

HOUSE BILL NO. 487

INTRODUCED BY MCDONOUGH, THOMAS, B. BROWN,
HARPER, O'KEEFE, RAPP-SVRCEK

BY REQUEST OF THE SECRETARY OF STATE

IN THE HOUSE

JANUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
JANUARY 30, 1989	FIRST READING.
FEBRUARY 8, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. STATEMENT OF INTENT ADOPTED.
FEBRUARY 9, 1989	PRINTING REPORT.
FEBRUARY 11, 1989	SECOND READING, DO PASS.
FEBRUARY 13, 1989	ENGROSSING REPORT.
FEBRUARY 14, 1989	THIRD READING, PASSED. AYES, 96; NOES, 0. TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 15, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION. FIRST READING.
MARCH 6, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 7, 1989	SECOND READING, CONCURRED IN.
MARCH 9, 1989	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0. RETURNED TO HOUSE.

IN THE HOUSE

MARCH 10, 1989

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *487*
 2 INTRODUCED BY *McCamp Thomas Bill B...*
 3 *Office* BY REQUEST OF THE SECRETARY OF STATE *Ryan Smith*
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
 6 STORAGE AND REPRODUCTION OF CERTAIN STATE RECORDS ACCORDING
 7 TO RULES ADOPTED BY THE SECRETARY OF STATE; AND AMENDING
 8 SECTIONS 2-6-111, 30-9-403, AND 30-9-404, MCA."

9
 10 STATEMENT OF INTENT

11 A statement of intent is required for this bill because
 12 it permits the secretary of state to establish by rule
 13 methods for archiving documents filed in his office. Because
 14 the technology for archiving documents is developing
 15 quickly, it is necessary to provide the secretary of state
 16 with the flexibility for establishing the method of
 17 archiving.

18 The legislature intends that the rules require the
 19 storage of records in a manner that allows the retrieval of
 20 clear and accurate duplicates of the original document. The
 21 process must be quick and efficient for both reproducing the
 22 original and retrieving the duplicate. The process must
 23 have adequate safeguards to ensure that the stored documents
 24 will be preserved for many years.

25 The legislature intends that the rules permit the use

1 of appropriate technology that meets these requirements. The
 2 rules must allow for the use of microfilm, photostatic or
 3 microphotographic means, computerized electronic disc, or
 4 other new technologies that may be developed. These rules
 5 may permit storage systems that allow public access through
 6 computer hookups as long as no person is able to tamper with
 7 the stored records.

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 2-6-111, MCA, is amended to read:

11 "2-6-111. Custody and reproduction of records by
 12 secretary of state. (1) The secretary of state is charged
 13 with the custody of:

- 14 (a) the enrolled copy of the constitution;
 15 (b) all the acts and resolutions passed by the
 16 legislature;
 17 (c) the journals of the legislature;
 18 (d) the great seal;
 19 (e) all books, records, parchments, maps, and papers
 20 kept or deposited in his office pursuant to law.

21 (2) All records included in subsection (1) may be kept
 22 and recorded--by--photostatic--or--microphotographic--means,
 23 microfilm,--or--any--other--mechanical--process--that--produces--a
 24 clear,--accurate,--and--permanent--duplicate--of--the--original
 25 record reproduced in accordance with standards not less than

1 those--approved--for--permanent--records--by--the---American
 2 national--standards-institute rules adopted by the secretary
 3 of state.

4 (3) The state records committee created by 2-15-1013
 5 may approve the disposal of original records once those
 6 records are reproduced as provided for in subsection (2),
 7 unless disposal takes the form of transfer of records; in
 8 that case, reproduction will not be necessary. The
 9 reproduction, or certified copy thereof, of a record may be
 10 used in place of the original for all purposes, including as
 11 evidence in any court or proceeding, and ~~shall have~~ has the
 12 same force and effect as the original record.

13 (4) The secretary of state shall prepare enlarged
 14 typed or photographic copies of the records whenever their
 15 production is required by law.

