

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By **CHAIRMAN CHUCK SWYSGOOD**, on January 6, 1995,
at 1:05 p.m.

ROLL CALL

Members Present:

Sen. Charles "Chuck" Swysgood, Chairman (R)
Sen. Gerry Devlin, Vice Chairman (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. Don Hargrove (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Greg Jergeson (D)
Sen. Linda J. Nelson (D)
Sen. Bob Pipinich (D)

Members Excused: none

Members Absent: none

Staff Present: Doug Sternberg, Legislative Council
Jennifer Gaasch, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 44
Executive Action: SB 44

{Tape: 1 ; Side: A; Approx. Counter: ; Comments: .}

HEARING ON SB 44

Opening Statement by Sponsor:

SENATOR TOM BECK, SD 28, from **Deer Lodge**, presented SB 44. **SEN. BECK** stated the reason for the reintroduction of the bill was that he believes that there are some abuses occurring of this nature. He would like the Department of Livestock to explain in further detail why the bill has been introduced.

Proponents' Testimony:

Cork Mortensen, Executive Secretary to the Board of Livestock, read his written testimony (**Exhibit 1**). He noted that various county attorneys have reminded the Department of Livestock that the statutes and the penalties are old and need updating. He noted that **Mark Bridges**, Department of Livestock, is in charge of the district inspectors who enforce these statutes and the members of the committee can direct their questions and concerns to him.

Candace Torgeson, representing the Montana Cattlemen's Association and the Montana Stockgrower's Association (MSGA), stated that they will support this bill.

Nancy Espy, stated that it has been very disappointing to see the county attorney unable to prosecute or get a conviction, therefore supporting the bill. She also stated that the accidental taking of a neighbor's livestock is not considered in this bill. This is for the repeat offenders.

Lorena Frank, Montana Farm Bureau, stated that they also support SB 44.

Opponents' Testimony:None**Questions From Committee Members and Responses:**

SENATOR LINDA NELSON asked **Cork Mortensen** what 46-18-212 is in SB 44. **Cork Mortensen** said that it is the standardized misdemeanor statute which states that there is a fine of 6 months and \$500 or both.

SENATOR BOB PIPINICH asked **SEN. BECK** when moving cattle and a person accidentally ends up with neighbors cattle the neighbor can prosecute and possibly fine the person for taking the cattle and not reporting it. **SEN. BECK** stated that the Department of Livestock is not trying to prosecute people for accidentally having a neighbor's cattle. The problem is when moving cattle from county to county and the rancher is constantly taking his neighbor's cattle and every year a brand inspector is needed to sort through the cattle. The county attorney's office would like to be able to prosecute this type of person.

SENATOR DON HARGROVE asked **SEN. BECK** if the bill is stating that the person is actually taking the animal intentionally. **SEN. BECK** replied that this is true and it was not to prosecute that individual unintentionally taking an animal not belonging to them.

SENATOR REINY JABS asked **SEN. BECK** how the word "negligent" makes it easier to prosecute the individual. **SEN. BECK** replied that it is the judgement of the county attorney and this bill is giving them the right to act on such a situation.

SENATOR GERRY DEVLIN asked **Mark Bridges**, from the Department of Livestock if this bill has changed since two years ago. **Mark Bridges** replied that the only change was the addition of the word negligent, other than the upper sections state 46-18-212, which is the standard misdemeanor charges, and in the lower sections the standard misdemeanor charges were stated.

SENATOR GREG JERGESON asked about the penalties of the trespassing of the animals onto neighbor's property. If the individual has not maintained his fence and the animals trespass on that land, can the neighbor prosecute the other for the trespassing of the animals? **Mark Bridges** stated that a bill was passed (Boundaries, monuments and fences) that states who is responsible for maintaining what fence. Trespassing livestock is not a criminal act, the removal of impounding livestock is where the penalty section for 81-4-217 comes in.

SEN. JERGESON asked **SEN. BECK** asked if it was permissible for a female equine to trespass rather than male equine as stated in the title? **SEN. BECK** stated that male equine are possibly more aggressive than females. **Mark Bridges** stated that the history has been that male animals and stud horses have been aggressive and that is the reason for such a title.

SEN. DEVLIN asked **Mark Bridges** if this is passed how much will it be enforced? **Mark Bridges** replied that it could be used six to twelve times per year. **Mark Bridges** submitted the definitions of willfully, and negligently. (Exhibit #4)

CHAIRMAN SWYSGOOD gave a scenario and asked that **Mark Bridges** apply the last section of the bill. A grazing association has cattle and in the process of moving the cattle one of the member's gets another one of the members' cattle in his herd. They are taken to market and the animal is discovered by the branding inspector. Who's responsibility is it to get the animal back to the owner and what happens if it does not? **Mark Bridges** replied that the animal is either sold and the proceeds are held or the shipper and the brand owner are notified to determine if the animal is a stray or not. Classified as a stray then the owner is contacted and determine what the course of action will be. If the animal is sold there is a shipper's form the shipper can voluntarily fill out and then notify the owner. If the animal is not sold it is the shipper's responsibility to return the animal to the owner. If the shipper will not deliver the animal the Department of Livestock will step in and the owner has the opportunity to file a complaint against the shipper, there is a complaint form, an investigation, and then reviewed by the county attorney.

