

**SENATE
STATE OF MINNESOTA
NINETIETH SESSION**

S.F. No. 1673

(SENATE AUTHORS: DRAHEIM)

DATE	D-PG	OFFICIAL STATUS
03/02/2017	984	Introduction and first reading
		Referred to Agriculture, Rural Development, and Housing Policy
03/08/2017	1171a	Comm report: To pass as amended and re-refer to Judiciary and Public Safety Finance and Policy

1.1 A bill for an act

1.2 relating to agriculture; modifying the Farmer-Lender Mediation Act; increasing

1.3 the minimum debt amount; amending Minnesota Statutes 2016, sections 336.9-601;

1.4 550.365, subdivision 1; 559.209, subdivision 1; 582.039, subdivision 1; 583.215;

1.5 583.24, subdivision 4, by adding a subdivision; 583.26, subdivisions 2, 3, 3a, 4,

1.6 10; 583.27, subdivision 1; repealing Minnesota Statutes 2016, section 583.22,

1.7 subdivision 7b.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2016, section 336.9-601, is amended to read:

1.10 **336.9-601 RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT;**

1.11 **CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT**

1.12 **INTANGIBLES, OR PROMISSORY NOTES.**

1.13 (a) **Rights of secured party after default.** After default, a secured party has the rights

1.14 provided in this part and, except as otherwise provided in section 336.9-602, those provided

1.15 by agreement of the parties. A secured party:

1.16 (1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security

1.17 interest, or agricultural lien by any available judicial procedure; and

1.18 (2) if the collateral is documents, may proceed either as to the documents or as to the

1.19 goods they cover.

1.20 (b) **Rights and duties of secured party in possession or control.** A secured party in

1.21 possession of collateral or control of collateral under section 336.7-106, 336.9-104,

1.22 336.9-105, 336.9-106, or 336.9-107 has the rights and duties provided in section 336.9-207.

2.1 (c) **Rights cumulative; simultaneous exercise.** The rights under subsections (a) and
2.2 (b) are cumulative and may be exercised simultaneously.

2.3 (d) **Rights of debtor and obligor.** Except as otherwise provided in subsection (g) and
2.4 section 336.9-605, after default, a debtor and an obligor have the rights provided in this part
2.5 and by agreement of the parties.

2.6 (e) **Lien of levy after judgment.** If a secured party has reduced its claim to judgment,
2.7 the lien of any levy that may be made upon the collateral by virtue of an execution based
2.8 upon the judgment relates back to the earliest of:

2.9 (1) the date of perfection of the security interest or agricultural lien in the collateral;

2.10 (2) the date of filing a financing statement covering the collateral; or

2.11 (3) any date specified in a statute under which the agricultural lien was created.

2.12 (f) **Execution sale.** A sale pursuant to an execution is a foreclosure of the security interest
2.13 or agricultural lien by judicial procedure within the meaning of this section. A secured party
2.14 may purchase at the sale and thereafter hold the collateral free of any other requirements
2.15 of this article.

2.16 (g) **Consignor or buyer of certain rights to payment.** Except as otherwise provided
2.17 in section 336.9-607(c), this part imposes no duties upon a secured party that is a consignor
2.18 or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

2.19 (h) **Security interest in collateral that is agricultural property; enforcement.** A
2.20 person may not begin to enforce a security interest in collateral that is agricultural property
2.21 subject to sections 583.20 to 583.32 that has secured a debt of more than ~~\$5,000~~ the amount
2.22 provided in section 583.24, subdivision 5, unless: a mediation notice under subsection (i)
2.23 is served on the debtor after a condition of default has occurred in the security agreement
2.24 and a copy served on the director of the agricultural extension service; and the debtor and
2.25 creditor have completed mediation under sections 583.20 to 583.32; or as otherwise allowed
2.26 under sections 583.20 to 583.32.

2.27 (i) **Mediation notice.** A mediation notice under subsection (h) must contain the following
2.28 notice with the blanks properly filled in.

2.29 "TO: ...(Name of Debtor)...

2.30 YOU HAVE DEFAULTED ON THE ...(Debt in Default)... SECURED BY

2.31 AGRICULTURAL PROPERTY DESCRIBED AS ...(Reasonable Description of Agricultural

3.1 Property Collateral). THE AMOUNT OF THE OUTSTANDING DEBT IS ...(Amount of
3.2 Debt)...

3.3 AS A SECURED PARTY, ...(Name of Secured Party)... INTENDS TO ENFORCE
3.4 THE SECURITY AGREEMENT AGAINST THE AGRICULTURAL PROPERTY
3.5 DESCRIBED ABOVE BY REPOSSESSING, FORECLOSING ON, OR OBTAINING A
3.6 COURT JUDGMENT AGAINST THE PROPERTY.

3.7 YOU HAVE THE RIGHT TO HAVE THE DEBT REVIEWED FOR MEDIATION.
3.8 IF YOU REQUEST MEDIATION, A DEBT THAT IS IN DEFAULT WILL BE
3.9 MEDIATED ONLY ONCE. IF YOU DO NOT REQUEST MEDIATION, THIS DEBT
3.10 WILL NOT BE SUBJECT TO FUTURE MEDIATION IF THE SECURED PARTY
3.11 ENFORCES THE DEBT.

3.12 IF YOU PARTICIPATE IN MEDIATION, THE DIRECTOR OF THE
3.13 AGRICULTURAL EXTENSION SERVICE WILL PROVIDE AN ORIENTATION
3.14 MEETING AND A FINANCIAL ANALYST TO HELP YOU TO PREPARE FINANCIAL
3.15 INFORMATION. IF YOU DECIDE TO PARTICIPATE IN MEDIATION, IT WILL BE
3.16 TO YOUR ADVANTAGE TO ASSEMBLE YOUR FARM FINANCE AND OPERATION
3.17 RECORDS AND TO CONTACT A COUNTY EXTENSION OFFICE AS SOON AS
3.18 POSSIBLE. MEDIATION WILL ATTEMPT TO ARRIVE AT AN AGREEMENT FOR
3.19 HANDLING FUTURE FINANCIAL RELATIONS.

3.20 TO HAVE THE DEBT REVIEWED FOR MEDIATION YOU MUST FILE A
3.21 MEDIATION REQUEST WITH THE DIRECTOR WITHIN 14 DAYS AFTER YOU
3.22 RECEIVE THIS NOTICE. THE MEDIATION REQUEST FORM IS AVAILABLE AT
3.23 ANY COUNTY RECORDER'S OR COUNTY EXTENSION OFFICE.

3.24 FROM: ...(Name and Address of Secured Party)..."

3.25 Sec. 2. Minnesota Statutes 2016, section 550.365, subdivision 1, is amended to read:

3.26 Subdivision 1. **Requirement.** A person may not attach, execute on, levy on, or seize
3.27 agricultural property subject to sections 583.20 to 583.32 that has secured a debt of more
3.28 than ~~\$5,000~~ the amount provided in section 583.24, subdivision 5, unless: (1) a mediation
3.29 notice is served on the judgment debtor and a copy served on the director and the debtor
3.30 and creditor have completed mediation under sections 583.20 to 583.32; or (2) as otherwise
3.31 allowed under sections 583.20 to 583.32.

4.1 Sec. 3. Minnesota Statutes 2016, section 559.209, subdivision 1, is amended to read:

4.2 Subdivision 1. **Requirement.** A person may not begin to terminate a contract for deed
4.3 under section 559.21 to purchase agricultural property subject to sections 583.20 to 583.32
4.4 for a remaining balance on the contract of more than ~~\$5,000~~ the amount provided in section
4.5 583.24, subdivision 5, unless: (1) a mediation notice is served on the contract for deed
4.6 purchaser after a default has occurred under the contract and a copy served on the director
4.7 and the contract for deed vendor and purchaser have completed mediation under sections
4.8 583.20 to 583.32; or (2) as otherwise allowed under sections 583.20 to 583.32.

4.9 Sec. 4. Minnesota Statutes 2016, section 582.039, subdivision 1, is amended to read:

4.10 Subdivision 1. **Requirement.** A person may not begin a proceeding under this chapter
4.11 or chapter 580 to foreclose a mortgage on agricultural property subject to sections 583.20
4.12 to 583.32 that has a secured debt of more than ~~\$5,000~~ the amount provided in section 583.24,
4.13 subdivision 5, unless: (1) a mediation notice is served on the mortgagor after a default has
4.14 occurred in the mortgage and a copy is served on the director and the mortgagor and
4.15 mortgagee have completed mediation under sections 583.20 to 583.32; or (2) as otherwise
4.16 allowed under sections 583.20 to 583.32.

4.17 Sec. 5. Minnesota Statutes 2016, section 583.215, is amended to read:

4.18 **583.215 EXPIRATION.**

4.19 Sections 336.9-601, subsections (h) and (i); 550.365; 559.209; 582.039; and 583.20 to
4.20 583.32, expire June 30, ~~2018~~ 2022.

4.21 Sec. 6. Minnesota Statutes 2016, section 583.24, subdivision 4, is amended to read:

4.22 Subd. 4. **Debts.** The Farmer-Lender Mediation Act does not apply to a debt:

4.23 (1) for which a proof of claim form has been filed in bankruptcy by a creditor or that
4.24 was listed as a scheduled debt, of a debtor who has filed a petition in bankruptcy after July
4.25 1, 1987, under United States Code, title 11, chapter 7, 11, 12, or 13;

4.26 (2) if the debt was in default when the creditor received a mediation proceeding notice
4.27 under the Farmer-Lender Mediation Act and the creditor filed a claim form, the debt was
4.28 mediated during the mediation period under section 583.26, subdivision 8, and (i) the
4.29 mediation was unresolved; or (ii) a mediation agreement with respect to that debt was signed;

4.30 (3) for which the creditor has served a mediation notice, the debtor has failed to make
4.31 a timely request for mediation, and within 60 days after the debtor failed to make a timely

5.1 request the creditor began a proceeding to enforce the debt against the agricultural property
5.2 of the debtor;

5.3 (4) for which a creditor has received a mediation proceeding notice and the creditor and
5.4 debtor have restructured the debt and have signed a separate mediation agreement with
5.5 respect to that debt; ~~or~~

5.6 (5) for which there is a lien for rental value of farm machinery under section 514.661;
5.7 or

5.8 (6) that is a new line of credit, loan, or other debt extended by a creditor to the debtor
5.9 as a result of a mediation conducted pursuant to the Farmer-Lender Mediation Act. However,
5.10 this new debt becomes subject to the Farmer-Lender Mediation Act two years after the
5.11 mediation from which the new debt originated ends, as evidenced by the date on the
5.12 termination statement issued by the mediator under section 583.26, subdivision 10.

5.13 Sec. 7. Minnesota Statutes 2016, section 583.24, is amended by adding a subdivision to
5.14 read:

5.15 Subd. 5. **Minimum eligible debt amount.** The minimum debt amount is \$15,000, as
5.16 adjusted by the director for inflation in 2022 and every five years thereafter using the United
5.17 States Department of Agriculture's Index of the Cost of Production.

5.18 Sec. 8. Minnesota Statutes 2016, section 583.26, subdivision 2, is amended to read:

5.19 Subd. 2. **Mediation request.** (a) A debtor must file a mediation request form with the
5.20 director by 14 days after receiving a mediation notice. The debtor must state all known
5.21 creditors with debts secured for agricultural property and must authorize the director to
5.22 obtain the debtor's credit report from one or more credit reporting agencies. The mediation
5.23 request form must include an instruction that the debtor must state all known creditors with
5.24 debts secured by agricultural property and unsecured creditors that are necessary for the
5.25 farm operation of the debtor. It is the debtor's discretion as to which unsecured creditors
5.26 are necessary for the farm operation but the mediation request form must notify the debtor
5.27 that omission of a significant unsecured creditor could result in a bad-faith determination
5.28 pursuant to section 583.27, subdivisions 1, paragraph (a), clause (2), and 2. The mediation
5.29 request must state the date that the notice was served on the debtor. The director shall make
5.30 mediation request forms available in the county recorder's and county extension office of
5.31 each county.

6.1 (b) Except as provided in section 583.24, subdivision 4, paragraph (a), clause (3), a
6.2 debtor who fails to file a timely mediation request waives the right to mediation for that
6.3 debt under the Farmer-Lender Mediation Act. The director shall notify the creditor who
6.4 served the mediation notice stating that the creditor may proceed against the agricultural
6.5 property because the debtor has failed to file a mediation request.

6.6 (c) If a debtor has not received a mediation notice and is subject to a proceeding of a
6.7 creditor enforcing a debt against agricultural property under chapter 580 or 581 or sections
6.8 336.9-601 to 336.9-628, terminating a contract for deed to purchase agricultural property
6.9 under section 559.21, or garnishing, levying on, executing on, seizing, or attaching
6.10 agricultural property, the debtor may file a mediation request with the director. The mediation
6.11 request form must indicate that the debtor has not received a mediation notice.

6.12 Sec. 9. Minnesota Statutes 2016, section 583.26, subdivision 3, is amended to read:

6.13 Subd. 3. **Financial analyst and farm advocate.** (a) Within three business days after
6.14 receiving a mediation request, the director shall provide a financial analyst to meet with the
6.15 debtor and assure that all information relative to the finances of the debtor is prepared ~~for~~
6.16 prior to the initial mediation meeting. The financial analyst must review and, if necessary,
6.17 prepare the debtor's financial records before the initial mediation meeting.

