

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

400E0221

## SENATE BILL NO. 26

Introduced by: The Committee on Agriculture and Natural Resources at the request of the  
Department of Agriculture

1 FOR AN ACT ENTITLED, An Act to eliminate the South Dakota Farm Loan Mediation Board  
2 and transfer program authority to the secretary of agriculture, to provide civil liability  
3 immunity for certain agricultural finance counselors, and to authorize the department to  
4 contract with businesses for mediation services.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. That § 54-13-1 be amended to read as follows:

7 54-13-1. Terms used in this chapter mean:

8 (1) "Agricultural land," a parcel of land larger than forty acres not located in any  
9 municipality and used in farming or ranching operations carried on by the owner or  
10 operator within the preceding three-year period for the production of farm products  
11 as defined in subdivision 57A-9-109(3) and ~~shall include~~ includes wasteland lying  
12 within or contiguous to and in common ownership with land used in farming or  
13 ranching operations for the production of farming or ranching products;

14 (2) "Ag finance counselor, a person contracted by the Department of Agriculture  
15 mediation program who is trained to assist in resolving agricultural loan disputes;

1       (3) "Agricultural property," agricultural land or personal property or a combination  
2           thereof used in the pursuit of, or arising out of, or related to, the occupation of  
3           farming or ranching;

4       ~~(3) "Board," the South Dakota Mediation Board;~~

5       (4) "Borrower," an individual, corporation, trust, cooperative, joint venture, or any other  
6           entity entitled to contract who is engaged in farming or ranching and who derives  
7           more than sixty percent of his total gross income from farming or ranching and who  
8           has borrowed from any one creditor on any single farm related debt in excess of fifty  
9           thousand dollars ~~(\$50,000)~~;

10      (5) "Creditor," any individual, organization, cooperative, partnership, trust, or state or  
11           federally chartered corporation to whom is owed debt in excess of fifty thousand  
12           dollars by a borrower. A judgment creditor with a judgment of fifty thousand dollars  
13           or more against a debtor with agricultural property is a creditor within the meaning  
14           of this chapter;

15      (6) "Mediation," a process by which creditors and borrowers present, discuss, and  
16           explore practical and realistic alternatives to the resolution of a borrower's debts; and

17      (7) "Mediator," anyone responsible for and engaged in the performance of mediation  
18           pursuant to this chapter, who ~~shall be~~ is trained and certified by the Department of  
19           Agriculture.

20      Section 2. That § 54-13-2 be amended to read as follows:

21      54-13-2. ~~There is hereby created the South Dakota Farm Loan Mediation Board. The board~~  
22      ~~shall consist of seven members not all of the same political party, not less than two from the~~  
23      ~~agriculture community and not less than two from the financial community, appointed by the~~  
24      ~~Governor to three-year terms, with the terms staggered so that no more than three members'~~

1 terms expire in any one year. The Governor shall designate the terms at the time of appointment  
2 and shall designate one of the members as chairman. Members may be appointed to successive  
3 terms. Any member appointed to fill a vacancy arising from other than the natural expiration of  
4 a term may serve only the unexpired portion of the term. A majority of the board members shall  
5 constitute a quorum. The Department of Agriculture shall administer an agriculture mediation  
6 program to provide assistance to borrowers and creditors who seek to use mediation as a method  
7 for resolving loan disputes.

8 The ~~board~~ secretary of the Department of Agriculture shall adopt rules pursuant to chapter  
9 1-26 necessary to carry out the general purposes of this chapter, including the establishment of  
10 fees, training requirements for mediators and ag finance counselors and their certification,  
11 mediation request forms, and any other procedures as may be necessary for the prompt and  
12 expeditious implementation of this chapter, including the receipt of funds pursuant to the  
13 Agricultural Credit Act of 1987.

14 The ~~board~~ agriculture mediation program may not, as a condition to mediation, require that  
15 the borrower of any creditor waive any ~~of their~~ respective legal or equitable remedies or rights.

