

Act 829 of the 1989 Regular Session.

Act 829

SB304

By: Senators Bearden and Gibson

"AN ACT TO ESTABLISH THE ARKANSAS FARM MEDIATION PROGRAM; TO CREATE THE ARKANSAS FARM MEDIATION OFFICE WITHIN THE ARKANSAS INDUSTRIAL DEVELOPMENT COMMISSION; TO PROVIDE FOR A SYSTEM OF MANDATORY AND VOLUNTARY DEBT MEDIATION FOR FARMERS AND THEIR CREDITORS; AND FOR OTHER PURPOSES.

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

SECTION 1. This act shall be known and may be cited as the "Arkansas Farm Mediation Act".

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Action" means a court action or legal recourse to the courts of the State of Arkansas by a creditor against a farmer for payment of a debt, to enforce or foreclose a security interest, lien, or mortgage, or to repossess or declare a creditor's interest in agricultural property; "Actions" include, but are not limited to garnishment, replevin, foreclosure, execution of judgement, and involuntary receivership.

(2) "Agricultural property" means all of the following:

(A) Real property that is used principally for farming or ranching;
(B) Real property that is a farmer's principal place of residence and any land contiguous to the residence;

(C) Personal property that is used as security to finance farming or ranching; and

(D) Personal property that is used for farming or ranching;

(3) "Creditor" means any person who holds a mortgage on agricultural property, who has a lien on or a security interest in agricultural property, or who is a judgement creditor with a judgement against a farmer affecting the farmer's agricultural property;

(4) "Farmer" means any person who is engaged in farming or ranching, who has at least twenty thousand dollars (\$20,000) in outstanding agricultural loans that are secured by real estate, crops, livestock, farm machinery, or other agricultural supplies, and who, either owns or leases a total of fifty (50) acres or more of land that is agricultural property, or has had gross sales of farm products of at least twenty thousand dollars (\$20,000) in any of the preceding three (3) years;

(5) "Farming" or "ranching" means the employment or operation of real property for the production of agricultural products including, but not limited to, the following:

(A) The production or cultivation of agricultural, horticultural, or aquacultural commodities such as field crops, rice, soybeans, cotton, sorghum, corn, wheat, fruit, vegetables, mushrooms, nurserystock, ornamental trees, sod, or flowers;

(B) Animal or poultry husbandry and the production of poultry and poultry products, livestock, equine or fur-bearing animals and wildlife, including the raising, breeding, shearing, grazing, or other feeding of these animals;

(C) Dairy production;

(D) Viticulture, wine-making, and related activities; and
(E) On-site storing, handling, and processing incidental to the production of the foregoing agricultural or horticultural products and commodities;

(6) "Mediation " means the process in which a neutral person or persons intermediate between or among parties for the purpose of facilitating the settlement of their dispute by mutual agreement; and

(7) "Party" or "parties" means, with respect to the mediation of a dispute affecting a farmer's agricultural property, the farmer, a creditor of the farmer, and any other person necessary to the resolution of a dispute or an action.

SECTION 3. (A) There is hereby created within the Division of Agriculture Development of the Arkansas Industrial Development Commission the Arkansas Farm Mediation Office which shall administer the Arkansas Farm Mediation Program to provide mediation and debt management services to farmers and their creditors in the State of Arkansas. The program shall be administered by the Director of the Division of Agriculture Development who shall employ mediators and administrative staff in such numbers as necessary and as the General Assembly may appropriate to carry out the provisions of this act. The Director of the Division of Agricultural Development may apply to the United States Secretary of Agriculture or any other agency or department for any financial assistance for the administration and operation of the program. The Director or his designee shall select mediators who are knowledgeable in the areas of finance, agriculture, and negotiation and shall train them in any other matters as necessary to carry out their functions under this act. The Director shall have the authority to promulgate any necessary rules and regulations to carry out the provisions of this act.

(B) The Arkansas Farm Mediation Office shall prepare all forms necessary for the administration of this Act and shall ensure that forms are disseminated and that the availability of mediation under this Act is publicized so that creditors and borrowers of agricultural loans receive adequate notification of the mediation program.

SECTION 4. (A) In connection with a secured indebtedness of \$20,000 or more, no proceeding against a farmer shall be commenced to foreclose a mortgage on agricultural property, to terminate a contract for deed to purchase agricultural property, to repossess or foreclose a security interest in agricultural property, to set off or seize an account, monies or other asset which is agricultural property, or to enforce any judgment against agricultural property unless the creditor has first obtained a release as provided in this Act; except that an action for attachment or replevin may be commenced without first obtaining a release in those cases provided for under Arkansas Code 16-110-101(1)(A)(vi), (vii) or (viii) or 18-60-807.

(B) Prior to commencing any proceeding prohibited by Section 4 without first obtaining a release, a creditor shall serve a notice on the farmer that the farmer may request mandatory mediation of the farm indebtedness. The notice shall be in a form and contain the information as required by rule. The Director shall make forms available in each county recorder's office. The notice shall contain, at a minimum, the following information: the name and address of the farmer; the name, address and telephone number of the creditor; a description of the debt and the amount currently owing; a description of the agricultural property securing the debt; a description of the proceeding the creditor intends to commence or continue or the action the creditor intends to take; a statement that the farmer has the right to request mandatory mediation which could result in restructuring the debt; the address and telephone number of the Director; a statement that a request for mandatory mediation must be

served on the Director within 14 days after service of the notice on the farmer; and the location of the office of the recorder of the county in which the farmer resides where an application form for requesting mandatory mediation may be obtained. A creditor shall also serve a copy of such mediation notice on the Director within five (5) days after the mediation notice has been served on the farmer by the creditor.