16 (5) At least two copies shall be made of all records
 17 reproduced as provided for in subsection (2). The secretary
 18 of state shall place one copy in a fireproof storage place
 19 and shall retain the other copy in his office with suitable
 20 equipment for displaying such a record by projection to not
 21 less than its original size and for preparing, for persons
 22 entitled thereto, copies of the record.

23 (6) All duplicates of all records shall be identified
 24 and indexed."

25 **Section 2.** Section 30-9-403, MCA, is amended to read:

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

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

23 (3) A continuation statement may be filed by the
 24 secured party within 6 months prior to the expiration of the
 25 5-year period specified in subsection (2). Any such

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

1 period more than 5 years past, those which have been
 2 continued by a continuation statement or which are still
 3 effective under subsection (6) shall be retained.

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

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

6 (12) Financing statement information in the computer
 7 system constitutes public writings within the meaning of
 8 2-6-101, but the information may not be used to compile
 9 mailing lists.

10 (13) The secretary of state, with advice from the
 11 county clerk and recorders, shall by administrative rule
 12 establish fees as required by this part. The fees must be
 13 commensurate with the costs of processing the documents. The
 14 secretary of state shall maintain records sufficient to
 15 support the amounts of the fees established under this
 16 subsection. The secretary of state shall deposit in a state
 17 special revenue fund in the state treasury all fees he
 18 collects, and the fee money may be paid out of the treasury
 19 only on appropriation made by the legislature as provided in
 20 17-8-101. Any fee money collected under this part and
 21 remaining in the state treasury after all current fiscal
 22 year expenditures are met must be transferred to the general
 23 fund. The secretary of state shall disseminate the uniform
 24 fee schedule to the county clerk and recorders for their
 25 use."

1 **Section 3.** Section 30-9-404, MCA, is amended to read:

2 **"30-9-404. Termination statement.** (1) If a financing
 3 statement covering consumer goods is filed on or after
 4 October 1, 1983, then within 1 month or within 10 days
 5 following written demand by the debtor after there is no
 6 outstanding secured obligation and no commitment to make
 7 advances, incur obligations, or otherwise give value, the
 8 secured party must file with each filing officer with whom
 9 the financing statement was filed a termination statement to
 10 the effect that he no longer claims a security interest
 11 under the financing statement, which shall be identified by
 12 file number. In other cases, whenever there is no
 13 outstanding secured obligation and no commitment to make
 14 advances, incur obligations, or otherwise give value, the
 15 secured party must on written demand by the debtor send the
 16 debtor, for each filing officer with whom the financing
 17 statement was filed, a termination statement to the effect
 18 that he no longer claims a security interest under the
 19 financing statement, which shall be identified by file
 20 number. A termination statement signed by a person other
 21 than the secured party of record must be accompanied by a
 22 separate written statement of assignment signed by the
 23 secured party of record complying with 30-9-405(2),
 24 including payment of the required fee. If the affected
 25 secured party fails to file such a termination statement as

1 required by this subsection or to send such a termination
2 statement within 10 days after proper demand therefor, he
3 shall be liable to the debtor for \$100, and in addition for
4 any loss caused to the debtor by such failure.

5 (2) On presentation to the filing officer of such a
6 termination statement, he must note it in the index. If he
7 has received the termination statement in duplicate, he
8 shall return one copy of the termination statement to the
9 secured party, stamped to show the time of receipt thereof.
10 If the filing officer has a microfilm or other photographic
11 record or a record produced according to rules adopted by
12 the secretary of state of the financing statement and of any
13 related continuation statement, statement of assignment, and
14 statement of release, he may remove the originals from the
15 files at any time after receipt of the termination
16 statement; ~~or~~ if. If he has no such record, he may remove
17 them from the files at any time after 1 year after receipt
18 of the termination statement.

19 (3) The uniform fee for filing and indexing the
20 termination statement shall be set pursuant to 30-9-403."

21 NEW SECTION. Section 4. Extension of authority. Any
22 existing authority to make rules on the subject of the
23 provisions of [this act] is extended to the provisions of
24 [this act].

-End-

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

HOUSE BILL NO. 487

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HARPER, O'KEEFE, RAPP-SVRCEK

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The legislature intends that the rules require the
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legislature;

(c) the journals of the legislature;

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kept or deposited in his office pursuant to law.

(2) All records included in subsection (1) may be kept
and recorded--by--photostatic--or--microphotographic--means--
microfilm--or--any--other--mechanical--process--that--produces--a
clear--accurate--and--permanent--duplicate--of--the--original

record reproduced in accordance with ~~standards-not-less-than~~
~~those--approved--for--permanent--records--by--the--American~~
~~national--standards--institute~~ rules adopted by the secretary
of state IN CONSULTATION WITH THE STATE RECORDS COMMITTEE
PROVIDED FOR IN 2-15-1013.

(3) The state records committee created by 2-15-1013
may approve the disposal of original records once those
records are reproduced as provided for in subsection (2),
unless disposal takes the form of transfer of records; in
that case, reproduction will not be necessary. The
reproduction, or certified copy thereof, of a record may be
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evidence in any court or proceeding, and ~~shall-have~~ has the
same force and effect as the original record.

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reproduced as provided for in subsection (2). The secretary
of state shall place one copy in a fireproof storage place
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(6) All duplicates of all records shall be identified

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***30-9-403.** What constitutes filing -- duration of
filing -- fees -- effect of lapsed filing -- duties of
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Presentation for filing of a financing statement and tender
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(2) Except as provided in subsections (6) and (11), a
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 9 of record and complying with 30-9-405(2), including payment
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19 statement, continuation statement, assignment, amendment, or
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24 does not require the secretary of state to mail a copy of
25 any document which does not specifically indicate the county

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2 (11) When a financing or continuation statement covers
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4 lapses on July 1, 1986, unless prior to that date there is
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23 original and retrieving the duplicate. The process must
24 have adequate safeguards to ensure that the stored documents
25 will be preserved for many years.

1 The legislature intends that the rules permit the use
2 of appropriate technology that meets these requirements. The
3 rules must allow for the use of microfilm, photostatic or
4 microphotographic means, computerized electronic disc, or
5 other new technologies that may be developed. These rules
6 may permit storage systems that allow public access through
7 computer hookups as long as no person is able to tamper with
8 the stored records.

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 2-6-111, MCA, is amended to read:

12 "2-6-111. Custody and reproduction of records by
13 secretary of state. (1) The secretary of state is charged
14 with the custody of:

15 (a) the enrolled copy of the constitution;

16 (b) all the acts and resolutions passed by the
17 legislature;

18 (c) the journals of the legislature;

19 (d) the great seal;

20 (e) all books, records, parchments, maps, and papers
21 kept or deposited in his office pursuant to law.

22 (2) All records included in subsection (1) may be kept
23 and recorded--by--photostatic--or--microphotographic--means,
24 microfilm,--or--any--other--mechanical--process--that--produces--a
25 clear,--accurate,--and--permanent--duplicate--of--the--original

record reproduced in accordance with standards-not-less-than those--approved--for--permanent--records--by--the---American national--standards-institute rules adopted by the secretary of state IN CONSULTATION WITH THE STATE RECORDS COMMITTEE PROVIDED FOR IN 2-15-1013.

(3) The state records committee created by 2-15-1013 may approve the disposal of original records once those records are reproduced as provided for in subsection (2), unless disposal takes the form of transfer of records; in that case, reproduction will not be necessary. The reproduction, or certified copy thereof, of a record may be used in place of the original for all purposes, including as evidence in any court or proceeding, and shall have has the same force and effect as the original record.

(4) The secretary of state shall prepare enlarged typed or photographic copies of the records whenever their production is required by law.

