

Approved

February 5, 1988  
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Representative Clifford Campbell at  
Chairperson

9:06 a.m./~~p.m.~~ on January 27, 1988 in room 423-S of the Capitol.

All members were present except: Representative Dean who was excused.

Committee staff present: Raney Gilliland, Legislative Research Department  
Norman Furse, Revisor of Statutes Office  
Marjorie Brownlee, Committee Secretary

Conferees appearing before the committee: Representative Bruce Larkin  
Bill Fuller, Kansas Farm Bureau  
Donald Jacka, Department of Agriculture

Chairman Campbell stated that the purpose of today's meeting is to present any new bills through the Committee. He commented that Secretary of Agriculture Sam Brownback had proffered his three bills in the previous meeting inasmuch as he could not be present today.

Donald Jacka, Department of Agriculture, was present and explained further the bill proposals which had been submitted by Secretary of Agriculture Sam Brownback.

Representative Bruce Larkin requested the Committee for a bill with regard to mediation programs---whether it be mandatory or voluntary. (Attachment I) The difference in this bill and the one proposed by the Board of Agriculture being it would include all lending services.

Representative Gross made a motion to accept the bill. Representative Apt seconded the motion. The motion was passed by the Committee.

Bill Fuller, Kansas Farm Bureau, requested a bill to discourage the filing of nuisance lawsuits, requiring individuals or groups who file unfounded or overturned injunctions against the use of registered agricultural chemicals to reimburse farmers, ranchers, federal, state, and county governments for all court costs, legal fees, losses and costs arising therefrom. (Attachment II)

A motion to introduce the bill was made by Representative Apt. Representative Eckert seconded the motion. The motion was passed by the Committee.

Representative Solbach moved that the Committee introduce a bill with regard to input liens. Representative Neufeld seconded the motion. The motion carried.

Chairman Campbell adjourned the meeting at 9:30 a.m.

The next meeting of the House Agriculture and Small Business Committee will be on Tuesday, February 2, 1988.





# CENTER FOR RURAL AFFAIRS

Post Office Box 405  
Phone (402)846-5428

Walthill, Nebraska 68067  
Population 900

REBUILDING FAMILY FARM AGRICULTURE  
INFORMATION ALERT NO. 87-06

July 27, 1987

## MANDATORY MEDIATION IS ALTERNATIVE TO BANKRUPTCY

Summary: Chapter 12 bankruptcy is proving to be a popular method for farmers to give lenders their due while allowing farm families to retain a minimum farming base from which to rebuild their operations. Importantly for family farm based economies, Chapter 12 is preventing the arbitrary dispersal of the assets of a farm businesses and the unnecessary dislocation of farm families. In South Dakota, nearly 1% of all farmers have filed Chapter 12 bankruptcies in the first 6 months of the law's availability.

However, there are very large and significant differences in total Chapter 12 filings among distressed farm states. In a six-state study which examined bankruptcy filings per 1000 farms, states with no mandatory mediation (Nebraska and South Dakota) experienced a rate of Chapter 12's that is nearly  $4\frac{1}{2}$  times higher than states which have adopted mandatory mediation (Iowa and Minnesota). Statistics so far demonstrate that mandatory mediation is a viable alternative to bankruptcy (see chart), and some lenders are now actively supporting mandatory mediation.

Mandatory mediation before an impartial mediator is being used by farmers as an alternative to bankruptcy according to statistics collected by the Center for Rural Affairs over the last five months in six upper midwestern states. The chart below shows a consistent and repeated pattern: on a per farmer basis states with mandatory mediation experience far fewer Chapter 12 bankruptcy filings than states without mandatory mediation. States with voluntary mediation fall in between.

State	No. of farmers	No. of Chap 12 filings	No. of filings per 1000 farmers	Type of mediation
S. Dak.	36,500	349* (194)**	9.6* (5.3)**	None
Nebr.	59,000	446 (239)	7.6 (4.1)	None
N. Dak.	34,000	90 (46)	2.6 (1.4)	Voluntary
Kansas	72,000	188 (78)	2.6 (1.1)	Voluntary
Iowa	111,000	280 (173)	2.5 (1.6)	Mandatory
Minn.	96,000	114 (58)	1.2 (0.6)	Mandatory

\* As of July 9, 1987.

\*\* As of March 25, 1987.

When the March 25th figures were compiled, one interpretation was that mandatory mediation may simply delay rather than prevent bankruptcy filings,

and that the rate in mediation states would eventually catch up with states like Nebraska and South Dakota which have high rates of Chapter 12 filings and have no mediation. However, no such "catch up" has taken place.