Closing Statement by Sponsor:

SEN. BECK commented on the scenario of CHAIRMAN SWYSGOOD that there should be an inspection when the animals are going such a distance of one hundred miles or out of the county. He stated that under the circumstances that the **Department of Livestock** has asked for the bill again that there is a need for it and if there was any abuse of the bill he would be the first to correct the situation.

Discussion:

CHAIRMAN SWYSGOOD asked the committee if they wanted to take executive action since there was no fiscal note or take action using a copy of the original fiscal note that was submitted by SEN. BECK ?

Motion:

SEN. BECK moved that SB 44 DO PASS.

Discussion:

SEN. PIPINICH stated that he agrees that there is a problem, but feels that this bill is not the answer.

SEN. HARGROVE stated that he understood the concerns and the separation of the definitions given by the **Department of Livestock** on willfully and negligently creates a concern and he supports the bill.

Vote :

SB 44 passed with SEN. PIPINICH voting no.

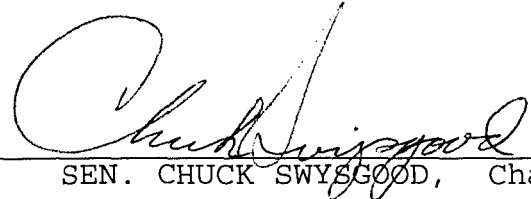
SENATE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE

January 6, 1995

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ADJOURNMENT

Adjournment: 1:36 p.m.

A handwritten signature in cursive script, reading "Chuck Swyggood", written over a horizontal line.

SEN. CHUCK SWYGGOOD, Chair

A handwritten signature in cursive script, reading "Jennifer Gaasch", written over a horizontal line.

JENNIFER GAASCH, Secretary

CS/JG

MONTANA SENATE
1995 LEGISLATURE
AGRICULTURE COMMITTEE

ROLL CALL

DATE 1-6-95

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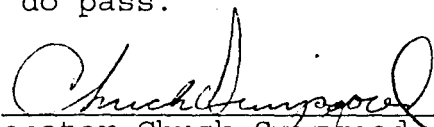
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 6, 1995

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration SB44 (first reading copy -- white), respectfully report that SB44 do pass.

Signed: 
Senator Chuck Swysgood, Chair

 Amd. Coord.
SA Sec. of Senate

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STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0044, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act increasing penalties for allowing male equines and certain cattle to run at large, for taking or rescuing a trespassing animal from the possession of a person who lawfully retains the animal, for unlawful possession of an estray, and for willfully or negligently moving livestock from their owner's customary range.

ASSUMPTIONS:

1. Incidents applicable to this legislation and penalties collected would be minimal.

FISCAL IMPACT: There would be no fiscal impact to the Department of Livestock.

(\$60)

Dave Lewis 1-6-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Thomas A. Beck 1-6-

THOMAS A. BECK, PRIMARY SPONSOR DATE

Fiscal Note for SB0044, as introduced

SENATE AGRICULTURE
EXHIBIT NO. 1
DATE 1-6-95
BILL NO. SB 44

SENATE BILL 44

SENATE AGRICULTURE
EXHIBIT NO. 1
DATE 1-6-95
BILL NO. SB 44

Mr. Chairman and members of the committee, for the record my name is Cork Mortensen and I am the Executive Secretary to the Board of Livestock. The Board and Department of Livestock support this legislation and urge you to support Senate Bill 44 for the following reasons:

This bill simplifies various penalty provisions by standardizing misdemeanor penalties. It will then be easier for judges to apply the sanctions imposed in a more or less uniform manner.

This bill also changes section 81-5-101 by insertion of the term "negligently". That will allow the judicial system to more easily prosecute individuals if circumstances warrant. You should also be aware that this change is being done at the behest of various county attorneys.

Thank you for your time and consideration in this matter. Once again, the Board and Department of Livestock urge you to support this legislation. If you have any questions or need more information, I should be happy to respond.

Thank you,



E.E. "Cork" Mortensen, Executive Secretary
To the Board of Livestock

SENATE AGRICULTURE

EXHIBIT NO. 2

DATE 1-6-95

FILE NO. SB 44

SENATE AGRICULTURE

EXHIBIT NO. 2

DATE 1-6-95

BILL NO. SB 44

81-5-101 MOVING LIVESTOCK FROM CUSTOMARY RANGE

Willfully; is "an act or omission if done voluntarily and intentionally and with the specific intent to do something the law forbids".

Negligently; is "the failure to use such care as a reasonably prudent and careful person would use under similar circumstances"

This Legislative change was derived from the request of County Attorney's that have attempted to prosecute cases for the victims, regarding their livestock being removed from their Customary Range.

The difficulty in prosecution was the term willfully; intentionally removed would be proving theft, a felony, which in numerous cases was not the defendant's motive.

By inserting or negligently this would give the prosecutors more latitude in the pursuit of Justice and would not weaken the strength of this statute.

from Mark Bridges, Department of Livestock

DATE 1-6-95

SENATE COMMITTEE ON Agriculture, livestock, and Irrigation

BILLS BEING HEARD TODAY: SB 44

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Clark Mortensen	Mt. Board of Livestock	44	X	
LARRY BROWN	Ag. PRES. ASSOC.	44		
MARC BRIDGES	DEPT. OF LIVESTOCK	44		
NAUREEN CLARY-SCHWINDEN	W.I.F.E.	44		
WANEY ESPY	BOARD OF LIVESTOCK	44	X	
CANDACE JOrgison	MSA & Mt. Cattlemen	44	X	
Max Maddox	Self (Maddox Ranch)	44		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY