

# House Bill 2444

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for State Department of Agriculture)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Revises statutes relating to mediation of agricultural disputes.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to mediation of agricultural disputes; amending ORS 36.252, 36.254, 36.256, 36.258, 36.260,  
3 36.262, 36.264 and 36.266; repealing ORS 36.250 and 36.270; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. ORS 36.250 and 36.270 are repealed.**

6 **SECTION 2.** ORS 36.252 is amended to read:

7 36.252. (1) **The State Department of Agriculture shall coordinate agricultural mediation**  
8 **services for disputes directly related to activities of the department and agricultural issues**  
9 **under the jurisdiction of the department.**

10 (2) The Director of Agriculture or a designee of the director [*of Agriculture*] shall serve as the  
11 agricultural mediation service coordinator. The coordinator shall establish rules necessary to im-  
12 plement ORS 36.250 to 36.270. The rules [*shall*] **must** include, but need not be limited to:

13 [(1)] (a) Reasonable mediator training guidelines for persons providing **agricultural** mediation  
14 [*service*] **services** under ORS 36.250 to 36.270.

15 [(2)] (b) Fees to be charged for **agricultural** mediation services. [*The fee schedule should be*  
16 *sufficient to cover the costs of providing the mediation service but shall not exceed \$30 per hour per*  
17 *participant.*]

18 [(3)] (c) Methods for advertising the availability of **agricultural** mediation services.

19 (d) **Procedures for accepting applications for agricultural mediation services and for no-**  
20 **tifying any other person who is identified in the request for mediation as a party to the dis-**  
21 **pute.**

22 **SECTION 3.** ORS 36.254 is amended to read:

23 36.254. (1) The **agricultural mediation service** coordinator **servicing under ORS 36.252** shall  
24 contract with [*a person to provide agricultural producer-creditor mediation services*] **one or more**  
25 **providers of agricultural mediation services to provide impartial mediators who are know-**  
26 **ledgeable in agriculture and financial matters.**

27 (2) The coordinator may contract with, or use the services of, a private mediation organization,  
28 **a** community-based program, **a** state agency or a combination of organizations and agencies.

29 (3) [*The*] **A contract entered into under this section** may be terminated by the coordinator  
30 **only** upon 30 days' written notice and for good cause. [*The organization awarded the contract is*  
31 *designated as the agricultural mediation service for the duration of the contract.*]

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 (4) *[The]* **An** agricultural mediation service *[shall be]* **provider other than a state agency is**  
 2 an independent contractor and *[shall not be considered]* **is not** a state agency for any purpose.

3 **SECTION 4.** ORS 36.256 is amended to read:

4 36.256. *[(1) An agricultural producer who is in danger of foreclosure on agricultural property un-*  
 5 *der ORS 86.010 to 86.990, 87.001 to 87.920 or 88.710 to 88.740 or a creditor, before or after beginning*  
 6 *foreclosure proceedings, may request mediation of the agricultural producer's indebtedness by filing a*  
 7 *request with the mediation service on a form provided by the service. However, an agricultural pro-*  
 8 *ducer or creditor may not request mediation under this section unless, at the time the request is made,*  
 9 *the agricultural producer owes more than \$100,000 to one or more creditors, and the debt is either:]*

10 *[(a) Secured by one or more mortgages or trust deeds on the agricultural producer's agricultural*  
 11 *property;]*

12 *[(b) Evidenced by a real estate contract covering the agricultural producer's agricultural property;*  
 13 *or]*

14 *[(c) The subject of one or more statutory liens that have attached to the agricultural producer's*  
 15 *agricultural property.]*

16 *[(2) In filing a mediation request, the agricultural producer shall provide:]*

17 **(1) The State Department of Agriculture may accept a request for mediation under ORS**  
 18 **36.250 to 36.270 of a dispute directly related to activities of the department or agricultural**  
 19 **issues under the jurisdiction of the department from:**

20 **(a) A person engaged in the production of livestock, poultry, field crops, fruit, dairy,**  
 21 **fur-bearing animals, Christmas trees, vermiculture products, food fish or other animal and**  
 22 **vegetable matter; or**

23 **(b) Any other person at the discretion of the department.**

24 **(2) A person may request mediation by submitting the request to the department on a**  
 25 **form provided by the department. A mediation request must include:**

26 **(a) The name and address of each [creditor] party to the dispute;**

27 *[(b) The amount claimed by each creditor;]*

28 *[(c) The amount of the periodic installment payments made to each creditor;]*

29 *[(d) Any financial statements and projected cash flow statements, including those related to any*  
 30 *nonagricultural activities;]*

