1 Sec. 31. FUTURE REPEALS.

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 Sections 654.2C and 656.8, Code 1989, are repealed.

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 Section 657.10 as created in this Act is repealed.

4 Sec. 32. REPEALS.

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 Sections 654A.2 and 654A.3, Code 1989, are repealed.

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7 repealed.

8 3. 1986 Iowa Acts, chapter 1214, section 29, as amended by  
9 1989 Iowa Acts, chapter 108, section 1, is repealed.

10 Sec. 33. EXISTING FARM MEDIATION SERVICE CONTRACTS.

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

15 Sec. 34. EFFECTIVE DATE.

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

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

21 EXPLANATION

22 This bill relates to farm mediation. The name of the  
23 position within the attorney general's office designated to  
24 select a farm mediation organization is changed from the farm  
25 crisis program coordinator to the farm assistance program  
26 coordinator. Provisions relating to the coordinator, and  
27 confidentiality of information, rules and forms, and liability  
28 of the organization (the farm mediation service) are  
29 transferred from chapter 654A to chapter 13. The hourly fee  
30 charged parties for conducting mediation is increased from \$25  
31 to \$35. Chapter 654A retains provisions relating to creditor  
32 and debtor mediation. The bill provides that the farm  
33 mediation service may provide mediation services in addition  
34 to services provided by 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 on behalf of a  
6 processor, or the claim relates to an action of one person  
7 which is alleged to be a 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 21 days of the issuance of a  
15 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 42 days after the farm mediation  
22 service received a mediation request. The bill provides for  
23 the issuing of a mediation release. It provides for extension  
24 of deadlines under the chapter if all parties agree.

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

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

35 The Act takes effect upon enactment.

## HOUSE FILE 2404

H-5196

1 Amend House File 2404 as follows:

2 1. Page 1, line 33, by striking the figure "654A"  
3 and inserting the following: "17B, 654A,".

4 2. Page 2, line 28, by striking the figure "654A"  
5 and inserting the following: "17B, 654A,".

6 3. Page 3, by inserting after line 31 the fol-  
7 lowing:

8 "Sec. \_\_\_\_ . Section 17A.12, Code 1989, is amended  
9 by adding the following new unnumbered paragraph:

10 NEW UNNUMBERED PARAGRAPH. If the request or demand  
11 involves an action by the department of natural  
12 resources or the environmental protection commission,  
13 relating to environmental quality or the management of  
14 agricultural land, the department or commission shall  
15 deliver a notice to the person making the request or  
16 demand prepared by the farm mediation service pursuant  
17 to section 17B.3. An agency shall not deliver the  
18 notice provided in subsection 2 until at least twenty-  
19 one days after delivering the farm mediation notice.  
20 If the agency receives notice of a mediation  
21 proceeding under chapter 17B, the department or  
22 commission shall not deliver the notice provided in  
23 subsection 2 until the agency receives a mediation  
24 release.

25 Sec. \_\_\_\_ . NEW SECTION. 17B.1 DEFINITIONS.

26 As used in this chapter, unless the context  
27 otherwise requires:

28 1. "Action" means the department carrying out in  
29 whole or in part a measure authorized under statute  
30 directed toward a farm resident or toward another  
31 person which affects the farm resident's farmland. An  
32 action includes but is not limited to carrying out an  
33 agency rule or other statement of law or policy,  
34 order, decision, proceeding, review of an application  
35 for a permit or license, or sanction. "Action" does  
36 not include an investigation or inquiry by the  
37 department, or inaction.

38 2. "Department" means the department of natural  
39 resources established under section 455A.2 and the  
40 environmental protection commission established under  
41 section 455A.6, acting in a capacity to regulate  
42 environmental quality or the management or land  
43 practices which affect farmland.

44 3. "Dispute" means a controversy between a person  
45 who is a farm resident and the department involving an  
46 action or inaction by the department, which arises  
47 from a claim eligible to be resolved in a civil  
48 proceeding in law or equity or as a contested case  
49 proceeding under chapter 17A, by the department or the  
50 attorney general on behalf of the department.