(5) At least two copies shall be made of all records reproduced as provided for in subsection (2). The secretary of state shall place one copy in a fireproof storage place and shall retain the other copy in his office with suitable equipment for displaying such a record by projection to not less than its original size and for preparing, for persons entitled thereto, copies of the record.

(6) All duplicates of all records shall be identified

and indexed."

Section 2. 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) 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.

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

(3) A continuation statement may be filed by the

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

1 statements or other related filings, or by other means, that
 2 if he physically destroys the financing statements of a
 3 period more than 5 years past, those which have been
 4 continued by a continuation statement or which are still
 5 effective under subsection (6) shall be 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. The filing officer
 9 shall hold the statement or a microfilm or other
 10 photographic copy thereof or a copy produced according to
 11 rules adopted by the secretary of state for public
 12 inspection. In addition, the filing officer shall index the
 13 statements according to the name of the debtor and shall
 14 note in the index the file number and the address of the
 15 debtor given in the statement.

16 (5) The uniform fees for filing, indexing, and
 17 stamping a copy furnished by the filing party to show the
 18 date and place of filing shall be set pursuant to subsection
 19 (13).

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

1 terminates as to the real estate.

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

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

24 (9) Within one working day of receipt of a financing
25 or continuation statement, the secretary of state shall

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

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

1 of the principal debtor's residence on its face.

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

8 (12) Financing statement information in the computer
9 system constitutes public writings within the meaning of
10 2-6-101, but the information may not be used to compile
11 mailing lists.

12 (13) The secretary of state, with advice from the
13 county clerk and recorders, shall by administrative rule
14 establish fees as required by this part. The fees must be
15 commensurate with the costs of processing the documents. The
16 secretary of state shall maintain records sufficient to
17 support the amounts of the fees established under this
18 subsection. The secretary of state shall deposit in a state
19 special revenue fund in the state treasury all fees he
20 collects, and the fee money may be paid out of the treasury
21 only on appropriation made by the legislature as provided in
22 17-8-101. Any fee money collected under this part and
23 remaining in the state treasury after all current fiscal
24 year expenditures are met must be transferred to the general
25 fund. The secretary of state shall disseminate the uniform

1 fee schedule to the county clerk and recorders for their
2 use."

3 **Section 3.** Section 30-9-404, MCA, is amended to read:

4 "30-9-404. Termination statement. (1) If a financing
5 statement covering consumer goods is filed on or after
6 October 1, 1983, then within 1 month or within 10 days
7 following written demand by the debtor after there is no
8 outstanding secured obligation and no commitment to make
9 advances, incur obligations, or otherwise give value, the
10 secured party must file with each filing officer with whom
11 the financing statement was filed a termination statement to
12 the effect that he no longer claims a security interest
13 under the financing statement, which shall be identified by
14 file number. In other cases, whenever there is no
15 outstanding secured obligation and no commitment to make
16 advances, incur obligations, or otherwise give value, the
17 secured party must on written demand by the debtor send the
18 debtor, for each filing officer with whom the financing
19 statement was filed, a termination statement to the effect
20 that he no longer claims a security interest under the
21 financing statement, which shall be identified by file
22 number. A termination statement signed by a person other
23 than the secured party of record must be accompanied by a
24 separate written statement of assignment signed by the
25 secured party of record complying with 30-9-405(2),

1 including payment of the required fee. If the affected
2 secured party fails to file such a termination statement as
3 required by this subsection or to send such a termination
4 statement within 10 days after proper demand therefor, he
5 shall be liable to the debtor for \$100, and in addition for
6 any loss caused to the debtor by such failure.

7 (2) On presentation to the filing officer of such a
8 termination statement, he must note it in the index. If he
9 has received the termination statement in duplicate, he
10 shall return one copy of the termination statement to the
11 secured party, stamped to show the time of receipt thereof.
12 If the filing officer has a microfilm or other photographic
13 record or a record produced according to rules adopted by
14 the secretary of state of the financing statement and of any
15 related continuation statement, statement of assignment, and
16 statement of release, he may remove the originals from the
17 files at any time after receipt of the termination
18 statement; ~~or if~~. If he has no such record, he may remove
19 them from the files at any time after 1 year after receipt
20 of the termination statement.

