

HOUSE BILL NO. 345

INTRODUCED BY THOMAS, O'KEEFE

BY REQUEST OF THE SECRETARY OF STATE

IN THE HOUSE

JANUARY 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
JANUARY 23, 1989	FIRST READING.
FEBRUARY 9, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 10, 1989	PRINTING REPORT.
FEBRUARY 11, 1989	SECOND READING, DO PASS.
FEBRUARY 13, 1989	ENGROSSING REPORT.
FEBRUARY 14, 1989	THIRD READING, PASSED. AYES, 91; NOES, 6.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 15, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
	FIRST READING.
MARCH 8, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 9, 1989	SECOND READING, CONCURRED IN.
MARCH 11, 1989	THIRD READING, CONCURRED IN. AYES, 42; NOES, 1.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 13, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 14, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 345
2 INTRODUCED BY Thomas Rife
3 BY REQUEST OF THE SECRETARY OF STATE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING FACSIMILE
6 COPIES OF CERTAIN DOCUMENTS TO BE FILED WITH THE SECRETARY
7 OF STATE PENDING FILING OF THE ORIGINAL DOCUMENT WITHIN 5
8 DAYS; AND AMENDING SECTIONS 30-9-403, 35-1-102, AND
9 35-2-102, MCA."
10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 30-9-403, MCA, is amended to read:

13 "30-9-403. What constitutes filing -- duration of
14 filing -- fees -- effect of lapsed filing -- duties of
15 filing officer -- computerized farm statement system. (1)(a)
16 Presentation for filing of a financing statement and tender
17 of the filing fee or acceptance of the statement by the
18 filing officer constitutes filing under this chapter.

19 (b) The secretary of state may treat a facsimile copy
20 of a document the same as an original for purposes of
21 subsection (1)(a), provided that he receives the original
22 document within 5 working days of the receipt of the
23 facsimile copy. If all other requirements are met, the date
24 of filing relates back to the date of receipt of the
25 facsimile copy. A facsimile copy may be filed under

1 subsection (1)(a) if it:

2 (i) is produced by a method of transmission of images
3 in which the image is scanned at the transmitter,
4 reconstructed at the receiving station, and duplicated on
5 paper at the receiving station; and

6 (ii) is legible and the same size as the original.

7 (c) During the 5-day period referred to in subsection
8 (1)(b), the recorded facsimile copy constitutes constructive
9 notice for all purposes of the original document.

10 (2) Except as provided in subsections (6) and (11), a
11 filed financing statement is effective for a period of 5
12 years from the date of filing. The effectiveness of a filed
13 financing statement lapses on the expiration of the 5-year
14 period unless a continuation statement is filed prior to the
15 lapse. If a security interest perfected by filing exists at
16 the time insolvency proceedings are commenced by or against
17 the debtor, the security interest remains perfected until 60
18 days after termination of the insolvency proceedings ~~and~~
19 ~~thereafter-for-a-period-of-60-days~~ or until expiration of
20 the 5-year period, whichever occurs later. Upon lapse the
21 security interest becomes unperfected, unless it is
22 perfected without filing. If the security interest becomes
23 unperfected upon lapse, it is considered to have been
24 unperfected as against a person who became a purchaser or
25 lien creditor before lapse.

1 (3) A continuation statement may be filed by the
 2 secured party within 6 months prior to the expiration of the
 3 5-year period specified in subsection (2). Any such
 4 continuation statement must be signed by the secured party,
 5 identify the original statement by file number, and state
 6 that the original statement is still effective. A
 7 continuation statement signed by a person other than the
 8 secured party of record must be accompanied by a separate
 9 written statement of assignment signed by the secured party
 10 of record and complying with 30-9-405(2), including payment
 11 of the required fee. Upon timely filing of the continuation
 12 statement, the effectiveness of the original statement is
 13 continued for 5 years after the last date to which the
 14 filing was effective, whereupon it lapses in the same manner
 15 as provided in subsection (2) unless another continuation
 16 statement is filed prior to such lapse. Succeeding
 17 continuation statements may be filed in the same manner to
 18 continue the effectiveness of the original statement. Unless
 19 a statute on disposition of public records provides
 20 otherwise, the filing officer may remove a lapsed statement
 21 from the files and destroy it immediately if he has retained
 22 a microfilm or other photographic record, or in other cases
 23 after 1 year after the lapse. The filing officer shall so
 24 arrange matters by physical annexation of financing
 25 statements to continuation statements or other related

1 filings, or by other means, that if he physically destroys
 2 the financing statements of a period more than 5 years past,
 3 those which have been continued by a continuation statement
 4 or which are still effective under subsection (6) shall be
 5 retained.

6 (4) Except as provided in subsection (7), a filing
 7 officer shall mark each statement with a file number and
 8 with the date and hour of filing and shall hold the
 9 statement or a microfilm or other photographic copy thereof
 10 for public inspection. In addition, the filing officer shall
 11 index the statements according to the name of the debtor and
 12 shall note in the index the file number and the address of
 13 the debtor given in the statement.

14 (5) The uniform fees for filing, indexing, and
 15 stamping a copy furnished by the filing party to show the
 16 date and place of filing shall be set pursuant to subsection
 17 (13).

18 (6) If the debtor is a transmitting utility and a
 19 filed financing statement so states, it is effective until a
 20 termination statement is filed. A real estate mortgage that
 21 is effective as a fixture filing under 30-9-402(6) remains
 22 effective as a fixture filing until the mortgage is released
 23 or satisfied of record or its effectiveness otherwise
 24 terminates as to the real estate.

25 (7) When a financing statement covers timber to be cut -

1 or covers minerals or the like (including oil and gas) or
2 accounts subject to 30-9-103(5) or is filed as a fixture
3 filing, the filing officer shall index it under the names of
4 the debtor and any owner of record shown on the financing
5 statement in the same fashion as if they were the mortgagors
6 in a mortgage of the real estate described and, to the
7 extent that the law of this state provides for indexing of
8 mortgages under the name of the mortgagee, under the name of
9 the secured party as if he were the mortgagee thereunder, or
10 if indexing is by description, in the same fashion as if the
11 financing statement were a mortgage of the real estate
12 described.

13 (8) When a financing or continuation statement filed
14 by a financial institution covers farm products or accounts,
15 livestock, general intangibles arising from or relating to
16 the sale of farm products by a farmer, crops growing or to
17 be grown, or equipment used in farming operations, the fee
18 for filing must be established by the secretary of state in
19 an amount commensurate with the costs of establishing and
20 operating the computerized access system described in
21 subsection (9).

22 (9) Within one working day of receipt of a financing
23 or continuation statement, the secretary of state shall
24 record the information contained in the statement on a
25 centralized computer system that he shall establish. The

1 computer system must allow access to financing statement
2 information by any type of communications which conform to
3 standards used by the state central computer. The system
4 must have safeguards to allow only access to UCC data and to
5 prevent alteration, addition, or deletion of the UCC data.
6 The computer must be accessible whenever the state computer
7 system is available. A perfected security interest is not
8 created until the financing statement information is
9 recorded on the system. A printout of information from the
10 system is prima facie evidence of the existence or
11 nonexistence of the filing of a financing statement. The
12 secretary of state shall maintain adequate errors and
13 omissions liability coverage to protect against input errors
14 causing loss to a secured party.

15 (10) The secretary of state shall, upon request of a
16 clerk and recorder, mail a certified copy of a financing
17 statement, continuation statement, assignment, amendment, or
18 termination covering collateral described in subsection (8)
19 to the clerk and recorder in the county of the principal
20 debtor's residence. The secretary of state shall mail the
21 requested copies at least once each week. This subsection
22 does not require the secretary of state to mail a copy of
23 any document which does not specifically indicate the county
24 of the principal debtor's residence on its face.

25 (11) When a financing or continuation statement covers

property described in subsection (8), its effectiveness lapses on July 1, 1986, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement on file with the county clerk and all related documents.

(12) Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile mailing lists.

(13) The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall deposit in a state special revenue fund in the state treasury all fees he collects, and the fee money may be paid out of the treasury only on appropriation made by the legislature as provided in 17-8-101. Any fee money collected under this part and remaining in the state treasury after all current fiscal year expenditures are met must be transferred to the general fund. The secretary of state shall disseminate the uniform fee schedule to the county clerk and recorders for their use."