16 Section 3. That § 54-13-3 be repealed.

17 ~~—54-13-3. Members shall receive per diem and shall be reimbursed for necessary expenses~~  
18 ~~incurred in connection with performing their duties as prescribed by this chapter.~~

19 Section 4. That § 54-13-4 be amended to read as follows:

20 54-13-4. All staff services required by the ~~board~~ agriculture mediation program shall be  
21 provided by the Department of Agriculture. The ~~board~~ secretary of agriculture may employ a  
22 director of mediation services and such other agents and employees as ~~it~~ the secretary deems  
23 necessary ~~to carry out its duties and purposes subject to the approval of the secretary of~~  
24 ~~agriculture.~~ The director shall serve at the pleasure of the secretary of agriculture. The mediation

1 services shall be administered under the direction and supervision of the Department of  
2 Agriculture. All expenses incurred in carrying on the work of the ~~board~~ agriculture mediation  
3 program, including the per diem and expenses of the ~~board members and~~ staff, salaries, contract  
4 payments, and any other items of expense shall be paid out of funds appropriated or otherwise  
5 made available to the farm mediation operating fund.

6 Section 5. That § 54-13-5 be amended to read as follows:

7 54-13-5. Any fees provided under this chapter and by rule shall be borne equally between the  
8 borrower and the creditor. Such fees and any funds received pursuant to the Agricultural Credit  
9 Act of 1987 shall be deposited in the farm mediation operating fund which is hereby created. All  
10 money in the farm mediation operating fund created by this section is continuously appropriated  
11 for the purposes of administering the farm mediation program. All funds received by the ~~board~~  
12 agriculture mediation program shall be set forth in an informational budget as described in  
13 § 4-7-7.2 and be annually reviewed by the Legislature. Any disbursements from the farm  
14 mediation operating fund shall be by authorization of the ~~chairman of the board and the~~ secretary  
15 of agriculture.

16 Section 6. That § 54-13-6 be amended to read as follows:

17 54-13-6. The Department of Agriculture, in the administration of this chapter, may contract  
18 with one or more established agencies of state government, nonprofit corporations, businesses,  
19 or individuals to provide mediation services for borrowers and creditors and to provide financial  
20 preparation assistance for borrowers involved in mediation. Any contract executed under this  
21 section is exempt from chapter 5-18. The contract may include such terms and conditions as the  
22 ~~board~~ secretary of agriculture deems appropriate.

23 Section 7. That § 54-13-9 be amended to read as follows:

24 54-13-9. Upon receipt of a mediation request, the ~~board~~ director of the agriculture mediation

1 program shall advise the borrower that financial preparation assistance is available and may be  
2 obtained through the financial preparation assistance for borrowers provided in § 54-13-7 and  
3 shall provide any other information available regarding assistance programs to borrowers.

4 Section 8. That § 54-13-10 be amended to read as follows:

5 54-13-10. A creditor desiring to commence an action or a proceeding in this state to enforce  
6 a debt totaling fifty thousand dollars or greater against agricultural land or agricultural property  
7 of the borrower or to foreclose a contract to sell agricultural land or agricultural property or to  
8 enforce a secured interest in agricultural land or agricultural property or pursue any other action,  
9 proceeding or remedy relating to agricultural land or agricultural property of the borrower shall  
10 file a request for mediation with the ~~board~~ director of the agriculture mediation program. No  
11 creditor may commence any such action or proceeding until the creditor receives a mediation  
12 release as described in this chapter, or the debtor waives mediation or until a court determines  
13 after notice and hearing, that the time delay required for mediation would cause the creditor to  
14 suffer irreparable harm because there are reasonable grounds to believe that the borrower may  
15 waste, dissipate or divert agricultural property or that the agricultural property is in imminent  
16 danger of deterioration. Dismissal of a bankruptcy proceeding, abandonment by a bankruptcy  
17 trustee, release or relief from a bankruptcy stay, or release or termination of a receivership  
18 proceeding shall have the effect of a mediation release.

