

LEGISLATIVE BILL 200

Approved by the Governor March 10, 1997

Introduced by Agriculture Committee: Dierks, 40, Chairperson; Chambers, 11; Cudaback, 36; Hudkins, 21; Schrock, 38; Vrtiska, 1

AN ACT relating to the Farm Mediation Act; to amend sections 2-4804, 2-4808, 2-4809, and 2-4811 to 2-4814, Reissue Revised Statutes of Nebraska, and sections 2-4802 and 2-4816, Revised Statutes Supplement, 1996; to expand the scope of mediation; to change a termination date; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 2-4802, Revised Statutes Supplement, 1996, is amended to read:

2-4802. As used in the Farm Mediation Act, unless the context otherwise requires:

(1) Administrator ~~shall mean~~ means the Department of Agriculture or any other appropriate state agency designated by the Governor;

(2) Borrower ~~shall mean~~ means an individual, limited liability company, corporation, trust, cooperative, joint venture, or other entity entitled to contract who is engaged in farming or ranching, who derives more than fifty percent of his or her gross income from farming or ranching, and who holds an agricultural loan;

(3) Creditor ~~shall mean~~ means any individual, organization, cooperative, partnership, limited liability company, trust, or state or federally chartered corporation to whom an agricultural loan is owed;

(4) Farm mediation service ~~shall mean~~ means an entity with which the administrator contracts to conduct mediation and related services pursuant to the act;

(5) Mediation ~~shall mean~~ means a process by which ~~creditors and borrowers the parties~~ present, discuss, and explore practical and realistic alternatives to the resolution of a borrower's ~~debts dispute~~; and

(6) Mediator ~~shall mean~~ means anyone responsible for and engaged in the performance of mediation pursuant to the act.

Sec. 2. Section 2-4804, Reissue Revised Statutes of Nebraska, is amended to read:

2-4804. (1) Borrowers involved in mediation under the Farm Mediation Act shall be offered assistance, at no cost to borrowers, in the analysis of their business and personal financial situation. The administrator shall contract with one or more eligible persons to provide such assistance. A person shall be eligible to contract to provide services pursuant to this subsection if he or she has staff trained and experienced in farm and ranch financial analysis, is familiar with the unique aspects of production agriculture, is able to work effectively with borrowers and creditors, and demonstrates an ability to assist each borrower in developing alternatives and to evaluate such alternatives for potential viability.

(2) The administrator shall provide any available information regarding legal assistance programs for borrowers and may contract with one or more eligible persons to provide such assistance. A person shall be eligible to contract to provide services pursuant to this subsection if such assistance is provided by attorneys who are qualified in agricultural credit problems of borrowers.

(3) The administrator shall contract with one or more eligible persons to provide farm mediation services pursuant to the Farm Mediation Act. A person shall be eligible to contract to provide farm mediation services if he or she is qualified or provides agricultural credit mediation training of mediators to a level of expertise specified by the administrator and ensures that all mediation sessions are confidential.

(4) Any person contracting with the administrator to provide services pursuant to this section shall demonstrate an ability to perform high quality service for the least cost within the time limits established by the administrator.

(5) The contract or contracts entered into pursuant to this section may be terminated by either party upon written notice. Any person awarded a contract shall be designated as the contractor for the service area of the state set forth in such contract for the duration of the contract.

Sec. 3. Section 2-4808, Reissue Revised Statutes of Nebraska, is amended to read:

2-4808. Any borrower or creditor may request mediation of any

indebtedness incurred in relation to an agricultural loan by applying to the farm mediation service. Any party involved in an adverse decision from a United States Department of Agriculture agency may request mediation by applying to the farm mediation service. The farm mediation service shall notify all the parties and, upon their consent, schedule a meeting with a mediator. The borrower and any creditor parties shall not be required to attend any mediation meetings under this section, and failure to attend any mediation meetings or to participate in mediation under this section shall not affect the rights of a borrower or creditor any party in any manner. Participation in mediation under this section shall not be a prerequisite or a bar to the institution of or prosecution of legal proceedings by the borrower or the creditor any party.

Sec. 4. Section 2-4809, Reissue Revised Statutes of Nebraska, is amended to read:

2-4809. After Within twenty days after receiving a mediation request under section 2-4808, the farm mediation service shall send a mediation meeting notice to all the consenting parties setting a time and place for an initial mediation meeting between the borrower, the creditor or creditors, parties and a mediator associated with the farm mediation service. Adequate preparation by all parties shall be advised by the farm mediation service prior to the mediation meeting. An initial mediation meeting shall be held within twenty forty days of the issuance of the notice after receiving the mediation request or as otherwise agreed by the parties.

Sec. 5. Section 2-4811, Reissue Revised Statutes of Nebraska, is amended to read:

2-4811. If an agreement is reached between the borrower and the creditor or creditors parties, the mediator may (1) draft a written mediation agreement encompassing the agreement, (2) have it signed by the borrower and the creditor or creditors parties, and (3) file the agreement with the farm mediation service. The borrower and any creditor who is a Any party to the mediation agreement may enforce the agreement as a legal contract.

Sec. 6. Section 2-4812, Reissue Revised Statutes of Nebraska, is amended to read:

2-4812. (1) At the initial mediation meeting and any subsequent meetings, the mediator associated with the farm mediation service shall:

(a) Listen to the borrower and any creditor every party desiring to be heard;

(b) Attempt to mediate between the borrower and creditor or creditors parties;

(c) Allow for exploration of legitimate and fair interests of the borrower and creditor or creditors parties; and

(d) Advise the borrower and the creditor or creditors parties as to the existence of any available assistance programs including financial preparation and legal assistance.

(2) All documents and data regarding the finances of borrowers and creditors or the involvement of parties in an adverse decision from a United States Department of Agriculture agency which is are created, collected, and maintained by the farm mediation service shall not be public records and shall be held in strict confidence by the farm mediation service and all parties to the mediation. If all parties consent to disclosure, such information may be disclosed pursuant to the terms of the consent.

(3) No mediation shall commence until the mediator makes a statement to the effect of language contained in subsection (2) of this section. At the end of a mediation session, the mediator shall obtain a signed statement by all parties to the mediation agreeing to abide by the requirements of this section.

Sec. 7. Section 2-4813, Reissue Revised Statutes of Nebraska, is amended to read:

2-4813. The administrator and the farm mediation service shall make an extensive effort to educate borrowers and creditors and other eligible participants on the mediation process; financial, legal, and federal agricultural program issues; and the availability of farm mediation services.

Sec. 8. Section 2-4814, Reissue Revised Statutes of Nebraska, is amended to read:

2-4814. Except as otherwise provided in the Farm Mediation Act, nothing in the act shall be applicable to or shall affect any legal proceedings filed by a borrower or creditor any party in mediation.

Sec. 9. Section 2-4816, Revised Statutes Supplement, 1996, is amended to read:

2-4816. The Farm Mediation Act shall terminate on June 30, 1999 2003, unless extended by action of the Legislature.

Sec. 10. Original sections 2-4804, 2-4808, 2-4809, and 2-4811 to

2-4814, Reissue Revised Statutes of Nebraska, and sections 2-4802 and 2-4816, Revised Statutes Supplement, 1996, are repealed.