

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

304

By: Senators Bearden and Gibson

For An Act To Be Entitled

"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. 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.

SECTION 4. During the pendency of any action brought by a creditor against a farmer, the farmer or his legal representative may, on motion, request and the court shall order a sixty (60) day suspension of the action which shall require all parties to the action to engage in mediation under this act. A suspension order under this section suspends all orders and proceedings in the action for the time period specified here. A suspension order shall not serve to prejudice the rights of any party in the case and may be revoked by the ordering judge prior to the expiration of the sixty (60) time period upon motion of the farmer or his legal representative or upon motion of any other party or parties to the order after proving that the farmer is not attempting to mediate in good faith. If all parties to the court action agree, by written stipulation, that all issues before the court are resolved by mediation, the court shall dismiss the action and order a settlement in accordance with the terms of the written stipulation. If all parties to the action do not agree that the issues are resolved or if the sixty (60) day time period of the suspension order expires, the action shall proceed as if no mediation had been attempted. All parties to a suspension order may voluntarily agree to extend the suspension order for a specific period of time and the court shall order the extension on agreement of all parties.

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. Upon the institution of a suspension order by a court, the farmer or his legal representative shall notify the Arkansas Farm Mediation Office within seven (7) days of the filing of the suspension order. After receiving the notification of the suspension order for mediation or upon the voluntary mediation request, the Arkansas Farm Mediation Office shall assign a mediator to the case. The mediator shall contact all parties and shall set the time, date, and place for the initial mediation meeting to be held within twenty (20) days of the notification of the suspension order or to be held within thirty (30) days of the voluntary mediation request. The mediator shall then send notice of the initial mediation meeting to the farmer and all other parties to the suspension order or the voluntary mediation request. All subsequent mediation meetings shall be held at a time, date, and place as determined by the mediator.

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) Under a suspension order for mediation:

- (1) If all parties to the court action agree, by written stipula-

tion, that all issues before the court are resolved by mediation, the court shall dismiss the action and order a settlement in accordance with the terms of the written stipulation.

(2) If all parties to the court action do not agree that the issues are resolved or if the sixty (60) day time period of the suspension order expires, the court action shall proceed as if no mediation had been attempted.

(3) A suspension order shall not prejudice the rights of any party in the court action.

(b) Under voluntary mediation:

(1) If an agreement is reached between the farmer and the creditors, the mediator shall draft a written mediation agreement, have it signed by the farmer and creditors, and file the agreement with the Arkansas Farm Mediation Office. The farmer and the creditors who are parties to the mediation may enforce the mediation agreement as a legal contract.

(2) If an agreement is not reached between the farmer and the creditors within one hundred and twenty (120) days from the request for voluntary mediation, the mediator shall terminate the voluntary mediation and close the case file.

(3) If all parties agree, the termination deadline of subdivision (b)(2) of this section may be extended for an additional thirty (30) days.

(4) Voluntary mediation shall not prejudice or suspend any parties rights to file a court action.

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. 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 12. All laws and parts of laws in conflict with this act are hereby repealed.