(C) All requests for mediation by a farmer under Section 4(A) shall be served on the Director within fourteen (14) days after the mediation notice was served on the farmer by the creditor. Every request for mediation shall be in a form and contain the information as required by the Director.

(D) Within five (5) days after receiving a request for mediation, the Director shall inform the farmer and the creditor of any financial analysis, legal or other services available that may assist them in preparing for the mediation meeting and of any other requirements the farmer and creditor must meet prior to the mediation meeting. Within twenty-one (21) days after receiving a request for mediation the Director shall assign a mediator and serve notice on the farmer and all his known creditors of the name of the mediator, the time and place of the mediation meetings, which meeting shall be not more than forty-two (42) days after the Director receives the request, and of any activities prohibited during mediation.

(E) Subsections (A) through (D) of this section shall not apply:

(1) Where the debt to be collected was listed as a scheduled debt by the farmer in a petition in bankruptcy or for which a proof of claim form has been filed by a creditor under United States Code, Title 11, Chapter 7, 11, 12, or 13 and

(a) the debt was discharged,

(b) the creditor was granted relief from the automatic stay,

(c) provision for repayment, restructuring or other treatment of the debt was made in a confirmed plan,

(d) in the year preceding the date of commencement of the collection action, the automatic stay provided for under 11 U.S.C. 362 was in effect with regard to the debt for more than ninety (90) days, or

(2) When the Arkansas Farm Mediation Office has not adopted and promulgated bylaws, rules, regulations, or program guidelines necessary to implement this Act or has not hired qualified mediators for the mediation region in which the agricultural property involved is located.

SECTION 5. A farmer and any creditor of the farmer may voluntarily participate in mediation under the Arkansas Farm Mediation Program if they wish to resolve a dispute between them that involves the creditor's interest in a mortgage, lien, security interest, or judgement affecting the agricultural property of the farmer. Voluntary mediation shall occur before an action has been initiated in court in which the farmer and creditor are parties. The Arkansas Farm Mediation Office shall adopt voluntary mediation application and request forms.

SECTION 6. The initial mediation meeting shall be attended by the farmer and the creditor who served the mediation notice. The meeting shall be at least one hour long and may be continued for a longer period at the discretion of the parties involved. Other creditors of the farmer are strongly encouraged to attend and may attend all mediation meetings. After the initial meeting any further mediation meetings shall be held by consent of the parties.

SECTION 7. At the initial mediation meeting and subsequent meetings, the mediator shall:

(1) Listen to the farmer and the creditors desiring to be heard;

(2) Attempt to mediate between the farmer and the creditors to reach a consensus where possible;

(3) Advise the farmer and creditor as to the existence of available assistance programs;

(4) Encourage the parties to adjust, refinance, or provide for the payment of the farmer debts; and

(5) Advise, counsel, and assist the farmer and creditors in attempting to arrive at an agreement for the future conduct of financial relations among the parties or to arrive at a settlement which may be stipulated to in court for the resolution to the court action.

SECTION 8. (A) If an agreement is reached between the farmer and any creditor or creditors, the agreement shall: (a) be signed by the farmer and any such creditor or creditors; (b) bind each to the terms of the agreement; (c) be enforced as a legal contract between the farmer and such creditor or creditors; and (d) constitute a mediation release.

(B) The Director shall issue a release upon request to any creditor who has paid any required fees and: (a) who has attended an initial mediation meeting pursuant to Section 5 or Section 6 of this Act; (b) who has served a mediation notice on the farmer and the farmer has not requested mediation within the time allowed; (c) when the farmer has waived mediation with respect to that creditor or the agricultural property at issue; (d) when the agricultural property has been abandoned by the farmer; (e) in the discretion of the Director if the default is other than monetary; (f) when ordered to do so by a court upon a finding by the court that mediation would be unduly burdensome and an extreme hardship on the creditor; (g) upon the failure of a farmer to appear at a scheduled mediation meeting; or (h) as otherwise provided by rule. A release is effective as to any proceeding commenced or continued or any action taken one year or less after its date of issuance, but is not effective as to any proceeding commenced or action taken more than one year after its date of issuance.

SECTION 9. A farmer or other party has the right to be represented by an attorney at any mediation meeting or hearing. A waiver of this right prior to any mediation meeting or hearing is ineffective.

SECTION 10. (a) All materials, data, and information received by the Arkansas Farm Mediation Office are confidential and are not subject to examination or disclosure as public information under the Freedom of Information Act, Arkansas Code 25-19-101 et seq.

(b) No mediator or administrative employee of the Arkansas Farm Mediation Office shall knowingly disclose any materials, data, or information concerning a mediation request or suspension order without the consent of the farmer and the creditors involved.

(c) Mediation meetings between a farmer and any other parties conducted by a mediator are not open to public participation and are not subject to the provisions for open meetings of the Freedom of Information Act, Arkansas Code 25-19-101 et seq.

SECTION 11. This act does not apply to any commercial bank chartered by the state or federal government.

SECTION 12. All provisions of this act of general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 13. All laws and parts of laws in conflict with this act are

hereby repealed.

APPROVED: March 22, 1989