On the contrary, the large discrepancies in Chapter 12 filings have continued. For example, in Iowa and Nebraska (two states with similar degrees of farm distress) the discrepancy is increasing. In March, Nebraska's Chapter 12 filing (per 1000 farmers) was  $2\frac{1}{2}$  times higher than Iowa's (4.1 vs 1.6). In July, it was over 3 times higher (7.6 vs 2.5). The track record of mandatory mediation has won over important converts among agricultural lenders. The Omaha Farm Credit Bank, which originally opposed the adoption of mandatory mediation in Iowa, now supports it and testified in favor of mandatory mediation before the Nebraska legislature.

While mandatory mediation has a significant correlation to the number of Chapter 12 filings in these six states, it is not the only factor. The four states which provide some form of mediation (Kansas, North Dakota, Iowa and Minnesota) have also passed other laws providing alternatives to foreclosure. This makes it easier for farmers to resolve their debt problems and avoid bankruptcy. The South Dakota legislature rejected a mediation scheme at its last legislative session; now nearly 1% of farmers in that state have filed for Chapter 12 over the last six months. In Nebraska, a legislative committee favorably reported a mediation bill, but it has not been acted upon by the full legislature.

Mediation advocates point to a number of advantages that mandatory mediation has over Chapter 12. These include the fact that the mediation process is a face-to-face informal negotiation that is less hostile and more conducive to a consideration of more appropriate and personalized approaches to debt resolutions. Mediation is proving to be less expensive since, if successful, it avoids the high attorneys fees associated with bankruptcy, or for that matter, debt collection under state laws. Disadvantages include the possibility that farmers will go into mediation with inadequate preparation allowing lender representatives to dominate the mediation proceedings.

"Mandatory mediation" is mandatory only in the sense that the parties must meet before the impartial mediator and try to resolve differences. The mediator is a facilitator and cannot make binding decisions. If the parties fail to reach agreement, then they may resort to their normal legal remedies. Ordinarily, that means the lender can begin taking foreclosure and other debt collection actions, and the borrower can file bankruptcy or take any appropriate protective actions allowed under state law. <>

## **Agricultural Chemicals**

We support reasonable regulation of the use of agricultural chemicals to assure adequate standards of public health. We will oppose regulations which are proposed as a result of mass hysteria and are not based on sound judgment and scientific knowledge.

No governmental agency should have the authority to ban, or continue the ban on, the manufacture or use of any agricultural chemical unless there is conclusive scientific proof that such use is detrimental to society.

We believe procedures should be developed so that some chemicals now banned from regular use can, in an emergency, be used by registered, certified applicators to control agricultural pest infestations.

We urge continued funding for research programs which could lead to eradication of those insects and pests that are particularly damaging to agricultural production.

We oppose the State of Kansas becoming involved in registration, certification, or determining the specific restrictions for agricultural chemicals. We believe such activity would be duplication and create confusion with existing federal regulations.

To discourage the filing of nuisance lawsuits, we urge legislation be enacted to:

1. Require individuals or groups that file injunctions against the proper use of registered agricultural chemicals to reimburse farmers, ranchers, federal, state and county governments for all court costs, legal fees, losses and costs arising from such injunctions that are eventually shown to be unfounded or are overturned in a court of law;
2. Require those filing any complaints to provide a bond guaranteeing payment of attorney fees and court costs. The amount shall be set by the court and subject to review upon motion by defense counsel. After conducting a hearing, the court may increase the amount of the bond; and
3. Prohibit non-affected parties from bringing a suit or injunction against pesticide users for possible misuse of chemicals.

## **Agricultural Commodity Storage**

The economic repercussions from grain elevator bankruptcies are devastating for the communities involved.

We continue to support licensing and bonding of all commercial elevators and grain warehouses in Kansas. We recommend increasing inspections of licensed warehouses to a minimum of two each year.

We recommend and support legislation to require grain dealers and grain brokerage firms to be bonded or otherwise provide proof of financial responsibility.

When a grain warehouse failure occurs, we believe that when a check has been issued for payment of grain within 14 days of the declared insolvency, and if the check has not cleared the bank, the party to whom the check was issued should be considered eligible for a share of the bond.

Substantial additional protection should be provided for producers whose grain is in commercial storage. A grain producer security fund (indemnity fund) should be established. In an effort to maximize effectiveness and acceptance of a fund, we recommend these features:

1. Grain producers and grain warehouse operators should contribute to the fund;
2. The fund should be in-addition-to the bond requirements for grain warehouses;
3. Federal and state warehouses should be required to participate;
4. Contributions shall not be used to maintain the fund above a balance of \$10 million;
5. All interest earned on the balance in the fund should be credited to the fund; and
6. The fund should cover not less than 75 percent nor more than 90 percent of all losses incurred from date of delivery of grain to a warehouse to final settlement.