6.18 (b) After receiving the mediation notice, the director shall provide the debtor with a list
6.19 of farm advocates that may be available without charge to assist the debtor and the financial
6.20 analyst.

6.21 Sec. 10. Minnesota Statutes 2016, section 583.26, subdivision 3a, is amended to read:

6.22 Subd. 3a. **Orientation session.** The director shall schedule an orientation session to be
6.23 held at least five days before the first mediation meeting. The debtor, the financial analyst,
6.24 and a mediator shall participate in the orientation session. The mediator at the session need
6.25 not be the one assigned to the mediation proceeding under subdivision 4. Creditors
6.26 participating in the mediation may participate in the orientation session. At the orientation
6.27 session, the financial analyst shall review the debtor's financial and inventory records to
6.28 determine if they are adequate for the mediation and inform the debtor of any inadequacies,
6.29 and the mediator shall inform the debtor of the requirements of the mediation process
6.30 including but not limited to the requirement to participate in good faith by addressing, prior
6.31 to the initial mediation meeting, any inadequacies identified by the financial analyst.

7.1 Sec. 11. Minnesota Statutes 2016, section 583.26, subdivision 4, is amended to read:

7.2 Subd. 4. **Mediation proceeding notice.** (a) By ten days after receiving a mediation
7.3 request, the director shall send: (1) a mediation proceeding notice to the debtor; (2) a
7.4 mediation proceeding notice to all creditors listed by the debtor in the mediation request
7.5 and any additional secured creditors identified by the director from the credit report obtained
7.6 with the debtor's permission under subdivision 2; and (3) a claim form to all secured creditors
7.7 stated by the debtor or identified by the director.

7.8 (b) The mediation proceeding notice must state:

7.9 (1) the name and address of the debtor;

7.10 (2) that the debtor has requested mediation under the Farmer-Lender Mediation Act;

7.11 (3) the time and place for the orientation session;

7.12 (4) the time and place for the initial mediation meeting;

7.13 (5) a list of the names of three mediators that may be assigned to the proceeding, along
7.14 with background information on those mediators including biographical information, a
7.15 summary of previous mediation experience, and the number of agreements signed by parties
7.16 to previous mediation;

7.17 (6) that the debtor and the initiating creditor may each request the director to exclude
7.18 one mediator by notifying the director within three days after receiving the notice;

7.19 (7) that in lieu of having a mediator assigned by the director, the debtor and any one or
7.20 more of the creditors may agree to select and pay for a professional mediator that is approved
7.21 by the director;

7.22 (8) that the Farmer-Lender Mediation Act prohibits the creditor from beginning or
7.23 continuing a proceeding to enforce the debt against agricultural property for 90 days after
7.24 the debtor files a mediation request with the director unless otherwise allowed; and

7.25 (9) that the creditor must provide the debtor by the initial mediation meeting with copies
7.26 of notes and contracts for debts subject to the Farmer-Lender Mediation Act and provide a
7.27 statement of interest rates on the debts, delinquent payments, unpaid principal and interest
7.28 balances, the creditor's value of the collateral, and debt restructuring programs available by
7.29 the creditor.

7.30 (c) An initial mediation meeting must be held within 20 days of the notice.

8.1 (d) The initiating creditor and the debtor may each request the director to exclude one
8.2 mediator from the list by sending the director a notice to exclude the mediator within three
8.3 days after receiving the mediation proceeding notice.

8.4 (e) In lieu of the director assigning a mediator, the debtor and any one or more of the
8.5 creditors may agree to select and pay for a professional mediator for the mediation
8.6 proceeding. The director must approve the professional mediator before the professional
8.7 mediator may be assigned to the mediation proceeding. The professional mediator may not
8.8 be approved unless the professional mediator prepares and signs an affidavit:

8.9 (1) disclosing any biases, relationships, or previous associations with the debtor or
8.10 creditors subject to the mediation proceedings;

8.11 (2) stating certifications, training, or qualifications as a professional mediator;

8.12 (3) disclosing fees to be charged or a rate schedule of fees for the mediation proceeding;

8.13 and

8.14 (4) affirming to uphold the Farmer-Lender Mediation Act and faithfully discharge the
8.15 duties of a mediator.

8.16 (f) After receiving a mediation proceeding notice, a secured creditor must return a claim
8.17 form if the debt is not subject to the Farmer-Lender Mediation Act and specify why the debt
8.18 is not subject to sections 583.20 to 583.32.