Section 2. Section 35-1-102, MCA, is amended to read:

"35-1-102. Definitions. As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this chapter.

(3) "Registered agent" means the person appointed as an agent of the corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.

(5) "Shares" means the units into which the proprietary interests in a corporation are divided.

(6) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(7) "Shareholder" means one who is a holder of record of shares in a corporation and is synonymous with the term

"stockholder". If the articles of incorporation or the bylaws so provide, the board of directors may adopt by resolution a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of such shareholder are held for the account of a specified person or persons. The resolution shall set forth the classification of a shareholder who may certify; the purpose or purposes for which the certification may be made; the form of certification and information to be contained therein; if the certification is with respect to a record date or closing of the stock transfer books, the time after the record date or closing of the stock transfer books within which the certification must be received by the corporation; and ~~such~~ other provisions with respect to the procedure as are considered necessary or desirable. Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be considered, for the purpose or purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.

(8) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.

(9) (a) "Filed with the secretary of state" ~~shall be~~

~~deemed is considered~~ to be the time of receipt of a document by him, if he subsequently finds that it conforms to law. ~~Such~~ The finding ~~shall relate~~ relates back to the time of receipt, but receipt by the secretary of state ~~shall~~ may not of itself constitute filing under this chapter.

(b) The secretary of state may treat a facsimile copy of a document the same as an original for purposes of subsection (9)(a), provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under subsection (9)(a) if it:

(i) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(ii) is legible and the same size as the original.

(c) During the 5-day period referred to in subsection (9)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(10) "Distribution" means a direct or indirect transfer by a corporation of money or other property (except its own shares) or incurrance of indebtedness to or for the benefit of any of its shareholders in respect to any of its shares,

whether by dividend or by purchase, redemption, or other acquisition of its shares or otherwise."

Section 3. Section 35-2-102, MCA, is amended to read:

"35-2-102. **Definitions.** As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a nonprofit corporation organized under laws other than the laws of this state.

(3) "Nonprofit corporation" means a corporation, no part of the income or profit of which is distributable to its members, directors, or officers.

(4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger.

(5) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such the rules are designated.

(6) "Member" means one's having membership rights in a corporation in accordance with the provisions of its

articles of incorporation or bylaws.

(7) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such the group is designated.

(8) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs.

(9) (a) "Filed with the secretary of state" shall--be deemed is considered to be the time of receipt of a document by him if he subsequently finds that it conforms to law. Such The finding shall--relate relates back to the time of receipt, but receipt by the secretary of state ~~shall~~ may not of itself constitute "filing" under this chapter.

(b) The secretary of state may treat a facsimile copy of a document the same as an original for purposes of subsection (9)(a), provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under subsection (9)(a) if it:

(i) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on

1 paper at the receiving station; and
 2 (ii) is legible and the same size as the original.
 3 (c) During the 5-day period referred to in subsection
 4 (9)(b), the recorded facsimile copy constitutes constructive
 5 notice for all purposes of the original document."
 6 **NEW SECTION. Section 4. Filing of a facsimile copy.**
 7 (1) The secretary of state may treat a facsimile copy of a
 8 document that is required to be filed under [this chapter or
 9 part] the same as an original for purposes of [this chapter
 10 or part], provided that he receives the original document
 11 within 5 working days of the receipt of the facsimile copy.
 12 If all other requirements are met, the date of filing
 13 relates back to the date of receipt of the facsimile copy. A
 14 facsimile copy may be filed under this section if it:
 15 (a) is produced by a method of transmission of images
 16 in which the image is scanned at the transmitter,
 17 reconstructed at the receiving station, and duplicated on
 18 paper at the receiving station; and
 19 (b) is legible and the same size as the original.
 20 (2) During the 5-day period referred to in subsection
 21 (1), the recorded facsimile copy constitutes constructive
 22 notice for all purposes of the original document.
 23 **NEW SECTION. Section 5. Extension of authority.** Any
 24 existing authority to make rules on the subject of the
 25 provisions of [this act] is extended to the provisions of

1 [this act].
 2 **NEW SECTION. Section 6. Codification instruction.**
 3 [Section 4] is intended to be codified as an integral part
 4 of the following chapters and parts, and the provisions of
 5 those chapters and parts apply to [section 4]:
 6 (1) parts 2 and 3 of chapter 13, Title 30;
 7 (2) part 10 of chapter 1, Title 35; and
 8 (3) chapters 12 and 15 of Title 35.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB345, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act permitting facsimile copies of certain documents to be filed with the Secretary of State pending filing of the original document within 5 days; and amending Sections 30-9-403, 35-1-102, and 35-2-102, MCA.

ASSUMPTIONS:

1. The level of filings will not be impacted: therefore the current levels of FTE and operating expenses are appropriate and do not change.
2. Exceptions to this are the addition of one telephone line, one FAX machine, and office supplies necessary to operate the FAX machine.
3. The purchase of a FAX machine is currently in the FY90 budget as developed in conjunction with the Governor's Budget Office and LFA.
4. Income figures assume that we will follow statute and charge fees to recover the costs of services.
5. Growth between FY90 and FY91 assumes 10% increase in FAX filings, and equal increase in supplies.

FISCAL IMPACT:

	<u>FY90</u>			<u>FY91</u>		
	Current	Proposed		Current	Proposed	
<u>Expenditures:</u>	Law	Law	Difference	Law	Law	Difference
Operating Expenses	\$ 522	\$ 1,522	\$ 1,000	\$ 550	\$ 1,650	\$ 1,100
Equipment	2,000	2,000	-0-	-0-	-0-	-0-
TOTAL	\$ 2,522	\$ 3,522	\$ 1,000	\$ 550	\$ 1,650	\$ 1,100
<u>Funding Sources:</u>						
General Fund	\$ 1,891	\$ 2,641	\$ 750	\$ 412	\$ 1,237	\$ 825
State Special	631	881	250	138	413	275
TOTAL	\$ 2,522	\$ 3,522	\$ 1,000	\$ 550	\$ 1,650	\$ 1,100
<u>Revenues:</u>						
Corporate Filings	\$ -0-	\$ 2,321	\$ 2,321	\$ -0-	\$ 2,553	\$ 2,553
UCC/AG Filings	-0-	3,097	3,097	-0-	3,406	3,406
TOTAL	\$ -0-	\$ 5,418	\$ 5,418	\$ -0-	\$ 5,959	\$ 5,959

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Depending upon the usage and volume of filings, it is possible that additional FAX machines may be necessary. Also, income may be affected through rule modification to ensure compliance with the statutory requirement that this office charge fees commensurate with the cost of providing the service. Such additions or changes would be done only on a break-even or revenue generating basis.

Ray Shackelford 1/30/89
 RAY SHACKLEFORD, BUDGET DIRECTOR DATE
 OFFICE OF BUDGET AND PROGRAM PLANNING

Fred Thomas 2/02/89
 FRED THOMAS, PRIMARY SPONSOR DATE

Fiscal Note for HB345, as introduced

HB 345

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

HOUSE BILL NO. 345

INTRODUCED BY THOMAS, O'KEEFE

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING FACSIMILE COPIES OF CERTAIN DOCUMENTS TO BE FILED WITH THE SECRETARY OF STATE PENDING FILING OF THE ORIGINAL DOCUMENT WITHIN 5 DAYS; PROVIDING THAT A PERSON WHO FILES A FALSE DOCUMENT BY FACSIMILE COPY IS LIABLE FOR RESULTANT DAMAGES; AND AMENDING SECTIONS 30-9-403, 35-1-102, AND 35-2-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-9-403, MCA, is amended to read:

"30-9-403. What constitutes filing -- duration of filing -- fees -- effect of lapsed filing -- duties of filing officer -- computerized farm statement system. (1)(a) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(b) The secretary of state may treat a facsimile copy of a document AND THE SIGNATURES ON THE FACSIMILE COPY IN the same MANNER as an original for purposes of 39-9-402 AND subsection (1)(a), provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date

of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under subsection (1)(a) if it:

(i) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(ii) is legible and the same size as the original.