21 (3) The uniform fee for filing and indexing the
22 termination statement shall be set pursuant to 30-9-403."

23 NEW SECTION. Section 4. 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].

-End-

1 HOUSE BILL NO. 487

2 INTRODUCED BY MCDONOUGH, THOMAS, B. BROWN,

3 HARPER, O'KEEFE, RAPP-SVRCEK

4 BY REQUEST OF THE SECRETARY OF STATE

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
7 STORAGE AND REPRODUCTION OF CERTAIN STATE RECORDS ACCORDING
8 TO RULES ADOPTED BY THE SECRETARY OF STATE; AND AMENDING
9 SECTIONS 2-6-111, 30-9-403, AND 30-9-404, MCA."

10
11 STATEMENT OF INTENT

12 A statement of intent is required for this bill because
13 it permits the secretary of state to establish by rule
14 methods for archiving documents filed in his office. Because
15 the technology for archiving documents is developing
16 quickly, it is necessary to provide the secretary of state
17 with the flexibility for establishing the method of
18 archiving.

19 The legislature intends that the rules require the
20 storage of records in a manner that allows the retrieval of
21 clear and accurate duplicates of the original document. The
22 process must be quick and efficient for both reproducing the
23 original and retrieving the duplicate. The process must
24 have adequate safeguards to ensure that the stored documents
25 will be preserved for many years.

1 The legislature intends that the rules permit the use
2 of appropriate technology that meets these requirements. The
3 rules must allow for the use of microfilm, photostatic or
4 microphotographic means, computerized electronic disc, or
5 other new technologies that may be developed. These rules
6 may permit storage systems that allow public access through
7 computer hookups as long as no person is able to tamper with
8 the stored records.

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

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13 secretary of state. (1) The secretary of state is charged
14 with the custody of:

15 (a) the enrolled copy of the constitution;

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17 legislature;

18 (c) the journals of the legislature;

19 (d) the great seal;

20 (e) all books, records, parchments, maps, and papers
21 kept or deposited in his office pursuant to law.

22 (2) All records included in subsection (1) may be kept
23 and recorded--by--photostatic--or--microphotographic--means,
24 microfilm,--or--any--other--mechanical--process--that--produces--a
25 clear,--accurate,--and--permanent--duplicate--of--the--original

1 record reproduced in accordance with standards not less than
 2 ~~those approved for permanent records by the American~~
 3 ~~national standards institute~~ rules adopted by the secretary
 4 of state IN CONSULTATION WITH THE STATE RECORDS COMMITTEE
 5 PROVIDED FOR IN 2-15-1013.

6 (3) The state records committee created by 2-15-1013
 7 may approve the disposal of original records once those
 8 records are reproduced as provided for in subsection (2),
 9 unless disposal takes the form of transfer of records; in
 10 that case, reproduction will not be necessary. The
 11 reproduction, or certified copy thereof, of a record may be
 12 used in place of the original for all purposes, including as
 13 evidence in any court or proceeding, and ~~shall have~~ has the
 14 same force and effect as the original record.

15 (4) The secretary of state shall prepare enlarged
 16 typed or photographic copies of the records whenever their
 17 production is required by law.

18 (5) At least two copies shall be made of all records
 19 reproduced as provided for in subsection (2). The secretary
 20 of state shall place one copy in a fireproof storage place
 21 and shall retain the other copy in his office with suitable
 22 equipment for displaying such a record by projection to not
 23 less than its original size and for preparing, for persons
 24 entitled thereto, copies of the record.

25 (6) All duplicates of all records shall be identified

1 and indexed."

2 **Section 2.** Section 30-9-403, MCA, is amended to read:

3 "30-9-403. What constitutes filing -- duration of
 4 filing -- fees -- effect of lapsed filing -- duties of
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 6 Presentation for filing of a financing statement and tender
 7 of the filing fee or acceptance of the statement by the
 8 filing officer constitutes filing under this chapter.