H-5196

Page 2

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

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

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

12 7. "Inaction" means failure by the department to  
13 take action by failing to exercise departmental  
14 discretion authorized by law or failing to perform a  
15 duty required by law.

16 8. "Intervening person" means a person who takes  
17 action or proposes to take action on farmland or on  
18 land which adjoins farmland, if the action is one of  
19 the following:

20 a. Conditional upon administrative action by the  
21 department.

22 b. Subject to enforcement by the department under  
23 the laws of this state.

24 c. Subject to rules adopted by the department  
25 pursuant to chapter 17A.

26 9. "Mediation release" means an agreement or  
27 statement signed by all parties or by less than all  
28 the parties and the mediator pursuant to section  
29 17B.7.

30 Sec. \_\_\_\_ . NEW SECTION. 17B.2 VOLUNTARY MEDIATION  
31 PROCEEDINGS.

32 A farm resident or the department may request  
33 mediation of a controversy between the farm resident  
34 and the department arising from an action or inaction  
35 by the department. No monetary limit is required  
36 before a request may be granted by the farm mediation  
37 service. The mediation service shall make voluntary  
38 mediation application forms available. The farm  
39 mediation service shall evaluate each request and may  
40 direct a mediator to meet with the farm resident and  
41 the department to assist in mediation. If the dispute  
42 involves an action directed to an intervening party,  
43 the service shall invite the intervening party to  
44 participate as a party in mediation.

45 Sec. \_\_\_\_ . NEW SECTION. 17B.3 MANDATORY MEDIATION  
46 PROCEEDINGS.

47 1. A farm resident shall have a right to have a  
48 dispute mediated under this section. However, the  
49 farm resident may only request mediation once relating  
50 to a dispute existing between the farm resident and

H-5196

Page 3

1 the department. Controversies sharing the same issue  
2 and facts shall be deemed a single dispute. Mediation  
3 may be requested under this section if the  
4 departmental action is directed at the farm resident  
5 or the action is directed at an intervening person and  
6 the measure will affect the farm resident's farmland  
7 or quality of life. The farm mediation service shall  
8 alone decide whether a person may receive farm  
9 mediation under this section.

10 2. A farm resident bringing a legal action against  
11 the department or requesting or demanding a contested  
12 case proceeding against a department and arising from  
13 a department's action shall have an opportunity to  
14 request mediation before the commencement of the  
15 proceeding, or the contested case pursuant to section  
16 17A.12. The department shall deliver a notice to the  
17 resident prepared by the farm mediation service  
18 stating how the resident may initiate mandatory  
19 mediation proceedings under this chapter. The notice  
20 shall include a request for mediation also prepared by  
21 the mediation service.

22 3. Before the department may initiate an action  
23 directed at a farm resident which the department  
24 determines will cost the farm resident more than one  
25 hundred dollars in complying with the action, the  
26 department shall deliver a notice to the resident  
27 prepared by the farm mediation service stating how the  
28 resident may initiate mandatory mediation proceedings  
29 under this chapter. The notice shall include a  
30 request for mediation form also prepared by the  
31 mediation service.

32 4. Before the department may initiate an action  
33 directed at an intervening party which the department  
34 determines may cause a reduction of more than five  
35 thousand dollars in the value of the farmland of a  
36 farm resident, the department shall publish in a  
37 newspaper of general circulation within each county  
38 where all affected farmland is located a notice  
39 prepared by the farm mediation service describing how  
40 the resident may initiate mandatory mediation  
41 proceedings under this chapter.

42 5. Following notice to a farm resident, the  
43 department shall publish in the next issue of the Iowa  
44 administrative law bulletin the names of all persons  
45 sent direct notices under this section and the names  
46 of all intervening parties subject to action by the  
47 department which affect farm residents plus the county  
48 in which notice was published. After twenty-one days  
49 following publication in the bulletin, the department  
50 may proceed with its action and the farm resident

H-5196

Page 4

1 shall be deemed to have waived rights to mediation  
2 under this section, unless the farm mediation service  
3 notifies the department that mediation has been  
4 requested by the farm resident.