8.19 Sec. 12. Minnesota Statutes 2016, section 583.26, subdivision 10, is amended to read:

8.20 Subd. 10. **End of mediation.** (a) The mediator shall sign and serve to the parties and
8.21 the director a termination statement by the end of the time period specified in subdivision
8.22 5.

8.23 (b) The mediator shall prepare a termination statement that:

8.24 (1) acknowledges that mediation has ended and specifies the date on which the mediation
8.25 ended; and

8.26 (2) describes or references agreements, if any, reached between a creditor and the debtor;
8.27 ~~if any,~~ including any new line of credit, loan, or other debt issued by a creditor to the debtor
8.28 as a result of the mediation; and agreements, if any, reached among creditors, ~~if any.~~

8.29 (c) Mediation agreements may be included as part of the termination statement.

9.1 Sec. 13. Minnesota Statutes 2016, section 583.27, subdivision 1, is amended to read:

9.2 Subdivision 1. **Obligation of good faith.** (a) The parties must engage in mediation in
9.3 good faith. Prior to the initial mediation meeting, the director must notify all parties in
9.4 writing of their obligation to participate in good faith, the consequences of failing to
9.5 participate in good faith, and that not participating in good faith includes: (1) a failure on a
9.6 regular or continuing basis to attend and participate in mediation sessions without cause;
9.7 (2) failure to provide full information no later than the initial mediation meeting regarding
9.8 the financial obligations of the parties and other creditors including the obligation of a
9.9 creditor to provide information under section 583.26, subdivision 5, paragraph (d); (3)
9.10 failure of the creditor to designate a representative to participate in the mediation with
9.11 authority to make binding commitments within one business day to fully settle, compromise,
9.12 or otherwise mediate the matter; (4) lack of a written statement of debt restructuring
9.13 alternatives and a statement of reasons why alternatives are unacceptable to one of the
9.14 parties; (5) failure of a creditor to release funds from the sale of farm products to the debtor
9.15 for necessary living and farm operating expenses; or (6) other similar behavior which
9.16 evidences lack of good faith by the party. A failure to agree to reduce, restructure, refinance,
9.17 or forgive debt does not, in itself, evidence lack of good faith by the creditor.

9.18 (b) The amount that the creditor is required to release per month for necessary living
9.19 expenses under this section is limited to ~~\$1,600 per month less~~ the lesser of clause (1) or
9.20 (2), minus the debtor's off-farm income-;

9.21 (1) \$3,800; or

9.22 (2) a sum approximately equal to 1-1/2 times the amount to which the family would be
9.23 entitled if eligible for payments under chapter 256J.

9.24 Beginning in 2022 and every five years thereafter, the director must adjust the monetary
9.25 limit under clause (1) for inflation using the United States All-Items Consumer Price Index.

9.26 (c) If the debtor and creditor do not agree on the amount of necessary living expenses
9.27 to be released, the debtor or creditor may petition conciliation court in the county of the
9.28 debtor's residence to make a determination of the amount to be released. The conciliation
9.29 court must make the determination within ten days after receiving the petition.

9.30 (d) If the debtor and creditors do not agree on the amount of necessary operating expenses
9.31 or necessary living and operating expenses to be released, the debtor or a creditor requested
9.32 to release necessary living or operating expenses may petition the district court of the debtor's
9.33 residence to make a determination of the amount to be released. The court shall hear and
9.34 make a determination of the amount of living and operating expenses to be released within

10.1 ten days after receiving the petition. The court shall also add or subtract up to ten days to
10.2 the time when the creditor can begin to enforce a proceeding to collect the debt against
10.3 agricultural property of the debtor and assess costs, including any attorney fees, among the
10.4 parties to the court proceeding. The court shall equitably adjust the time to begin a creditor's
10.5 proceeding and the assessment of costs based on the parties' good faith claim to the amount
10.6 of living and operating expenses to be released.

10.7 Sec. 14. **REPEALER.**

10.8 Minnesota Statutes 2016, section 583.22, subdivision 7b, is repealed.

10.9 Sec. 15. **EFFECTIVE DATE.**

10.10 This act is effective August 1, 2017, and applies to debt subject to the Farmer-Lender
10.11 Mediation Act that is initiated on or after that date.

APPENDIX
Repealed Minnesota Statutes: S1673-1

583.22 DEFINITIONS.

Subd. 7b. **Necessary living expenses.** As used in section 583.27, "necessary living expenses" means a sum approximately equal to 1-1/2 times the amount to which the family would be entitled if eligible for payments under chapter 256J, unless limited by section 583.27, subdivision 1, paragraph (b).