

5-2-10/98 Judic 8
5-3/17/98 Do Pass
5.3/16/98 UNFINISHED BUSINESS CALENDAR

FEB 26 1998

HOUSE FILE **2473**
BY COMMITTEE ON JUDICIARY

Place On Calendar

(SUCCESSOR TO HSB 509)
(Formerly 2063)

Passed House, (P.577) Date 3/10/98
Vote: Ayes 93 Nays 0

Passed Senate, Date 3/26/98 (P.920)
Vote: Ayes 47 Nays 0

Approved April 17, 1998
Passed 4-6-98
Vote 99-0 (P.1295)

A BILL FOR

1 An Act providing for mediation in disputes involving agricultural
2 producers.

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

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HOUSE FILE 2473

S-5373

1 Amend House File 2473, as passed by the House, as
2 follows:
3 1. Page 1, by striking line 35.
By NANCY BOETTGER

S-5373 FILED MARCH 25, 1998
Adopted 3/26/98 (P.920)

SENATE AMENDMENT TO HOUSE FILE 2473

H-8734

1 Amend House File 2473, as passed by the House, as
2 follows:
3 1. Page 1, by striking line 35.

RECEIVED FROM THE SENATE

H-8734 FILED MARCH 26, 1998

House Concurred 4/6/98 (P.1293)

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HF 2473

1 Section 1. Section 654A.11, subsection 3, paragraph b,
2 Code 1997, is amended to read as follows:

3 b. The mediator shall issue a mediation release unless the
4 creditor fails to personally attend and participate in at
5 least-one all mediation meeting meetings. The mediator shall
6 issue a mediation release if the borrower waives or fails to
7 personally attend and participate in at-least-one all
8 mediation meeting meetings, regardless of participation by the
9 creditor. ~~The creditor or borrower may be represented by~~
10 ~~another person, if the person participates in mediation and~~
11 ~~has authority to discuss the debt on behalf of the creditor or~~
12 ~~borrower.~~ However, if a creditor or borrower is not a natural
13 person, the creditor or borrower must be represented by a
14 natural person who is an officer, director, employee, or
15 partner of the creditor or borrower. If a person acts in a
16 fiduciary capacity for the creditor or borrower, the fiduciary
17 may represent the creditor or borrower. If the creditor or
18 borrower or eligible representative is not able to attend and
19 participate as required in this paragraph, due to physical
20 infirmity, mental infirmity, or other exigent circumstances
21 determined reasonable by the farm mediation service, the
22 creditor or borrower must be represented by another natural
23 person. Any representative of the creditor or borrower must
24 be authorized to sign instruments provided by this chapter,
25 including a mediation agreement or a statement prepared by the
26 mediator that mediation was waived. This section does not
27 require the creditor or borrower to reach an agreement,
28 including restructuring a debt, in order to receive a
29 mediation release.

30 Sec. 2. Section 654B.4, subsection 3, Code 1997, is
31 amended to read as follows:

32 3. At the meeting, a party ~~to the dispute~~ participating in
33 mediation may be represented accompanied by counsel or appear
34 with a consultant to assist the party in mediation.
35 consultant to assist the party in mediation.

1 Sec. 3. Section 654B.8, subsection 2, paragraph a, Code
2 1997, is amended to read as follows:

3 a. The mediator shall issue a mediation release unless the
4 other party desiring to initiate a civil proceeding to resolve
5 the dispute fails to personally attend and participate in at
6 ~~least-one~~ all mediation ~~meeting~~ meetings. The mediator shall
7 issue a mediation release if the farm resident waives or fails
8 to personally attend and participate in ~~at-least-one~~ all
9 mediation ~~meeting~~ meetings, regardless of participation by the
10 other party. ~~A-party-to-a-dispute-may-be-represented-by~~
11 ~~another-person, if the person participates in mediation and~~
12 ~~has authority to discuss the dispute on behalf of the party~~
13 ~~being represented.~~ However, if the other party or the farm
14 resident is not a natural person, the other party or farm
15 resident must be represented by a natural person who is an
16 officer, director, employee, or partner of the other party or
17 farm resident. If a person acts in a fiduciary capacity for
18 the other party or farm resident, the fiduciary may represent
19 the other party or farm resident. If the other party or farm
20 resident or eligible representative is not able to attend and
21 participate as required in this paragraph, due to physical
22 infirmity, mental infirmity, or other exigent circumstances
23 determined reasonable by the farm mediation service, the other
24 party or farm resident must be represented by another natural
25 person. Any representative of the other party or the farm
26 resident must be authorized to sign instruments provided by
27 this chapter, including a mediation agreement or a statement
28 prepared by the mediator that mediation was waived. This
29 section does not require a party to reach an agreement. This
30 section does not require a person to change a position, alter
31 an activity which is a subject of the dispute, or restructure
32 a contract in order to receive a mediation release.

33 Sec. 4. Section 654C.5, subsection 2, Code 1997, is
34 amended to read as follows:

35 2. The parties agreeing to mediation shall personally

1 attend and participate in at-least-one all mediation meeting
2 meetings. A-party-to-a-dispute-may-be-represented-by-another
3 person, if the person participates in mediation and has
4 authority to discuss the dispute on behalf of the party being
5 represented. However, if a party is not a natural person, the
6 party must be represented by a natural person who is an
7 officer, director, employee, or partner of the party. If a
8 person acts in a fiduciary capacity for a party, the fiduciary
9 may represent the party. If the party or an eligible
10 representative is not able to attend and participate as
11 required in this subsection, due to physical infirmity, mental
12 infirmity, or other exigent circumstances determined
13 reasonable by the farm mediation service, the party must be
14 represented by another natural person. Any representative of
15 a party must be authorized to sign instruments provided by
16 this chapter, including a mediation agreement or a statement
17 prepared by the mediator that mediation was waived. This
18 section does not require a party to reach an agreement. This
19 section does not require a person to change a position, alter
20 an activity which is a subject of the dispute, alter an
21 application for a permit for construction of an animal feeding
22 operation, or restructure a contract.

23 EXPLANATION

24 This bill amends Iowa Code chapters 654A, 654B, and 654C,
25 which provide for mediation affecting agricultural producers.
26 Iowa Code chapter 654A requires mediation between farmers who
27 are borrowers and creditors prior to the enforcement of a
28 legal action to collect the debt. Iowa Code chapter 654B
29 requires mediation in disputes involving farmers who provide
30 care and feeding to livestock under contract. Iowa Code
31 chapter 654C allows for mediation between producers and
32 neighbors negotiating to allow the construction of animal
33 feeding operation structures closer than otherwise legally
34 required to the neighbor's property.

35 The bill requires greater participation by the parties

1 attending the mediation meetings. It provides for the types
 2 of corporate entities that must be involved as parties to a
 3 mediation. It requires personal participation by the parties
 4 subject to mediation. If the party is a corporate entity,
 5 attendance and participation is required by an officer,
 6 director, employee, or partner of the party. If a person acts
 7 in a fiduciary capacity for the party, the fiduciary may
 8 represent the party. Another representative may attend if a
 9 party cannot otherwise be represented. Any representative
 10 must be able to execute documents required under the chapter
 11 including a mediation agreement or waiver.

12 Current law requires participation at only one mediation
 13 meeting, by a party or a party's representative. The bill is
 14 partly in response to the case, Arends v. Iowa Select Farms,
 15 556 N.W.2d 812, in which the Iowa supreme court held that
 16 mediation requirements were satisfied when an attorney for one
 17 party attended and participated in a mediation meeting, even
 18 though the attorney did not have the authority to enter into
 19 an agreement on behalf of the party.

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HSB 509

SUCCESSOR JUDICIARY

SF 2063 & 2473

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Sukup
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HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON LAMBERTI)

Passed House, Date _____

Passed Senate, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act providing for mediation in disputes involving agricultural
2 producers.

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

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1 Section 1. Section 654A.11, subsection 3, paragraph b,
2 Code 1997, is amended to read as follows:

3 b. The mediator shall issue a mediation release unless the
4 creditor fails to personally attend and participate in at
5 ~~least-one~~ all mediation meeting meetings. The mediator shall
6 issue a mediation release if the borrower waives or fails to
7 personally attend and participate in at-least-one all
8 mediation meeting meetings, regardless of participation by the
9 creditor. ~~The creditor or borrower may be represented by~~
10 ~~another person, if the person participates in mediation and~~
11 ~~has authority to discuss the debt on behalf of the creditor or~~
12 ~~borrower.~~ However, if a creditor or borrower is not a natural
13 person, the creditor or borrower must be represented by a
14 natural person who is an officer, director, employee, partner,
15 trustee, or executor of the creditor or borrower. If the
16 creditor or borrower or a representative is not able to attend
17 and participate as required in this paragraph, due to physical
18 infirmity, mental infirmity, or other exigent circumstances
19 determined reasonable by the farm mediation service, the
20 creditor or borrower must be represented by another natural
21 person. Any representative of the creditor or borrower must
22 be authorized to sign instruments required under this chapter,
23 including a mediation agreement or a statement prepared by the
24 mediator that mediation was waived. This section does not
25 require the creditor or borrower to reach an agreement,
26 including restructuring a debt, in order to receive a
27 mediation release.