19 Section 9. That § 54-13-11 be amended to read as follows:

20 54-13-11. Unless the borrower waives mediation, the ~~board~~ director of the agriculture  
21 mediation program shall promptly send a mediation meeting notice to the borrower and to all  
22 creditors as defined in subdivision 54-13-1(5), setting a time and place for an initial mediation  
23 meeting between the borrower, the creditor or creditors, and a mediator. An initial mediation  
24 meeting shall be held within twenty-one days of the issuance of the mediation meeting notice.

1 Any creditors of the borrower who are not included in the definition of creditor under  
2 subdivision 54-13-1(5) are exempt from the requirements of this section. Any borrower's failure  
3 to furnish timely information requested by the ~~board~~ director of the agriculture mediation  
4 program constitutes a waiver of the right to mediate under this chapter. Also, the failure of the  
5 borrower and the borrower's spouse, unless excused by the initiating creditor, to attend all  
6 mediation meetings constitutes a waiver of the right to mediate under this chapter.

7 Any creditor subject to mandatory mediation under this chapter who receives notice pursuant  
8 to this section and who participates in all mediation sessions shall be treated as an initiating  
9 creditor and is be subject to the same debt collection limitations as provided in § 54-13-10.

10 Section 10. That § 54-13-12 be amended to read as follows:

11 54-13-12. The total mediation period shall be for a term of forty-two days after the date the  
12 ~~board~~ director of the agriculture mediation program issues the notice to the borrower. The ~~board~~  
13 director of the agriculture mediation program must issue a notice to the borrower within three  
14 business days following receipt of the request for mediation from the creditor. The mediator may,  
15 after the initial meeting, schedule additional mediation meetings during the mediation period.

16 Section 11. That § 54-13-13 be amended to read as follows:

17 54-13-13. A borrower may request mediation of any type or amount of indebtedness by  
18 applying to the ~~board~~ director of the agriculture mediation program. The ~~board~~ director of the  
19 agriculture mediation program may make the appropriate mediation request forms available for  
20 such purpose. The ~~board~~ director of the agriculture mediation program may follow the same  
21 procedure as for mandatory mediation. Neither the borrower nor the creditor may be required  
22 to attend any mediation meetings under this section. Failure to attend mediation meetings or to  
23 participate in mediation under this section does not affect the rights of a borrower or a creditor  
24 in any manner. Participation in mediation under this section is not a prerequisite to or a bar to

1 the commencement of an action of legal proceedings by the borrower or the creditor. No  
2 mediation release may be issued unless the borrower and creditor agree in writing.

3 Section 12. That § 54-13-15 be amended to read as follows:

4 54-13-15. If the borrower and the initiating creditor consent, mediation may continue beyond  
5 the forty-two day mediation period with the same force and effect as though held within the  
6 forty-two day period. If no meeting is held within the forty-two day mediation period, absent  
7 a waiver thereof, extension, or further agreement between borrower and creditor, the expiration  
8 of the mediation period shall conclusively constitute a mediation release. The ~~board~~ director of  
9 the agriculture mediation program shall so inform the borrower and creditors and certify  
10 accordingly.

11 Any agreement reached between borrower and creditors as a result of mediation shall be  
12 drafted into a written agreement. If signed by borrower and creditors, the agreement shall  
13 constitute a mediation release, and the mediator shall so certify on the agreement.

14 Section 13. That § 54-13-18 be amended to read as follows:

15 54-13-18. All data and information regarding the finances of borrowers and creditors which  
16 is created, collected, or maintained by the ~~board~~ director of the agriculture mediation program  
17 pursuant to the terms of this chapter or disclosed to the mediator are not public records and are  
18 confidential and discussions with the mediators are privileged communications.

19 All mediation meetings, and all mediation activities provided by this chapter are exempt from  
20 the provisions of chapter ~~1-25~~ 1-27.

21 Section 14. That § 54-13-20 be amended to read as follows:

22 54-13-20. Any person serving as a mediator or ag finance counselor pursuant to this chapter  
23 is immune from civil liability in any action brought in any court in this state on the basis of any  
24 act or omission resulting in damage or injury if the individual was acting in good faith and within

- 1 the scope of such individual's official functions and duties as a mediator or ag finance counselor
- 2 pursuant to this chapter.