5 6. Upon timely receipt of a request for mediation,  
6 the farm mediation service may conduct an initial  
7 consultation with the farm resident without charge.  
8 The farm resident may waive mediation after the  
9 initial consultation.

10 7. The department may suspend mediation required  
11 under this section, if the department determines that  
12 an emergency exists requiring immediate action. The  
13 farm mediation service shall issue a temporary  
14 mediation release. Mediation will resume upon  
15 determination by the department that an emergency no  
16 longer exists. The department shall not suspend  
17 mediation to grant a permit or license. The  
18 department shall file a statement with the farm  
19 mediation service providing all reasons for the  
20 suspension. Filing of the statement shall be the  
21 department's final agency action under chapter 17A.  
22 During the suspension the department may proceed with  
23 its action as provided by law. The farm mediation  
24 service or the farm resident may seek judicial review  
25 of the decision pursuant to section 17A.19. If the  
26 court reverses the emergency suspension, the  
27 department shall reimburse the farm mediation service  
28 or the farm resident for court costs plus attorney  
29 fees. The department shall also reimburse the farm  
30 resident any fines or penalties collected from the  
31 farm resident resulting from agency action.

32 Sec. \_\_\_\_ . NEW SECTION. 17B.4 INITIAL MEDIATION  
33 MEETING.

34 Unless the farm resident waives mediation, within  
35 twenty-one days after receiving a mediation request  
36 the farm mediation service shall send a mediation  
37 notice to the farm resident and to the department  
38 setting a time and place for an initial mediation  
39 meeting. If the action involves an intervening  
40 person, the farm mediation service shall send a notice  
41 to each farm resident requesting mediation, to the  
42 department, and to the regulated entity. An initial  
43 mediation meeting shall be held within twenty-one days  
44 of the issuance of the mediation meeting notice. All  
45 persons required to be sent a notice under this  
46 section shall be a party to the mediation.

47 Sec. \_\_\_\_ . NEW SECTION. 17B.5 DUTIES OF MEDIATOR.

48 At the initial mediation meeting and subsequent  
49 meetings, the mediator shall do all of the following:

50 1. Listen to all involved parties.

H-5196

Page 5

1 2. If more than three farm residents are involved  
2 in mediation involving an intervening party, the  
3 mediator may appoint one farm resident to represent  
4 all farm residents in mediating the dispute. The  
5 mediator may place any conditions for participation  
6 upon remaining farm residents who shall remain parties  
7 in mediation.

8 3. Attempt to mediate between all involved  
9 parties.

10 4. Encourage compromise and workable solutions  
11 within the department's legal authority.

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

15 Sec. \_\_\_\_ . NEW SECTION. 17B.6 MEDIATION PERIOD.

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

22 Sec. \_\_\_\_ . NEW SECTION. 17B.7 MEDIATION RELEASE.

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

27 2. The parties to the mediation agreement may  
28 enforce the mediation agreement as a legal contract.  
29 The agreement constitutes a mediation release.

30 3. If the farm resident waives mediation, or if a  
31 mediation agreement is not reached, the parties may  
32 sign a statement prepared by the mediator that  
33 mediation was waived or that the parties did not reach  
34 an agreement. If any party does not sign the  
35 statement, the mediator shall sign the statement. The  
36 statement constitutes a mediation release. Unless the  
37 farm resident waives mediation, the department shall  
38 not receive a mediation release until the mediator has  
39 participated in at least one mediation meeting.

40 Sec. \_\_\_\_ . NEW SECTION. 17B.8 EXTENSION OF  
41 DEADLINES.

42 Upon petition by all parties, the farm mediation  
43 service may, for good cause, extend a deadline imposed  
44 by section 17B.4 or section 17B.6 for up to thirty  
45 days.

46 Sec. \_\_\_\_ . NEW SECTION. 17B.9 JUDICIAL REVIEW.

47 An action for judicial review shall be brought in  
48 equity, and the action shall be limited to whether,  
49 based on clear and convincing evidence, the decision  
50 by the administrative head of the mediation service is

H-5196

Page 6

1 an abuse of discretion. The action may be brought in  
2 either the district court of Polk county or in the  
3 district court in which the affected farm resident  
4 resides. Upon reversing the decision by the service,  
5 the court shall order that the service issue a  
6 mediation release.

7 Sec. \_\_\_\_ . NEW SECTION. 17B.10 REPEAL OF CHAPTER.

8 This chapter is repealed on July 1, 1993.

9 Sec. \_\_\_\_ . Section 455B.103, Code 1989, is amended  
10 by adding the following new subsection:

11 NEW SUBSECTION. 7. Participate in farm mediation  
12 as provided in chapter 17B. The commission shall make  
13 available to the public information relating to  
14 mediation and mediation request forms provided by the  
15 farm mediation service.

16 Sec. \_\_\_\_ . Section 455B.105, Code Supplement 1989,  
17 is amended by adding the following new subsection:

18 NEW SUBSECTION. 12. Participate in farm mediation  
19 as provided in chapter 17B. The department shall make  
20 available to the public information relating to  
21 mediation and mediation request forms provided by the  
22 farm mediation service.

23 Sec. \_\_\_\_ . NEW SECTION. 455B.110 MEDIATION  
24 RELEASE REQUIRED FOR ACTION AGAINST FARM RESIDENT.

25 1. The department or the commission shall not take  
26 an administrative action to enforce a provision of  
27 this chapter involving a farm resident as defined in  
28 section 17B.1, unless the department or commission has  
29 complied with chapter 17B.

30 2. The attorney general shall not take an  
31 administrative action to enforce a provision of this  
32 chapter against a farm resident as defined in section  
33 17B.1, unless the department or commission has  
34 obtained a mediation release pursuant to chapter 17B."

35 4. Page 4, line 31, by striking the words  
36 "approved the creditor's" and inserting the following:  
37 "certified the creditor's reasonable".

38 5. Page 5, line 1, by striking the word  
39 "approval" and inserting the following:  
40 "certification".

41 6. Page 5, line 2, by inserting after the word  
42 "creditor's" the following: "reasonable".

43 7. Page 5, line 4, by striking the word  
44 "approval" and inserting the following:  
45 "certification".

46 8. By renumbering as necessary.

By BENNETT of Ida

H-5196 FILED FEBRUARY 19, 1990

OUT OF ORDER (p. 460)

## SENATE AMENDMENT TO HOUSE FILE 2404

H-5762

1 Amend House File 2404, as passed by the House, as  
2 follows:

3 1. Page 2, line 31, by striking the word "thirty-  
4 five" and inserting the following: "twenty-five".

5 2. Page 3, line 1, by striking the word "thirty-  
6 five" and inserting the following: "twenty-five".

7 3. Page 4, line 2, by striking the word  
8 "subsection" and inserting the following:  
9 "subsections".

10 4. Page 4, by inserting after line 4, the  
11 following:

12 "NEW SUBSECTION. \_\_\_\_\_. "Participate" or  
13 "participation" means attending a mediation meeting,  
14 and discussing issues, stating a position regarding  
15 restructuring, and exchanging information, relating to  
16 any of the following: a debt against agricultural  
17 property which is real estate under chapter 654; a  
18 forfeiture of a contract to purchase agricultural  
19 property under chapter 656; a secured interest in  
20 agricultural property under chapter 554; or a  
21 garnishment, levy, execution, seizure, or attachment  
22 of agricultural property; all as referenced in section  
23 654A.6."

24 5. Page 4, by striking lines 5 through 20.

25 6. Page 4, by striking lines 23 through 32, and  
26 inserting the following:

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

38 b. The mediator shall issue a mediation release  
39 unless the creditor fails to participate in at least  
40 one mediation meeting. The mediator shall issue a  
41 mediation release if the borrower waives or fails to  
42 participate in at least one mediation meeting,  
43 regardless of participation by the creditor. The  
44 creditor or borrower may be represented by another  
45 person, if the person participates in mediation and  
46 has authority to discuss the debt on behalf of the  
47 creditor or borrower. This section does not require  
48 the creditor or borrower to reach an agreement,  
49 including restructuring a debt in order to receive a  
50 mediation release."

Page 2

1 7. Page 5, by striking lines 1 through 5, and  
2 inserting the following:

3 "4. The mediator shall promptly notify a creditor  
4 by certified mail of a denial to issue a mediation  
5 release and the reasons for the denial. The notice  
6 shall state that the".

7 8. Page 6, by inserting after line 24 the  
8 following:

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

13 9. Page 6, line 35, by striking the word  
14 "resident" and inserting the following: "resident,".

15 10. Page 7, line 1, by striking the word  
16 "dispute" and inserting the following: "dispute,".

17 11. By striking page 8, line 19 through page 9,  
18 line 8.

19 12. Page 9, by inserting after line 19, the  
20 following:

21 "\_\_\_\_. a. The mediator shall issue a mediation  
22 release unless the other party desiring to initiate a  
23 civil proceeding to resolve the dispute fails to  
24 participate in at least one mediation meeting. The  
25 mediator shall issue a mediation release if the farm  
26 resident waives or fails to participate in at least  
27 one mediation meeting, regardless of participation by  
28 the other party. A party to a dispute may be  
29 represented by another person, if the person  
30 participates in mediation and has authority to discuss  
31 the dispute on behalf of the party being represented.  
32 This section does not require a party to reach an  
33 agreement. This section does not require a person to  
34 change a position, alter an activity which is a  
35 subject of the dispute, or restructure a contract in  
36 order to receive a mediation release.

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

46 13. Page 10, line 24, by inserting after the word  
47 "person" the following: ", required under chapter  
48 654B to participate in mediation,".

49 14. Title page, lines 3 and 4, by striking the  
50 words "increasing certain fees,".

Page 3

1 15. By renumbering, relettering, or redesignating  
2 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-5762 FILED MARCH 19, 1990

*House concurred 3/21 (p. 1281)*

HOUSE FILE 2404

S-5555

- 1 Amend House File 2404, as passed by the House, as  
2 follows:  
3 1. Page 2, line 31, by striking the word "thirty-  
4 five" and inserting the following: "twenty-five".  
5 2. Page 3, line 1, by striking the word "thirty-  
6 five" and inserting the following: "twenty-five".  
7 3. Title page, lines 3 and 4, by striking the  
8 words "increasing certain fees,".

By JIM RIORDAN

S-5555 FILED MARCH 19, 1990

ADOPTED (p. 1169)

## HOUSE FILE 2404

S-5556

1 Amend House File 2404, as passed by the House, as  
2 follows:

3 1. Page 4, line 2, by striking the word  
4 "subsection" and inserting the following:  
5 "subsections".

6 2. Page 4, by inserting after line 4, the  
7 following:

8 "NEW SUBSECTION. \_\_\_\_\_. "Participate" or  
9 "participation" means attending a mediation meeting,  
10 and discussing issues, stating a position regarding  
11 restructuring, and exchanging information, relating to  
12 any of the following: a debt against agricultural  
13 property which is real estate under chapter 654; a  
14 forfeiture of a contract to purchase agricultural  
15 property under chapter 656; a secured interest in  
16 agricultural property under chapter 554; or a  
17 garnishment, levy, execution, seizure, or attachment  
18 of agricultural property; all as referenced in section  
19 654A.6."

20 3. Page 4, by striking lines 5 through 20.

21 4. Page 4, by striking lines 23 through 32, and  
22 inserting the following:

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

34 b. The mediator shall issue a mediation release  
35 unless the creditor fails to participate in at least  
36 one mediation meeting. The mediator shall issue a  
37 mediation release if the borrower waives or fails to  
38 participate in at least one mediation meeting,  
39 regardless of participation by the creditor. The  
40 creditor or borrower may be represented by another  
41 person, if the person participates in mediation and  
42 has authority to discuss the debt on behalf of the  
43 creditor or borrower. This section does not require  
44 the creditor or borrower to reach an agreement,  
45 including restructuring a debt in order to receive a  
46 mediation release."

47 5. Page 5, by striking lines 1 through 10 and  
48 inserting the following:

49 "e. The mediator shall promptly notify the creditor  
50 by certified mail of a denial to issue a mediation

S-5556

Page 2

1 release and the reasons for the denial. The notice  
2 shall state that the".

3 6. Page 6, by inserting after line 24 the  
4 following:

5 "\_\_\_\_. "Participate" or "participation" means  
6 attending a mediation meeting, and having knowledge  
7 about and discussing issues concerning a subject  
8 relating to a dispute."

9 7. Page 6, line 35, by striking the word  
10 "resident" and inserting the following: "resident,".

11 8. Page 7, line 1, by striking the word "dispute"  
12 and inserting the following: "dispute,".

13 9. By striking page 8, line 19 through page 9,  
14 line 8.

15 10. Page 9, by inserting after line 19, the  
16 following:

17 "\_\_\_\_. a. The mediator shall issue a mediation  
18 release unless the other party desiring to initiate a  
19 civil proceeding to resolve the dispute fails to  
20 participate in at least one mediation meeting. The  
21 mediator shall issue a mediation release if the farm  
22 resident waives or fails to participate in at least  
23 one mediation meeting, regardless of participation by  
24 the other party. A party to a dispute may be  
25 represented by another person, if the person  
26 participates in mediation and has authority to discuss  
27 the dispute on behalf of the party being represented.  
28 This section does not require a party to reach an  
29 agreement. This section does not require a person to  
30 change a position, alter an activity which is a  
31 subject of the dispute, or restructure a contract in  
32 order to receive a mediation release.

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

42 11. Page 10, line 24, by inserting after the word  
43 "person" the following: ", required under chapter  
44 654B to participate in mediation,".

45 12. By renumbering as necessary.

By JIM RIORDAN

S-5556 FILED MARCH 19, 1990

ADOPTED (p. 1169)

Agriculture

HOUSE FILE 2404

BY (PROPOSED COMMITTEE ON  
AGRICULTURE BILL BY  
CHAIRPERSON OSTERBERG)

Passed House, Date \_\_\_\_\_ Passed Senate, 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:

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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 September 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 21.

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 ~~crisis~~ 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  
33 amended to read as follows:

34 2. "Coordinator" means the farm ~~crisis~~ assistance program  
35 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 mediator  
3 shall promptly notify the creditor in writing by certified  
4 mail of a denial of approval and the reasons for the denial.  
5 The notice shall state that the creditor has seven days from  
6 the date that the notice is delivered to appeal the mediator's  
7 decision to the administrative head of the mediation service,  
8 pursuant to procedures adopted by the service. The notice  
9 shall state that the creditor may also request another meeting  
10 from the mediation service. The action for judicial review  
11 shall be brought in equity, and the action shall be limited to  
12 whether, based on clear and convincing evidence, the decision  
13 of the administrative head is an abuse of discretion. The  
14 action may be brought either in the district court of Polk  
15 county or in the district court in which the farmer or  
16 creditor resides. Upon reversing the decision by the service,  
17 the court shall order that the service issue the mediation  
18 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 between  
28 a farm resident and a processor as defined in section 172C.1,  
29 under which the processor directly or indirectly controls the  
30 manufacturing, processing, or preparation for sale of products  
31 derived from livestock if the processor contracted for the  
32 care and feeding of the livestock in this state.