28 Sec. 2. Section 654B.1, subsection 5, Code 1997, is
29 amended to read as follows:

30 5. "Farm resident" means a person holding an interest in
31 farmland, in fee, under a real estate contract, or under a
32 lease, if the person manages farming operations on the land.
33 A farm resident includes a natural person, or any corporation,
34 trust, or limited liability company, partnership, limited
35 partnership, as-defined-in-section-9H.1 or limited liability

1 partnership organized under state law.

2 Sec. 3. Section 654B.4, subsection 3, Code 1997, is
3 amended to read as follows:

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

7 Sec. 4. Section 654B.8, subsection 2, paragraph a, Code
8 1997, is amended to read as follows:

9 a. The mediator shall issue a mediation release unless the
10 other party desiring to initiate a civil proceeding to resolve
11 the dispute fails to personally attend and participate in ~~at~~
12 ~~least-one~~ all mediation meeting meetings. The mediator shall
13 issue a mediation release if the farm resident waives or fails
14 to personally attend and participate in ~~at-least-one~~ all
15 mediation meeting meetings, regardless of participation by the
16 other party. ~~A-party-to-a-dispute-may-be-represented-by~~
17 ~~another-person,-if-the-person-participates-in-mediation-and~~
18 ~~has-authority-to-discuss-the-dispute-on-behalf-of-the-party~~
19 ~~being-represented:-~~ However, if the other party or the farm
20 resident is not a natural person, the other party or farm
21 resident must be represented by a natural person who is an
22 officer, director, employee, partner, trustee, or executor of
23 the other party or farm resident. If the other party or farm
24 resident, or a representative is not able to attend and
25 participate as required in this paragraph, due to physical
26 infirmity, mental infirmity, or other exigent circumstances
27 determined reasonable by the farm mediation service, the other
28 party or farm resident must be represented by another natural
29 person. Any representative of the other party or the farm
30 resident must be authorized to sign instruments required under
31 this chapter, including a mediation agreement or a statement
32 prepared by the mediator that mediation was waived. This
33 section does not require a party to reach an agreement. This
34 section does not require a person to change a position, alter
35 an activity which is a subject of the dispute, or restructure

1 a contract in order to receive a mediation release.

2 Sec. 5. Section 654C.5, subsection 2, Code 1997, is
3 amended to read as follows:

4 2. The parties agreeing to mediation shall personally
5 attend and participate in at-least-one all mediation meeting
6 meetings. A-party-to-a-dispute-may-be-represented-by-another
7 person, if the person participates in mediation and has
8 authority to discuss the dispute on behalf of the party being
9 represented. However, if a party is not a natural person, the
10 party must be represented by a natural person who is an
11 officer, director, employee, partner, trustee, or executor of
12 the party. If the party or a representative is not able to
13 attend and participate as required in this subsection, due to
14 physical infirmity, mental infirmity, or other exigent
15 circumstances determined reasonable by the farm mediation
16 service, the party must be represented by another natural
17 person. Any representative of a party must be authorized to
18 sign instruments required under this chapter, including a
19 mediation agreement or a statement prepared by the mediator
20 that mediation was waived. This section does not require a
21 party to reach an agreement. This section does not require a
22 person to change a position, alter an activity which is a
23 subject of the dispute, alter an application for a permit for
24 construction of an animal feeding operation, or restructure a
25 contract.

26 EXPLANATION

27 This bill amends Iowa Code chapters 654A, 654B, and 654C,
28 which provide for mediation affecting agricultural producers.
29 Iowa Code chapter 654A requires mediation between farmers who
30 are borrowers and creditors prior to the enforcement of a
31 legal action to collect the debt. Iowa Code chapter 654B
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33 care and feeding to livestock under contract. Iowa Code
34 chapter 654C allows for mediation between producers and
35 neighbors negotiating to allow the construction of animal

1 feeding operation structures closer than otherwise legally
2 required to the neighbor's property.