(c) During the 5-day period referred to in subsection (1)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(D) IF THE ORIGINAL DOCUMENT IS NOT RECEIVED WITHIN 5 WORKING DAYS OF RECEIPT OF THE FACSIMILE COPY AS PROVIDED IN SUBSECTION (1)(B), THE FILING OF THE FACSIMILE COPY IS VOID.

(E) A PERSON WHO FILES A FALSE DOCUMENT BY FACSIMILE COPY IS LIABLE TO THE PARTY AGGRIEVED FOR THREE TIMES THE AMOUNT OF DAMAGES RESULTING FROM THE FILING OF THE FALSE DOCUMENT.

(2) Except as provided in subsections (6) and (11), a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against

1 the debtor, the security interest remains perfected until 60
 2 days after termination of the insolvency proceedings and
 3 ~~thereafter--for--a--period--of--60--days~~ or until expiration of
 4 the 5-year period, whichever occurs later. Upon lapse the
 5 security interest becomes unperfected, unless it is
 6 perfected without filing. If the security interest becomes
 7 unperfected upon lapse, it is considered to have been
 8 unperfected as against a person who became a purchaser or
 9 lien creditor before lapse.

10 (3) A continuation statement may be filed by the
 11 secured party within 6 months prior to the expiration of the
 12 5-year period specified in subsection (2). Any such
 13 continuation statement must be signed by the secured party,
 14 identify the original statement by file number, and state
 15 that the original statement is still effective. A
 16 continuation statement signed by a person other than the
 17 secured party of record must be accompanied by a separate
 18 written statement of assignment signed by the secured party
 19 of record and complying with 30-9-405(2), including payment
 20 of the required fee. Upon timely filing of the continuation
 21 statement, the effectiveness of the original statement is
 22 continued for 5 years after the last date to which the
 23 filing was effective, whereupon it lapses in the same manner
 24 as provided in subsection (2) unless another continuation
 25 statement is filed prior to such lapse. Succeeding

1 continuation statements may be filed in the same manner to
 2 continue the effectiveness of the original statement. Unless
 3 a statute on disposition of public records provides
 4 otherwise, the filing officer may remove a lapsed statement
 5 from the files and destroy it immediately if he has retained
 6 a microfilm or other photographic record, or in other cases
 7 after 1 year after the lapse. The filing officer shall so
 8 arrange matters by physical annexation of financing
 9 statements to continuation statements or other related
 10 filings, or by other means, that if he physically destroys
 11 the financing statements of a period more than 5 years past,
 12 those which have been continued by a continuation statement
 13 or which are still effective under subsection (6) shall be
 14 retained.

15 (4) Except as provided in subsection (7), a filing
 16 officer shall mark each statement with a file number and
 17 with the date and hour of filing and shall hold the
 18 statement or a microfilm or other photographic copy thereof
 19 for public inspection. In addition, the filing officer shall
 20 index the statements according to the name of the debtor and
 21 shall note in the index the file number and the address of
 22 the debtor given in the statement.

23 (5) The uniform fees for filing, indexing, and
 24 stamping a copy furnished by the filing party to show the
 25 date and place of filing shall be set pursuant to subsection

1 (13).

2 (6) If the debtor is a transmitting utility and a
3 filed financing statement so states, it is effective until a
4 termination statement is filed. A real estate mortgage that
5 is effective as a fixture filing under 30-9-402(6) remains
6 effective as a fixture filing until the mortgage is released
7 or satisfied of record or its effectiveness otherwise
8 terminates as to the real estate.

9 (7) When a financing statement covers timber to be cut
10 or covers minerals or the like (including oil and gas) or
11 accounts subject to 30-9-103(5) or is filed as a fixture
12 filing, the filing officer shall index it under the names of
13 the debtor and any owner of record shown on the financing
14 statement in the same fashion as if they were the mortgagors
15 in a mortgage of the real estate described and, to the
16 extent that the law of this state provides for indexing of
17 mortgages under the name of the mortgagee, under the name of
18 the secured party as if he were the mortgagee thereunder, or
19 if indexing is by description, in the same fashion as if the
20 financing statement were a mortgage of the real estate
21 described.

22 (8) When a financing or continuation statement filed
23 by a financial institution covers farm products or accounts,
24 livestock, general intangibles arising from or relating to
25 the sale of farm products by a farmer, crops growing or to

1 be grown, or equipment used in farming operations, the fee
2 for filing must be established by the secretary of state in
3 an amount commensurate with the costs of establishing and
4 operating the computerized access system described in
5 subsection (9).

6 (9) Within one working day of receipt of a financing
7 or continuation statement, the secretary of state shall
8 record the information contained in the statement on a
9 centralized computer system that he shall establish. The
10 computer system must allow access to financing statement
11 information by any type of communications which conform to
12 standards used by the state central computer. The system
13 must have safeguards to allow only access to UCC data and to
14 prevent alteration, addition, or deletion of the UCC data.
15 The computer must be accessible whenever the state computer
16 system is available. A perfected security interest is not
17 created until the financing statement information is
18 recorded on the system. A printout of information from the
19 system is prima facie evidence of the existence or
20 nonexistence of the filing of a financing statement. The
21 secretary of state shall maintain adequate errors and
22 omissions liability coverage to protect against input errors
23 causing loss to a secured party.

24 (10) The secretary of state shall, upon request of a
25 clerk and recorder, mail a certified copy of a financing

statement, continuation statement, assignment, amendment, or termination covering collateral described in subsection (8) to the clerk and recorder in the county of the principal debtor's residence. The secretary of state shall mail the requested copies at least once each week. This subsection does not require the secretary of state to mail a copy of any document which does not specifically indicate the county of the principal debtor's residence on its face.

(11) When a financing or continuation statement covers property described in subsection (8), its effectiveness lapses on July 1, 1986, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement on file with the county clerk and all related documents.

(12) Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile mailing lists.

(13) The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall deposit in a state

special revenue fund in the state treasury all fees he collects, and the fee money may be paid out of the treasury only on appropriation made by the legislature as provided in 17-8-101. Any fee money collected under this part and remaining in the state treasury after all current fiscal year expenditures are met must be transferred to the general fund. The secretary of state shall disseminate the uniform fee schedule to the county clerk and recorders for their use."

Section 2. Section 35-1-102, MCA, is amended to read:

"35-1-102. Definitions. As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this chapter.

(3) "Registered agent" means the person appointed as an agent of the corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(4) "Articles of incorporation" means the original or

1 restated articles of incorporation or articles of
2 consolidation and all amendments thereto including articles
3 of merger.

4 (5) "Shares" means the units into which the
5 proprietary interests in a corporation are divided.

6 (6) "Subscriber" means one who subscribes for shares
7 in a corporation, whether before or after incorporation.

8 (7) "Shareholder" means one who is a holder of record
9 of shares in a corporation and is synonymous with the term
10 "stockholder". If the articles of incorporation or the
11 bylaws so provide, the board of directors may adopt by
12 resolution a procedure whereby a shareholder of the
13 corporation may certify in writing to the corporation that
14 all or a portion of the shares registered in the name of
15 such shareholder are held for the account of a specified
16 person or persons. The resolution shall set forth the
17 classification of a shareholder who may certify; the purpose
18 or purposes for which the certification may be made; the
19 form of certification and information to be contained
20 therein; if the certification is with respect to a record
21 date or closing of the stock transfer books, the time after
22 the record date or closing of the stock transfer books
23 within which the certification must be received by the
24 corporation; and such other provisions with respect to the
25 procedure as are considered necessary or desirable. Upon

1 receipt by the corporation of a certification complying with
2 the procedure, the persons specified in the certification
3 shall be considered, for the purpose or purposes set forth
4 in the certification, to be the holders of record of the
5 number of shares specified in place of the shareholder
6 making the certification.

7 (8) "Authorized shares" means the shares of all
8 classes which the corporation is authorized to issue.

9 (9) (a) "Filed with the secretary of state" ~~shall--be~~
10 deemed is considered to be the time of receipt of a document
11 by him, if he subsequently finds that it conforms to law.
12 Such The finding shall--relate relates back to the time of
13 receipt, but receipt by the secretary of state ~~shall~~ may not
14 of itself constitute filing under this chapter.