33 2. "Dispute" means a controversy between a person who is a  
34 farm resident and another person, which arises from a claim  
35 eligible to be resolved in a civil proceeding in law or

1 equity, if the claim relates to either of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 a. The time delay required for the mediation would cause

1 the person to suffer irreparable harm.

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

4 Sec. 21. NEW SECTION. 654B.5 DUTIES OF THE MEDIATOR.

5 At the initial mediation meeting and subsequent meetings,  
6 the mediator shall:

7 1. Listen to all involved parties.

8 2. Attempt to mediate between all involved parties.

9 3. Encourage compromise and workable solutions.

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

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

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

29 2. The mediator shall grant or deny approval of the  
30 party's participation in a mediation meeting. The mediator  
31 shall promptly notify the party in writing by certified mail  
32 of a denial and the reasons for the denial. The notice shall  
33 state that the party has seven days from the date that notice  
34 is delivered to appeal the mediator's decision, pursuant to  
35 procedures adopted by the service. After a final decision by

1 the farm mediation service, the party may seek an action for  
2 judicial review pursuant to section 654B.10.

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

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

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

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

14 2. The parties to the mediation agreement may enforce the  
15 mediation agreement as a legal contract. The agreement  
16 constitutes a mediation release.

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

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

27 Upon petition by all parties, the farm mediation service  
28 may, for good cause, extend a deadline imposed by section  
29 654B.4 or section 654B.7 for up to thirty days.

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

31 An action for judicial review shall be brought in equity,  
32 and the action shall be limited to whether, based on clear and  
33 convincing evidence, the decision by the administrative head  
34 of the mediation service is an abuse of discretion. The  
35 action may be brought in either the district court of Polk

1 county or in the district court in which the affected farm  
2 resident resides. Upon reversing the decision by the service,  
3 the court shall order that the service issue a mediation  
4 release.

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

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

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

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

16 This chapter is repealed on July 1, 1993.

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

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

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

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

27 Sec. 30.

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

30 Sec. 31. FUTURE REPEALS.

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

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

33 Sec. 32. REPEALS.

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

35 2. Sections 654A.14 and 654A.15, Code Supplement 1989, are

1 repealed.

2 3. 1986 Iowa Acts, chapter 1214, section 29, as amended by  
3 1989 Iowa Acts, chapter 108, section 1, is repealed.

4 Sec. 33. EXISTING FARM MEDIATION SERVICE CONTRACTS.

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

9 Sec. 34. EFFECTIVE DATE.

10 1. Except as provided in subsection 2, all sections of  
11 this Act, being deemed of immediate importance, take effect  
12 upon enactment.

13 2. Sections 30 and 31 of this Act take effect on July 1,  
14 1993.

15 EXPLANATION

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

28 The bill creates a new chapter, 654B, which provides for  
29 mediation in disputes arising between a person who is a farm  
30 resident and another person, which arise from a claim eligible  
31 to be resolved in a civil proceeding in law or equity, if the  
32 claim relates to the performance of either person under a  
33 contract for the care and feeding of livestock on behalf of a  
34 processor, or the claim relates to an action of one person  
35 which is alleged to be a nuisance.

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

19 The bill provides that under mediation both for creditors  
20 and debtors and for nuisances and contracts, the mediator must  
21 certify that the party making a claim in a civil proceeding  
22 participated in mediation. It also provides for judicial  
23 review of decisions made by the mediation service. Judicial  
24 review must be brought in equity and is limited to whether the  
25 decision by the administrative head of the service represents  
26 an abuse of discretion.

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

29 The Act takes effect upon enactment.

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## HOUSE FILE 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 crisis 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 crisis 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.

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DONALD D. AVENSON  
Speaker of the House

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JO ANN ZIMMERMAN  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2404, Seventy-third General Assembly.

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JOSEPH O'HERN  
Chief Clerk of the House

Approved April 4, 1990

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TERRY E. BRANSTAD  
Governor