3 The bill requires greater participation by the parties
4 attending the mediation meetings. It provides for the types
5 of corporate entities that must be involved as parties to a
6 mediation. It requires personal participation by the parties
7 subject to mediation. If the party is a corporate entity,
8 attendance and participation is required by an officer,
9 director, employee, partner, trustee, or executor of the
10 party. Another representative may attend if a party cannot
11 otherwise be represented. Any representative must be able to
12 execute documents required under the chapter including a
13 mediation agreement or waiver.

14 Current law requires participation at only one mediation
15 meeting, by a party or a party's representative. The bill is
16 partly in response to the case, Arends v. Iowa Select Farms,
17 556 N.W.2d 812, in which the Iowa supreme court held that
18 mediation requirements were satisfied when an attorney for one
19 party attended and participated in a mediation meeting, even
20 though the attorney did not have the authority to enter into
21 an agreement on behalf of the party.

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HOUSE FILE 2473

AN ACT
PROVIDING FOR MEDIATION IN DISPUTES INVOLVING AGRICULTURAL
PRODUCERS.

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

Section 1. Section 654A.11, subsection 3, paragraph b, Code 1997, is amended to read as follows:

b. The mediator shall issue a mediation release unless the creditor fails to personally attend and participate in at least one all mediation meeting meetings. The mediator shall issue a mediation release if the borrower waives or fails to personally attend and participate in at least one all mediation meeting meetings, 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. However, if a creditor or borrower is not a natural person, the creditor or borrower must be represented by a natural person who is an officer, director, employee, or partner of the creditor or borrower. If a person acts in a fiduciary capacity for the creditor or borrower, the fiduciary may represent the creditor or borrower. If the creditor or borrower or eligible representative is not able to attend and participate as required in this paragraph, due to physical~~

infirmity, mental infirmity, or other exigent circumstances determined reasonable by the farm mediation service, the creditor or borrower must be represented by another natural person. Any representative of the creditor or borrower must be authorized to sign instruments provided by this chapter, including a mediation agreement or a statement prepared by the mediator that mediation was waived. 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. 2. Section 654B.4, subsection 3, Code 1997, is amended to read as follows:

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

Sec. 3. Section 654B.8, subsection 2, paragraph a, Code 1997, is amended to read as follows:

a. The mediator shall issue a mediation release unless the other party desiring to initiate a civil proceeding to resolve the dispute fails to personally attend and participate in at least one all mediation meeting meetings. The mediator shall issue a mediation release if the farm resident waives or fails to personally attend and participate in at least one all mediation meeting meetings, 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. However, if the other party or the farm resident is not a natural person, the other party or farm resident must be represented by a natural person who is an officer, director, employee, or partner of the other party or farm resident. If a person acts in a fiduciary capacity for the other party or farm resident, the fiduciary may represent the other party or farm resident. If the other party or farm resident or eligible representative is not able to attend and~~

participate as required in this paragraph, due to physical infirmity, mental infirmity, or other exigent circumstances determined reasonable by the farm mediation service, the other party or farm resident must be represented by another natural person. Any representative of the other party or the farm resident must be authorized to sign instruments provided by this chapter, including a mediation agreement or a statement prepared by the mediator that mediation was waived. 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.

Sec. 4. Section 654C.5, subsection 2, Code 1997, is amended to read as follows:

2. The parties agreeing to mediation shall personally attend and participate in at-least-one all mediation meeting meetings. 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. However, if a party is not a natural person, the party must be represented by a natural person who is an officer, director, employee, or partner of the party. If a person acts in a fiduciary capacity for a party, the fiduciary may represent the party. If the party or an eligible representative is not able to attend and participate as required in this subsection, due to physical infirmity, mental infirmity, or other exigent circumstances determined reasonable by the farm mediation service, the party must be represented by another natural person. Any representative of a party must be authorized to sign instruments provided by this chapter, including a mediation agreement or a statement prepared by the mediator that mediation was waived. 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, alter an

application for a permit for construction of an animal feeding operation, or restructure a contract.

RON J. CORBETT
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2473, Seventy-seventh General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved April 17, 1998

TERRY E. BRANSTAD
Governor