15 (b) The secretary of state may treat a facsimile copy
16 of a document AND THE SIGNATURES ON THE FACSIMILE COPY IN
17 the same MANNER as an original for purposes of subsection
18 (9)(a), provided that he receives the original document
19 within 5 working days of the receipt of the facsimile copy.
20 If all other requirements are met, the date of filing
21 relates back to the date of receipt of the facsimile copy. A
22 facsimile copy may be filed under subsection (9)(a) if it:

23 (i) is produced by a method of transmission of images
24 in which the image is scanned at the transmitter,
25 reconstructed at the receiving station, and duplicated on

paper at the receiving station; and

(ii) is legible and the same size as the original.

(c) During the 5-day period referred to in subsection (9)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(D) IF THE ORIGINAL DOCUMENT IS NOT RECEIVED WITHIN 5 WORKING DAYS OF RECEIPT OF THE FACSIMILE COPY AS PROVIDED IN SUBSECTION (9)(B), THE FILING OF THE FACSIMILE COPY IS VOID.

(E) A PERSON WHO FILES A FALSE DOCUMENT BY FACSIMILE COPY IS LIABLE TO THE PARTY AGGRIEVED FOR THREE TIMES THE AMOUNT OF DAMAGES RESULTING FROM THE FILING OF THE FALSE DOCUMENT.

(10) "Distribution" means a direct or indirect transfer by a corporation of money or other property (except its own shares) or incurrence of indebtedness to or for the benefit of any of its shareholders in respect to any of its shares, whether by dividend or by purchase, redemption, or other acquisition of its shares or otherwise."

Section 3. Section 35-2-102, MCA, is amended to read:

"35-2-102. Definitions. As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a nonprofit corporation organized under laws other than the laws of this state.

(3) "Nonprofit corporation" means a corporation, no part of the income or profit of which is distributable to its members, directors, or officers.

(4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger.

(5) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such the rules are designated.

(6) "Member" means one's having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

(7) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such the group is designated.

(8) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs.

(9) (a) "Filed with the secretary of state" ~~shall be~~

1 deemed is considered to be the time of receipt of a document
 2 by him if he subsequently finds that it conforms to law.
 3 Such The finding shall-relate relates back to the time of
 4 receipt, but receipt by the secretary of state ~~shall~~ may not
 5 of itself constitute "filing" under this chapter.

6 (b) The secretary of state may treat a facsimile copy
 7 of a document AND THE SIGNATURES ON THE FACSIMILE COPY IN
 8 the same MANNER as an original for purposes of subsection
 9 (9)(a), provided that he receives the original document
 10 within 5 working days of the receipt of the facsimile copy.
 11 If all other requirements are met, the date of filing
 12 relates back to the date of receipt of the facsimile copy. A
 13 facsimile copy may be filed under subsection (9)(a) if it:

14 (i) is produced by a method of transmission of images
 15 in which the image is scanned at the transmitter,
 16 reconstructed at the receiving station, and duplicated on
 17 paper at the receiving station; and

18 (ii) is legible and the same size as the original.

19 (c) During the 5-day period referred to in subsection
 20 (9)(b), the recorded facsimile copy constitutes constructive
 21 notice for all purposes of the original document.

22 (D) IF THE ORIGINAL DOCUMENT IS NOT RECEIVED WITHIN 5
 23 WORKING DAYS OF RECEIPT OF THE FACSIMILE COPY AS PROVIDED IN
 24 SUBSECTION (9)(B), THE FILING OF THE FACSIMILE COPY IS VOID.

25 (E) A PERSON WHO FILES A FALSE DOCUMENT BY FACSIMILE

1 COPY IS LIABLE TO THE PARTY AGGRIEVED FOR THREE TIMES THE
 2 AMOUNT OF DAMAGES RESULTING FROM THE FILING OF THE FALSE
 3 DOCUMENT."

4 NEW SECTION. Section 4. Filing of a facsimile copy.

5 (1) The secretary of state may treat a facsimile copy of a
 6 document that is required to be filed under [this chapter or
 7 part] AND THE SIGNATURES ON THE FACSIMILE COPY IN the same
 8 MANNER as an original for purposes of [this chapter or
 9 part], provided that he receives the original document
 10 within 5 working days of the receipt of the facsimile copy.
 11 If all other requirements are met, the date of filing
 12 relates back to the date of receipt of the facsimile copy. A
 13 facsimile copy may be filed under this section if it:

14 (a) is produced by a method of transmission of images
 15 in which the image is scanned at the transmitter,
 16 reconstructed at the receiving station, and duplicated on
 17 paper at the receiving station; and

18 (b) is legible and the same size as the original.

19 (2) During the 5-day period referred to in subsection
 20 (1), the recorded facsimile copy constitutes constructive
 21 notice for all purposes of the original document.

22 (3) IF THE ORIGINAL DOCUMENT IS NOT RECEIVED WITHIN 5
 23 WORKING DAYS OF RECEIPT OF THE FACSIMILE COPY AS PROVIDED IN
 24 SUBSECTION (1), THE FILING OF THE FACSIMILE COPY IS VOID.

25 (4) A PERSON WHO FILES A FALSE DOCUMENT BY FACSIMILE

1 COPY IS LIABLE TO THE PARTY AGGRIEVED FOR THREE TIMES THE
2 AMOUNT OF DAMAGES RESULTING FROM THE FILING OF THE FALSE
3 DOCUMENT.

4 NEW SECTION. Section 5. Extension of authority. Any
5 existing authority to make rules on the subject of the
6 provisions of [this act] is extended to the provisions of
7 [this act].

8 NEW SECTION. Section 6. Codification instruction.
9 [Section 4] is intended to be codified as an integral part
10 of the following chapters and parts, and the provisions of
11 those chapters and parts apply to [section 4]:

- 12 (1) parts 2 and 3 of chapter 13, Title 30;
13 (2) part 10 of chapter 1, Title 35; and
14 (3) chapters 12 and 15 of Title 35.

-End-

HOUSE BILL NO. 345

INTRODUCED BY THOMAS, O'KEEFE

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING FACSIMILE COPIES OF CERTAIN DOCUMENTS TO BE FILED WITH THE SECRETARY OF STATE PENDING FILING OF THE ORIGINAL DOCUMENT WITHIN 5 DAYS; PROVIDING THAT A PERSON WHO FILES A FALSE DOCUMENT BY FACSIMILE COPY IS LIABLE FOR RESULTANT DAMAGES; AND AMENDING SECTIONS 30-9-403, 35-1-102, AND 35-2-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-9-403, MCA, is amended to read:

"30-9-403. What constitutes filing -- duration of filing -- fees -- effect of lapsed filing -- duties of filing officer -- computerized farm statement system. (1)(a) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(b) The secretary of state may treat a facsimile copy of a document AND THE SIGNATURES ON THE FACSIMILE COPY IN the same MANNER as an original for purposes of 39-9-402 AND subsection (1)(a), provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date

of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under subsection (1)(a) if it:

(i) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(ii) is legible and the same size as the original.

(c) During the 5-day period referred to in subsection (1)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(D) IF THE ORIGINAL DOCUMENT IS NOT RECEIVED WITHIN 5 WORKING DAYS OF RECEIPT OF THE FACSIMILE COPY AS PROVIDED IN SUBSECTION (1)(B), THE FILING OF THE FACSIMILE COPY IS VOID.

(E) A PERSON WHO FILES A FALSE DOCUMENT BY FACSIMILE COPY IS LIABLE TO THE PARTY AGGRIEVED FOR THREE TIMES THE AMOUNT OF DAMAGES RESULTING FROM THE FILING OF THE FALSE DOCUMENT.

(2) Except as provided in subsections (6) and (11), a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against

1 the debtor, the security interest remains perfected until 60
 2 days after termination of the insolvency proceedings and
 3 ~~thereafter--for--a--period-of-60-days~~ or until expiration of
 4 the 5-year period, whichever occurs later. Upon lapse the
 5 security interest becomes unperfected, unless it is
 6 perfected without filing. If the security interest becomes
 7 unperfected upon lapse, it is considered to have been
 8 unperfected as against a person who became a purchaser or
 9 lien creditor before lapse.

10 (3) A continuation statement may be filed by the
 11 secured party within 6 months prior to the expiration of the
 12 5-year period specified in subsection (2). Any such
 13 continuation statement must be signed by the secured party,
 14 identify the original statement by file number, and state
 15 that the original statement is still effective. A
 16 continuation statement signed by a person other than the
 17 secured party of record must be accompanied by a separate
 18 written statement of assignment signed by the secured party
 19 of record and complying with 30-9-405(2), including payment
 20 of the required fee. Upon timely filing of the continuation
 21 statement, the effectiveness of the original statement is
 22 continued for 5 years after the last date to which the
 23 filing was effective, whereupon it lapses in the same manner
 24 as provided in subsection (2) unless another continuation
 25 statement is filed prior to such lapse. Succeeding

1 continuation statements may be filed in the same manner to
 2 continue the effectiveness of the original statement. Unless
 3 a statute on disposition of public records provides
 4 otherwise, the filing officer may remove a lapsed statement
 5 from the files and destroy it immediately if he has retained
 6 a microfilm or other photographic record, or in other cases
 7 after 1 year after the lapse. The filing officer shall so
 8 arrange matters by physical annexation of financing
 9 statements to continuation statements or other related
 10 filings, or by other means, that if he physically destroys
 11 the financing statements of a period more than 5 years past,
 12 those which have been continued by a continuation statement
 13 or which are still effective under subsection (6) shall be
 14 retained.

15 (4) Except as provided in subsection (7), a filing
 16 officer shall mark each statement with a file number and
 17 with the date and hour of filing and shall hold the
 18 statement or a microfilm or other photographic copy thereof
 19 for public inspection. In addition, the filing officer shall
 20 index the statements according to the name of the debtor and
 21 shall note in the index the file number and the address of
 22 the debtor given in the statement.

23 (5) The uniform fees for filing, indexing, and
 24 stamping a copy furnished by the filing party to show the
 25 date and place of filing shall be set pursuant to subsection

1 (13).

2 (6) If the debtor is a transmitting utility and a
3 filed financing statement so states, it is effective until a
4 termination statement is filed. A real estate mortgage that
5 is effective as a fixture filing under 30-9-402(6) remains
6 effective as a fixture filing until the mortgage is released
7 or satisfied of record or its effectiveness otherwise
8 terminates as to the real estate.

9 (7) When a financing statement covers timber to be cut
10 or covers minerals or the like (including oil and gas) or
11 accounts subject to 30-9-103(5) or is filed as a fixture
12 filing, the filing officer shall index it under the names of
13 the debtor and any owner of record shown on the financing
14 statement in the same fashion as if they were the mortgagors
15 in a mortgage of the real estate described and, to the
16 extent that the law of this state provides for indexing of
17 mortgages under the name of the mortgagee, under the name of
18 the secured party as if he were the mortgagee thereunder, or
19 if indexing is by description, in the same fashion as if the
20 financing statement were a mortgage of the real estate
21 described.

22 (8) When a financing or continuation statement filed
23 by a financial institution covers farm products or accounts,
24 livestock, general intangibles arising from or relating to
25 the sale of farm products by a farmer, crops growing or to

1 be grown, or equipment used in farming operations, the fee
2 for filing must be established by the secretary of state in
3 an amount commensurate with the costs of establishing and
4 operating the computerized access system described in
5 subsection (9).

6 (9) Within one working day of receipt of a financing
7 or continuation statement, the secretary of state shall
8 record the information contained in the statement on a
9 centralized computer system that he shall establish. The
10 computer system must allow access to financing statement
11 information by any type of communications which conform to
12 standards used by the state central computer. The system
13 must have safeguards to allow only access to UCC data and to
14 prevent alteration, addition, or deletion of the UCC data.
15 The computer must be accessible whenever the state computer
16 system is available. A perfected security interest is not
17 created until the financing statement information is
18 recorded on the system. A printout of information from the
19 system is prima facie evidence of the existence or
20 nonexistence of the filing of a financing statement. The
21 secretary of state shall maintain adequate errors and
22 omissions liability coverage to protect against input errors
23 causing loss to a secured party.

24 (10) The secretary of state shall, upon request of a
25 clerk and recorder, mail a certified copy of a financing

1 statement, continuation statement, assignment, amendment, or
 2 termination covering collateral described in subsection (8)
 3 to the clerk and recorder in the county of the principal
 4 debtor's residence. The secretary of state shall mail the
 5 requested copies at least once each week. This subsection
 6 does not require the secretary of state to mail a copy of
 7 any document which does not specifically indicate the county
 8 of the principal debtor's residence on its face.

9 (11) When a financing or continuation statement covers
 10 property described in subsection (8), its effectiveness
 11 lapses on July 1, 1986, unless prior to that date there is
 12 filed in the office of the secretary of state a certified
 13 copy of the statement on file with the county clerk and all
 14 related documents.

15 (12) Financing statement information in the computer
 16 system constitutes public writings within the meaning of
 17 2-6-101, but the information may not be used to compile
 18 mailing lists.

19 (13) The secretary of state, with advice from the
 20 county clerk and recorders, shall by administrative rule
 21 establish fees as required by this part. The fees must be
 22 commensurate with the costs of processing the documents. The
 23 secretary of state shall maintain records sufficient to
 24 support the amounts of the fees established under this
 25 subsection. The secretary of state shall deposit in a state

1 special revenue fund in the state treasury all fees he
 2 collects, and the fee money may be paid out of the treasury
 3 only on appropriation made by the legislature as provided in
 4 17-8-101. Any fee money collected under this part and
 5 remaining in the state treasury after all current fiscal
 6 year expenditures are met must be transferred to the general
 7 fund. The secretary of state shall disseminate the uniform
 8 fee schedule to the county clerk and recorders for their
 9 use."

10 **Section 2.** Section 35-1-102, MCA, is amended to read:

11 "35-1-102. Definitions. As used in this chapter,
 12 unless the context otherwise requires, the following terms
 13 apply:

14 (1) "Corporation" or "domestic corporation" means a
 15 corporation for profit subject to the provisions of this
 16 chapter, except a foreign corporation.

17 (2) "Foreign corporation" means a corporation for
 18 profit organized under laws other than the laws of this
 19 state for a purpose or purposes for which a corporation may
 20 be organized under this chapter.

21 (3) "Registered agent" means the person appointed as
 22 an agent of the corporation upon whom any process, notice,
 23 or demand required or permitted by law to be served upon the
 24 corporation may be served.

25 (4) "Articles of incorporation" means the original or

1 restated articles of incorporation or articles of
2 consolidation and all amendments thereto including articles
3 of merger.

4 (5) "Shares" means the units into which the
5 proprietary interests in a corporation are divided.

6 (6) "Subscriber" means one who subscribes for shares
7 in a corporation, whether before or after incorporation.

8 (7) "Shareholder" means one who is a holder of record
9 of shares in a corporation and is synonymous with the term
10 "stockholder". If the articles of incorporation or the
11 bylaws so provide, the board of directors may adopt by
12 resolution a procedure whereby a shareholder of the
13 corporation may certify in writing to the corporation that
14 all or a portion of the shares registered in the name of
15 such shareholder are held for the account of a specified
16 person or persons. The resolution shall set forth the
17 classification of a shareholder who may certify; the purpose
18 or purposes for which the certification may be made; the
19 form of certification and information to be contained
20 therein; if the certification is with respect to a record
21 date or closing of the stock transfer books, the time after
22 the record date or closing of the stock transfer books
23 within which the certification must be received by the
24 corporation; and such other provisions with respect to the
25 procedure as are considered necessary or desirable. Upon

1 receipt by the corporation of a certification complying with
2 the procedure, the persons specified in the certification
3 shall be considered, for the purpose or purposes set forth
4 in the certification, to be the holders of record of the
5 number of shares specified in place of the shareholder
6 making the certification.

7 (8) "Authorized shares" means the shares of all
8 classes which the corporation is authorized to issue.

9 (9) (a) "Filed with the secretary of state" shall--be
10 deemed is considered to be the time of receipt of a document
11 by him, if he subsequently finds that it conforms to law.
12 Such The finding shall--relate relates back to the time of
13 receipt, but receipt by the secretary of state shall may not
14 of itself constitute filing under this chapter.

15 (b) The secretary of state may treat a facsimile copy
16 of a document AND THE SIGNATURES ON THE FACSIMILE COPY IN
17 the same MANNER as an original for purposes of subsection
18 (9)(a), provided that he receives the original document
19 within 5 working days of the receipt of the facsimile copy.
20 If all other requirements are met, the date of filing
21 relates back to the date of receipt of the facsimile copy. A
22 facsimile copy may be filed under subsection (9)(a) if it:

23 (i) is produced by a method of transmission of images
24 in which the image is scanned at the transmitter,
25 reconstructed at the receiving station, and duplicated on

1 paper at the receiving station; and
 2 (ii) is legible and the same size as the original.
 3 (c) During the 5-day period referred to in subsection
 4 (9)(b), the recorded facsimile copy constitutes constructive
 5 notice for all purposes of the original document.
 6 (D) IF THE ORIGINAL DOCUMENT IS NOT RECEIVED WITHIN 5
 7 WORKING DAYS OF RECEIPT OF THE FACSIMILE COPY AS PROVIDED IN
 8 SUBSECTION (9)(B), THE FILING OF THE FACSIMILE COPY IS VOID.
 9 (E) A PERSON WHO FILES A FALSE DOCUMENT BY FACSIMILE
 10 COPY IS LIABLE TO THE PARTY AGGRIEVED FOR THREE TIMES THE
 11 AMOUNT OF DAMAGES RESULTING FROM THE FILING OF THE FALSE
 12 DOCUMENT.
 13 (10) "Distribution" means a direct or indirect transfer
 14 by a corporation of money or other property (except its own
 15 shares) or incurrance of indebtedness to or for the benefit
 16 of any of its shareholders in respect to any of its shares,
 17 whether by dividend or by purchase, redemption, or other
 18 acquisition of its shares or otherwise."
 19 **Section 3.** Section 35-2-102, MCA, is amended to read:
 20 "35-2-102. Definitions. As used in this chapter,
 21 unless the context otherwise requires, the following terms
 22 apply:
 23 (1) "Corporation" or "domestic corporation" means a
 24 nonprofit corporation subject to the provisions of this
 25 chapter, except a foreign corporation.

1 (2) "Foreign corporation" means a nonprofit
 2 corporation organized under laws other than the laws of this
 3 state.
 4 (3) "Nonprofit corporation" means a corporation, no
 5 part of the income or profit of which is distributable to
 6 its members, directors, or officers.
 7 (4) "Articles of incorporation" means the original or
 8 restated articles of incorporation or articles of
 9 consolidation and all amendments thereto, including articles
 10 of merger.
 11 (5) "Bylaws" means the code or codes of rules adopted
 12 for the regulation or management of the affairs of the
 13 corporation irrespective of the name or names by which such
 14 the rules are designated.
 15 (6) "Member" means one's having membership rights in a
 16 corporation in accordance with the provisions of its
 17 articles of incorporation or bylaws.
 18 (7) "Board of directors" means the group of persons
 19 vested with the management of the affairs of the corporation
 20 irrespective of the name by which such the group is
 21 designated.
 22 (8) "Insolvent" means inability of a corporation to
 23 pay its debts as they become due in the usual course of its
 24 affairs.
 25 (9) (a) "Filed with the secretary of state" ~~shall be~~

1 deemed is considered to be the time of receipt of a document
 2 by him if he subsequently finds that it conforms to law.
 3 Such The finding shall-relate relates back to the time of
 4 receipt, but receipt by the secretary of state shall may not
 5 of itself constitute "filing" under this chapter.

6 (b) The secretary of state may treat a facsimile copy
 7 of a document AND THE SIGNATURES ON THE FACSIMILE COPY IN
 8 the same MANNER as an original for purposes of subsection
 9 (9)(a), provided that he receives the original document
 10 within 5 working days of the receipt of the facsimile copy.
 11 If all other requirements are met, the date of filing
 12 relates back to the date of receipt of the facsimile copy. A
 13 facsimile copy may be filed under subsection (9)(a) if it:

14 (i) is produced by a method of transmission of images
 15 in which the image is scanned at the transmitter,
 16 reconstructed at the receiving station, and duplicated on
 17 paper at the receiving station; and

18 (ii) is legible and the same size as the original.

19 (c) During the 5-day period referred to in subsection
 20 (9)(b), the recorded facsimile copy constitutes constructive
 21 notice for all purposes of the original document.

22 (D) IF THE ORIGINAL DOCUMENT IS NOT RECEIVED WITHIN 5
 23 WORKING DAYS OF RECEIPT OF THE FACSIMILE COPY AS PROVIDED IN
 24 SUBSECTION (9)(B), THE FILING OF THE FACSIMILE COPY IS VOID.

25 (E) A PERSON WHO FILES A FALSE DOCUMENT BY FACSIMILE

1 COPY IS LIABLE TO THE PARTY AGGRIEVED FOR THREE TIMES THE
 2 AMOUNT OF DAMAGES RESULTING FROM THE FILING OF THE FALSE
 3 DOCUMENT."

4 NEW SECTION. Section 4. Filing of a facsimile copy.

5 (1) The secretary of state may treat a facsimile copy of a
 6 document that is required to be filed under [this chapter or
 7 part] AND THE SIGNATURES ON THE FACSIMILE COPY IN the same
 8 MANNER as an original for purposes of [this chapter or
 9 part], provided that he receives the original document
 10 within 5 working days of the receipt of the facsimile copy.
 11 If all other requirements are met, the date of filing
 12 relates back to the date of receipt of the facsimile copy. A
 13 facsimile copy may be filed under this section if it:

14 (a) is produced by a method of transmission of images
 15 in which the image is scanned at the transmitter,
 16 reconstructed at the receiving station, and duplicated on
 17 paper at the receiving station; and

18 (b) is legible and the same size as the original.

19 (2) During the 5-day period referred to in subsection
 20 (1), the recorded facsimile copy constitutes constructive
 21 notice for all purposes of the original document.

22 (3) IF THE ORIGINAL DOCUMENT IS NOT RECEIVED WITHIN 5
 23 WORKING DAYS OF RECEIPT OF THE FACSIMILE COPY AS PROVIDED IN
 24 SUBSECTION (1), THE FILING OF THE FACSIMILE COPY IS VOID.

25 (4) A PERSON WHO FILES A FALSE DOCUMENT BY FACSIMILE

HB 0345/02

1 COPY IS LIABLE TO THE PARTY AGGRIEVED FOR THREE TIMES THE
2 AMOUNT OF DAMAGES RESULTING FROM THE FILING OF THE FALSE
3 DOCUMENT.

4 NEW SECTION. Section 5. Extension of authority. Any
5 existing authority to make rules on the subject of the
6 provisions of [this act] is extended to the provisions of
7 [this act].

8 NEW SECTION. Section 6. Codification instruction.
9 [Section 4] is intended to be codified as an integral part
10 of the following chapters and parts, and the provisions of
11 those chapters and parts apply to [section 4]:

- 12 (1) parts 2 and 3 of chapter 13, Title 30;
13 (2) part 10 of chapter 1, Title 35; and
14 (3) chapters 12 and 15 of Title 35.

-End-

SENATE STANDING COMMITTEE REPORT

March 8, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration HB 345 (third reading copy -- blue), respectfully report that HB 345 be amended and as so amended be concurred in:

Sponsor: Thomas (Farrell)

1. Page 1, line 22.
Following: "purposes of"
Strike: "39-9-402"
Insert: "30-9-402"

2. Page 15, line 14.
Following: "Title 35"
Strike: "."
Insert: ";

3. Page 15.
Following: line 14
Insert: "(4) part 4 of chapter 9, Title 30."

AND AS AMENDED BE CONCURRED IN

Signed: Farrell
William E. Farrell, Chairman

HB 345

SENATE

SCRHB345.308

1 HOUSE BILL NO. 345

2 INTRODUCED BY THOMAS, O'KEEFE

3 BY REQUEST OF THE SECRETARY OF STATE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING FACSIMILE
6 COPIES OF CERTAIN DOCUMENTS TO BE FILED WITH THE SECRETARY
7 OF STATE PENDING FILING OF THE ORIGINAL DOCUMENT WITHIN 5
8 DAYS; PROVIDING THAT A PERSON WHO FILES A FALSE DOCUMENT BY
9 FACSIMILE COPY IS LIABLE FOR RESULTANT DAMAGES; AND AMENDING
10 SECTIONS 30-9-403, 35-1-102, AND 35-2-102, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 30-9-403, MCA, is amended to read:

14 "30-9-403. What constitutes filing -- duration of
15 filing -- fees -- effect of lapsed filing -- duties of
16 filing officer -- computerized farm statement system.
17 (1) (a) Presentation for filing of a financing statement and
18 tender of the filing fee or acceptance of the statement by
19 the filing officer constitutes filing under this chapter.

20 (b) The secretary of state may treat a facsimile copy
21 of a document AND THE SIGNATURES ON THE FACSIMILE COPY IN
22 the same MANNER as an original for purposes of 39-9-402
23 30-9-402 AND subsection (1)(a), provided that he receives
24 the original document within 5 working days of the receipt
25 of the facsimile copy. If all other requirements are met,

1 the date of filing relates back to the date of receipt of
2 the facsimile copy. A facsimile copy may be filed under
3 subsection (1)(a) if it:

4 (i) is produced by a method of transmission of images
5 in which the image is scanned at the transmitter,
6 reconstructed at the receiving station, and duplicated on
7 paper at the receiving station; and

8 (ii) is legible and the same size as the original.

9 (c) During the 5-day period referred to in subsection
10 (1)(b), the recorded facsimile copy constitutes constructive
11 notice for all purposes of the original document.

12 (D) IF THE ORIGINAL DOCUMENT IS NOT RECEIVED WITHIN 5
13 WORKING DAYS OF RECEIPT OF THE FACSIMILE COPY AS PROVIDED IN
14 SUBSECTION (1)(B), THE FILING OF THE FACSIMILE COPY IS VOID.

15 (E) A PERSON WHO FILES A FALSE DOCUMENT BY FACSIMILE
16 COPY IS LIABLE TO THE PARTY AGGRIEVED FOR THREE TIMES THE
17 AMOUNT OF DAMAGES RESULTING FROM THE FILING OF THE FALSE
18 DOCUMENT.

19 (2) Except as provided in subsections (6) and (11), a
20 filed financing statement is effective for a period of 5
21 years from the date of filing. The effectiveness of a filed
22 financing statement lapses on the expiration of the 5-year
23 period unless a continuation statement is filed prior to the
24 lapse. If a security interest perfected by filing exists at
25 the time insolvency proceedings are commenced by or against

1 the debtor, the security interest remains perfected until 60
 2 days after termination of the insolvency proceedings and
 3 ~~thereafter-for-a-period-of-60-days~~ or until expiration of
 4 the 5-year period, whichever occurs later. Upon lapse the
 5 security interest becomes unperfected, unless it is
 6 perfected without filing. If the security interest becomes
 7 unperfected upon lapse, it is considered to have been
 8 unperfected as against a person who became a purchaser or
 9 lien creditor before lapse.

10 (3) A continuation statement may be filed by the
 11 secured party within 6 months prior to the expiration of the
 12 5-year period specified in subsection (2). Any such
 13 continuation statement must be signed by the secured party,
 14 identify the original statement by file number, and state
 15 that the original statement is still effective. A
 16 continuation statement signed by a person other than the
 17 secured party of record must be accompanied by a separate
 18 written statement of assignment signed by the secured party
 19 of record and complying with 30-9-405(2), including payment
 20 of the required fee. Upon timely filing of the continuation
 21 statement, the effectiveness of the original statement is
 22 continued for 5 years after the last date to which the
 23 filing was effective, whereupon it lapses in the same manner
 24 as provided in subsection (2) unless another continuation
 25 statement is filed prior to such lapse. Succeeding

1 continuation statements may be filed in the same manner to
 2 continue the effectiveness of the original statement. Unless
 3 a statute on disposition of public records provides
 4 otherwise, the filing officer may remove a lapsed statement
 5 from the files and destroy it immediately if he has retained
 6 a microfilm or other photographic record, or in other cases
 7 after 1 year after the lapse. The filing officer shall so
 8 arrange matters by physical annexation of financing
 9 statements to continuation statements or other related
 10 filings, or by other means, that if he physically destroys
 11 the financing statements of a period more than 5 years past,
 12 those which have been continued by a continuation statement
 13 or which are still effective under subsection (6) shall be
 14 retained.

15 (4) Except as provided in subsection (7), a filing
 16 officer shall mark each statement with a file number and
 17 with the date and hour of filing and shall hold the
 18 statement or a microfilm or other photographic copy thereof
 19 for public inspection. In addition, the filing officer shall
 20 index the statements according to the name of the debtor and
 21 shall note in the index the file number and the address of
 22 the debtor given in the statement.

23 (5) The uniform fees for filing, indexing, and
 24 stamping a copy furnished by the filing party to show the
 25 date and place of filing shall be set pursuant to subsection

1 (13).

2 (6) If the debtor is a transmitting utility and a
3 filed financing statement so states, it is effective until a
4 termination statement is filed. A real estate mortgage that
5 is effective as a fixture filing under 30-9-402(6) remains
6 effective as a fixture filing until the mortgage is released
7 or satisfied of record or its effectiveness otherwise
8 terminates as to the real estate.

9 (7) When a financing statement covers timber to be cut
10 or covers minerals or the like (including oil and gas) or
11 accounts subject to 30-9-103(5) or is filed as a fixture
12 filing, the filing officer shall index it under the names of
13 the debtor and any owner of record shown on the financing
14 statement in the same fashion as if they were the mortgagors
15 in a mortgage of the real estate described and, to the
16 extent that the law of this state provides for indexing of
17 mortgages under the name of the mortgagee, under the name of
18 the secured party as if he were the mortgagee thereunder, or
19 if indexing is by description, in the same fashion as if the
20 financing statement were a mortgage of the real estate
21 described.

22 (8) When a financing or continuation statement filed
23 by a financial institution covers farm products or accounts,
24 livestock, general intangibles arising from or relating to
25 the sale of farm products by a farmer, crops growing or to

1 be grown, or equipment used in farming operations, the fee
2 for filing must be established by the secretary of state in
3 an amount commensurate with the costs of establishing and
4 operating the computerized access system described in
5 subsection (9).

6 (9) Within one working day of receipt of a financing
7 or continuation statement, the secretary of state shall
8 record the information contained in the statement on a
9 centralized computer system that he shall establish. The
10 computer system must allow access to financing statement
11 information by any type of communications which conform to
12 standards used by the state central computer. The system
13 must have safeguards to allow only access to UCC data and to
14 prevent alteration, addition, or deletion of the UCC data.
15 The computer must be accessible whenever the state computer
16 system is available. A perfected security interest is not
17 created until the financing statement information is
18 recorded on the system. A printout of information from the
19 system is prima facie evidence of the existence or
20 nonexistence of the filing of a financing statement. The
21 secretary of state shall maintain adequate errors and
22 omissions liability coverage to protect against input errors
23 causing loss to a secured party.

24 (10) The secretary of state shall, upon request of a
25 clerk and recorder, mail a certified copy of a financing

1 statement, continuation statement, assignment, amendment, or
 2 termination covering collateral described in subsection (8)
 3 to the clerk and recorder in the county of the principal
 4 debtor's residence. The secretary of state shall mail the
 5 requested copies at least once each week. This subsection
 6 does not require the secretary of state to mail a copy of
 7 any document which does not specifically indicate the county
 8 of the principal debtor's residence on its face.

9 (11) When a financing or continuation statement covers
 10 property described in subsection (8), its effectiveness
 11 lapses on July 1, 1986, unless prior to that date there is
 12 filed in the office of the secretary of state a certified
 13 copy of the statement on file with the county clerk and all
 14 related documents.

15 (12) Financing statement information in the computer
 16 system constitutes public writings within the meaning of
 17 2-6-101, but the information may not be used to compile
 18 mailing lists.

19 (13) The secretary of state, with advice from the
 20 county clerk and recorders, shall by administrative rule
 21 establish fees as required by this part. The fees must be
 22 commensurate with the costs of processing the documents. The
 23 secretary of state shall maintain records sufficient to
 24 support the amounts of the fees established under this
 25 subsection. The secretary of state shall deposit in a state

1 special revenue fund in the state treasury all fees he
 2 collects, and the fee money may be paid out of the treasury
 3 only on appropriation made by the legislature as provided in
 4 17-8-101. Any fee money collected under this part and
 5 remaining in the state treasury after all current fiscal
 6 year expenditures are met must be transferred to the general
 7 fund. The secretary of state shall disseminate the uniform
 8 fee schedule to the county clerk and recorders for their
 9 use."

10 **Section 2.** Section 35-1-102, MCA, is amended to read:

11 "35-1-102. Definitions. As used in this chapter,
 12 unless the context otherwise requires, the following terms
 13 apply:

14 (1) "Corporation" or "domestic corporation" means a
 15 corporation for profit subject to the provisions of this
 16 chapter, except a foreign corporation.

17 (2) "Foreign corporation" means a corporation for
 18 profit organized under laws other than the laws of this
 19 state for a purpose or purposes for which a corporation may
 20 be organized under this chapter.

21 (3) "Registered agent" means the person appointed as
 22 an agent of the corporation upon whom any process, notice,
 23 or demand required or permitted by law to be served upon the
 24 corporation may be served.

25 (4) "Articles of incorporation" means the original or

1 restated articles of incorporation or articles of
2 consolidation and all amendments thereto including articles
3 of merger.

4 (5) "Shares" means the units into which the
5 proprietary interests in a corporation are divided.

6 (6) "Subscriber" means one who subscribes for shares
7 in a corporation, whether before or after incorporation.

8 (7) "Shareholder" means one who is a holder of record
9 of shares in a corporation and is synonymous with the term
10 "stockholder". If the articles of incorporation or the
11 bylaws so provide, the board of directors may adopt by
12 resolution a procedure whereby a shareholder of the
13 corporation may certify in writing to the corporation that
14 all or a portion of the shares registered in the name of
15 such shareholder are held for the account of a specified
16 person or persons. The resolution shall set forth the
17 classification of a shareholder who may certify; the purpose
18 or purposes for which the certification may be made; the
19 form of certification and information to be contained
20 therein; if the certification is with respect to a record
21 date or closing of the stock transfer books, the time after
22 the record date or closing of the stock transfer books
23 within which the certification must be received by the
24 corporation; and such other provisions with respect to the
25 procedure as are considered necessary or desirable. Upon

1 receipt by the corporation of a certification complying with
2 the procedure, the persons specified in the certification
3 shall be considered, for the purpose or purposes set forth
4 in the certification, to be the holders of record of the
5 number of shares specified in place of the shareholder
6 making the certification.

7 (8) "Authorized shares" means the shares of all
8 classes which the corporation is authorized to issue.

9 (9) (a) "Filed with the secretary of state" shall be
10 deemed is considered to be the time of receipt of a document
11 by him, if he subsequently finds that it conforms to law.
12 Such The finding shall relate relates back to the time of
13 receipt, but receipt by the secretary of state shall may not
14 of itself constitute filing under this chapter.

15 (b) The secretary of state may treat a facsimile copy
16 of a document AND THE SIGNATURES ON THE FACSIMILE COPY IN
17 the same MANNER as an original for purposes of subsection
18 (9)(a), provided that he receives the original document
19 within 5 working days of the receipt of the facsimile copy.
20 If all other requirements are met, the date of filing
21 relates back to the date of receipt of the facsimile copy. A
22 facsimile copy may be filed under subsection (9)(a) if it:

23 (i) is produced by a method of transmission of images
24 in which the image is scanned at the transmitter,
25 reconstructed at the receiving station, and duplicated on

paper at the receiving station; and

(ii) is legible and the same size as the original.

(c) During the 5-day period referred to in subsection (9)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(D) IF THE ORIGINAL DOCUMENT IS NOT RECEIVED WITHIN 5 WORKING DAYS OF RECEIPT OF THE FACSIMILE COPY AS PROVIDED IN SUBSECTION (9)(B), THE FILING OF THE FACSIMILE COPY IS VOID.

(E) A PERSON WHO FILES A FALSE DOCUMENT BY FACSIMILE COPY IS LIABLE TO THE PARTY AGGRIEVED FOR THREE TIMES THE AMOUNT OF DAMAGES RESULTING FROM THE FILING OF THE FALSE DOCUMENT.

(10) "Distribution" means a direct or indirect transfer by a corporation of money or other property (except its own shares) or incurrence of indebtedness to or for the benefit of any of its shareholders in respect to any of its shares, whether by dividend or by purchase, redemption, or other acquisition of its shares or otherwise."

Section 3. Section 35-2-102, MCA, is amended to read:

"35-2-102. Definitions. As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a nonprofit corporation organized under laws other than the laws of this state.

(3) "Nonprofit corporation" means a corporation, no part of the income or profit of which is distributable to its members, directors, or officers.

(4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger.

(5) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such the rules are designated.

(6) "Member" means one's having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

(7) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such the group is designated.

(8) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs.

(9) (a) "Filed with the secretary of state" ~~shall--be~~

deemed is considered to be the time of receipt of a document by him if he subsequently finds that it conforms to law. Such The finding shall-relate relates back to the time of receipt, but receipt by the secretary of state shall may not of itself constitute "filing" under this chapter.

(b) The secretary of state may treat a facsimile copy of a document AND THE SIGNATURES ON THE FACSIMILE COPY IN the same MANNER as an original for purposes of subsection (9)(a), provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under subsection (9)(a) if it:

(i) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(ii) is legible and the same size as the original.

(c) During the 5-day period referred to in subsection (9)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(D) IF THE ORIGINAL DOCUMENT IS NOT RECEIVED WITHIN 5 WORKING DAYS OF RECEIPT OF THE FACSIMILE COPY AS PROVIDED IN SUBSECTION (9)(B), THE FILING OF THE FACSIMILE COPY IS VOID.

(E) A PERSON WHO FILES A FALSE DOCUMENT BY FACSIMILE

COPY IS LIABLE TO THE PARTY AGGRIEVED FOR THREE TIMES THE AMOUNT OF DAMAGES RESULTING FROM THE FILING OF THE FALSE DOCUMENT."

NEW SECTION. Section 4. Filing of a facsimile copy.

(1) The secretary of state may treat a facsimile copy of a document that is required to be filed under [this chapter or part] AND THE SIGNATURES ON THE FACSIMILE COPY IN the same MANNER as an original for purposes of [this chapter or part], provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(3) IF THE ORIGINAL DOCUMENT IS NOT RECEIVED WITHIN 5 WORKING DAYS OF RECEIPT OF THE FACSIMILE COPY AS PROVIDED IN SUBSECTION (1), THE FILING OF THE FACSIMILE COPY IS VOID.

(4) A PERSON WHO FILES A FALSE DOCUMENT BY FACSIMILE

1 COPY IS LIABLE TO THE PARTY AGGRIEVED FOR THREE TIMES THE
2 AMOUNT OF DAMAGES RESULTING FROM THE FILING OF THE FALSE
3 DOCUMENT.

4 NEW SECTION. Section 5. Extension of authority. Any
5 existing authority to make rules on the subject of the
6 provisions of [this act] is extended to the provisions of
7 [this act].

8 NEW SECTION. Section 6. Codification instruction.
9 [Section 4] is intended to be codified as an integral part
10 of the following chapters and parts, and the provisions of
11 those chapters and parts apply to [section 4]:

- 12 (1) parts 2 and 3 of chapter 13, Title 30;
13 (2) part 10 of chapter 1, Title 35; and
14 (3) chapters 12 and 15 of Title 35; AND
15 (4) PART 4 OF CHAPTER 9, TITLE 30.

-End-