31 *[(e) The name of the person authorized to enter into a binding mediation agreement; and]*

32 **(b) The name of each party's legal representative, if applicable; and**

33 *[(f)]* **(c) Any additional information the [mediation service] department may require.**

34 *[(3) In filing a mediation request, a creditor shall provide:]*

35 *[(a) Statements regarding the status of the agricultural producer's loan performance;]*

36 *[(b) The name and title of the representative of the creditor authorized to enter into a binding me-*  
 37 *diation agreement; and]*

38 *[(c) Any additional information the mediation service may require.]*

39 *[(4) Nothing in ORS 36.250 to 36.270 shall be construed to require an agricultural producer or*  
 40 *creditor to engage or continue in the mediation of any dispute or controversy. Mediation under ORS*  
 41 *36.250 to 36.270 shall be entirely voluntary for all persons who are parties to the dispute or contro-*  
 42 *versy, and if such persons agree to engage in mediation, any one of the persons may at any time*  
 43 *withdraw from mediation.]*

44 *[(5) If an agricultural producer or a creditor files a mediation request with the mediation service,*  
 45 *the service shall within 10 days after receipt of the request give written notice of the request to any*

1 other person who is identified in the request for mediation as parties to the dispute or controversy. The  
 2 notice shall:]

3 [(a) Be accompanied by a copy of the request for mediation;]

4 [(b) Generally describe the mediation program created by ORS 36.250 to 36.270;]

5 [(c) Explain that participation in mediation is voluntary and that the recipient of the notice is not  
 6 required to engage in mediation or to continue to mediate if mediation is initiated;]

7 [(d) Request that the recipient of the notice advise the mediation service in writing and by certified  
 8 mail within 10 days as to whether the recipient wishes to engage in mediation; and]

9 [(e) Explain that if the written advice required under paragraph (d) of this subsection is not re-  
 10 ceived by the mediation service within the 10-day period, the mediation request will be considered de-  
 11 nied.]

12 [(6) If the person who receives the notice of request for mediation under subsection (5) of this sec-  
 13 tion wishes to engage in mediation, the person shall advise the mediation service in writing within the  
 14 10-day period specified in subsection (5) of this section. The response shall include the appropriate in-  
 15 formation that the responding person would have been required to include in a request for mediation  
 16 under subsection (2) or (3) of this section.]

17 [(7) If the person who receives notice of request for mediation under subsection (5) of this section  
 18 does not wish to engage in mediation, the person may but shall not be required to so advise the medi-  
 19 ation service.]

20 [(8) If the person who receives the notice of request for mediation under subsection (5) of this sec-  
 21 tion does not advise the mediation service in writing within the 10-day period specified in the notice  
 22 described in subsection (5) of this section that the person desires to mediate, the request for mediation  
 23 shall be considered denied.]

24 **(3) ORS 36.250 to 36.270 do not require a person to engage or continue in the mediation**  
 25 **of any dispute. Mediation under ORS 36.250 to 36.270 is voluntary for all parties to the dis-**  
 26 **pute, and if the parties agree to engage in mediation, any party may at any time withdraw**  
 27 **from mediation.**

28 [(9)] **(4)** The submission of a request for mediation [by an agricultural producer or a creditor  
 29 shall] **does** not operate to stay, impede or delay in any manner [whatsoever] the commencement,  
 30 prosecution or defense of any action or proceeding by any person.

31 [(10) If requested by the agricultural producer, the coordinator shall provide the services of a fi-  
 32 nancial analyst to assist the agricultural producer in preparation of financial data for the first medi-  
 33 ation session.]

34 [(11) ORS 36.250 to 36.270 are not applicable to obligations or foreclosure proceedings with respect  
 35 to which the creditor is a financial institution, as defined in ORS 706.008.]

36 **SECTION 5.** ORS 36.258 is amended to read:

37 36.258. [(1) A mediator must be an impartial person knowledgeable in agriculture and financial  
 38 matters.]

39 [(2)] In carrying out mediation under ORS 36.250 to 36.270, a mediator shall:

40 [(a)] **(1)** Listen to the [agricultural producer and any creditor] **parties that are** desiring to be  
 41 heard.

42 [(b)] **(2)** Attempt to facilitate a negotiated agreement that provides for mutual satisfaction. [Such  
 43 an agreement may include mutually agreed upon forbearance from litigation, rescheduled or renegoti-  
 44 ated debt, voluntary sale or other liquidation of agricultural property, authorization for the agricultural  
 45 producer to continue agriculture while providing reasonable security to the creditor or any other mu-

1 *tually agreed upon outcome.]*

2 [(c)] (3) Seek assistance **as necessary** from any public or private agency to effect the goals of  
3 ORS 36.250 to 36.270.

4 [(d)] (4) Permit any person who is a party to the mediation to be represented in all mediation  
5 proceedings by any person selected by the party.

6 [(3) *In carrying out a mediation under ORS 36.250 to 36.270, a mediator may invite additional*  
7 *creditors of the agricultural producer to participate in the mediation. A creditor may be invited to*  
8 *participate in a mediation regardless of whether the agricultural producer is in arrears with the cred-*  
9 *itor.]*

10 **SECTION 6.** ORS 36.260 is amended to read:

11 36.260. (1) If an agreement is reached between the [*agricultural producer and a creditor, the*  
12 *mediator shall draft a written mediation agreement to be signed by the agricultural producer and the*  
13 *creditor*] **parties in a mediation under ORS 36.250 to 36.270, the parties shall sign a written**  
14 **mediation agreement.**

15 (2) [*An agricultural producer and any creditor who are*] **The** parties to a mediation agreement:

16 (a) Are bound by the terms of the agreement;

17 (b) May enforce the mediation agreement as a legal contract; and

18 (c) May use the mediation agreement as a defense against an action contrary to the mediation  
19 agreement.

20 (3) **If the mediator drafts the agreement,** the mediator shall encourage the parties to have  
21 the agreement reviewed by independent legal counsel before signing the agreement.

22 **SECTION 7.** ORS 36.262 is amended to read:

23 36.262. (1) **For purposes of a mediation under ORS 36.250 to 36.270,** all memoranda, work  
24 products and other materials contained in the case files of a mediator [*or*], **an agricultural** medi-  
25 ation service **provider or the State Department of Agriculture** are confidential. Any communi-  
26 cation made in, or in connection with, the mediation [*which*] **that** relates to the [*controversy*]  
27 **dispute** being mediated, whether made to the mediator or a party, or to any other person if made  
28 at a mediation session, is confidential. However, a [*mediated agreement shall not be*] **mediation**  
29 **agreement entered into under ORS 36.260 is not** confidential unless the parties otherwise agree  
30 in writing.

31 (2) Confidential materials and communications are not subject to disclosure in any judicial or  
32 administrative proceeding except:

33 (a) When all parties to the mediation agree, in writing, to waive the confidentiality;

34 (b) In a subsequent action between the mediator and a party to the mediation for damages  
35 arising out of the mediation; or

36 (c) **When the material or communications are** statements, memoranda, materials and other  
37 tangible evidence, otherwise subject to discovery, that were not prepared specifically for use in and  
38 **not** actually used in the mediation.

39 (3) Notwithstanding subsection (2) of this section, a mediator may not be compelled to testify in  
40 any proceeding, unless all parties to the mediation and the mediator agree, in writing, to waive the  
41 confidentiality.

42 **SECTION 8.** ORS 36.264 is amended to read:

43 36.264. Mediators and **agricultural** mediation [*services shall be*] **service providers are** immune  
44 from civil liability for, or resulting from, any act or omission done or made while engaged in efforts  
45 to assist or facilitate a mediation **under ORS 36.250 to 36.270,** unless the act or omission was made

1 or done in bad faith, with malicious intent or in a manner exhibiting a willful, wanton disregard of  
2 the rights, safety or property of another.

3 **SECTION 9.** ORS 36.266 is amended to read:

4 36.266. (1) During the pendency of any action between [*a creditor and an agricultural producer*]  
5 **parties to a mediation under ORS 36.250 to 36.270**, the court may, upon stipulation by all parties  
6 [*requesting mediation under ORS 36.256*], enter an order suspending the action.

7 (2) A suspension order under subsection (1) of this section suspends all orders and proceedings  
8 in the action for the time period specified in the suspension order. In specifying the time period, the  
9 court shall exercise its discretion for the purpose of permitting the parties to engage in mediation  
10 without prejudice to the rights of any person. The suspension order may include other terms and  
11 conditions as the court may consider appropriate. The suspension order may be revoked upon motion  
12 of any party or upon motion of the court.

13 (3) If all parties to the action agree, by written stipulation, that all issues before the court are  
14 resolved by mediation under ORS 36.250 to 36.270, the court shall dismiss the action. If the parties  
15 do not agree that the issues are resolved or if the court revokes the suspension order under sub-  
16 section (2) of this section, the action shall proceed as if mediation had not been attempted.

17 **SECTION 10.** **This 2015 Act being necessary for the immediate preservation of the public**  
18 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**  
19 **on its passage.**

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