9 (2) Except as provided in subsections (6) and (11), a
 10 filed financing statement is effective for a period of 5
 11 years from the date of filing. The effectiveness of a filed
 12 financing statement lapses on the expiration of the 5-year
 13 period unless a continuation statement is filed prior to the
 14 lapse. If a security interest perfected by filing exists at
 15 the time insolvency proceedings are commenced by or against
 16 the debtor, the security interest remains perfected until
 17 termination of the insolvency proceedings and thereafter for
 18 a period of 60 days or until expiration of the 5-year
 19 period, whichever occurs later. Upon lapse the security
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 7 secured party of record must be accompanied by a separate
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 9 of record and complying with 30-9-405(2), including payment
 10 of the required fee. Upon timely filing of the continuation
 11 statement, the effectiveness of the original statement is
 12 continued for 5 years after the last date to which the
 13 filing was effective, whereupon it lapses in the same manner
 14 as provided in subsection (2) unless another continuation
 15 statement is filed prior to such lapse. Succeeding
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 19 otherwise, the filing officer may remove a lapsed statement
 20 from the files and destroy it immediately if he has retained
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 22 produced according to rules adopted by the secretary of
 23 state, or in other cases after 1 year after the lapse. The
 24 filing officer shall so arrange matters by physical
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1 statements or other related filings, or by other means, that
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 3 period more than 5 years past, those which have been
 4 continued by a continuation statement or which are still
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16 (5) The uniform fees for filing, indexing, and
 17 stamping a copy furnished by the filing party to show the
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 22 termination statement is filed. A real estate mortgage that
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 24 effective as a fixture filing until the mortgage is released
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2 (7) When a financing statement covers timber to be cut
3 or covers minerals or the like (including oil and gas) or
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6 the debtor and any owner of record shown on the financing
7 statement in the same fashion as if they were the mortgagors
8 in a mortgage of the real estate described and, to the
9 extent that the law of this state provides for indexing of
10 mortgages under the name of the mortgagee, under the name of
11 the secured party as if he were the mortgagee thereunder, or
12 if indexing is by description, in the same fashion as if the
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21 an amount commensurate with the costs of establishing and
22 operating the computerized access system described in
23 subsection (9).

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25 or continuation statement, the secretary of state shall

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18 clerk and recorder, mail a certified copy of a financing
19 statement, continuation statement, assignment, amendment, or
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21 to the clerk and recorder in the county of the principal
22 debtor's residence. The secretary of state shall mail the
23 requested copies at least once each week. This subsection
24 does not require the secretary of state to mail a copy of
25 any document which does not specifically indicate the county

1 of the principal debtor's residence on its face.

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

8 (12) Financing statement information in the computer
9 system constitutes public writings within the meaning of
10 2-6-101, but the information may not be used to compile
11 mailing lists.

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13 county clerk and recorders, shall by administrative rule
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18 subsection. The secretary of state shall deposit in a state
19 special revenue fund in the state treasury all fees he
20 collects, and the fee money may be paid out of the treasury
21 only on appropriation made by the legislature as provided in
22 17-8-101. Any fee money collected under this part and
23 remaining in the state treasury after all current fiscal
24 year expenditures are met must be transferred to the general
25 fund. The secretary of state shall disseminate the uniform

1 fee schedule to the county clerk and recorders for their
2 use."

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8 outstanding secured obligation and no commitment to make
9 advances, incur obligations, or otherwise give value, the
10 secured party must file with each filing officer with whom
11 the financing statement was filed a termination statement to
12 the effect that he no longer claims a security interest
13 under the financing statement, which shall be identified by
14 file number. In other cases, whenever there is no
15 outstanding secured obligation and no commitment to make
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 22 termination statement shall be set pursuant to 30-9-403."

23 NEW SECTION. Section 4. 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].

-End-