

1 SENATE BILL NO. 42

2 INTRODUCED BY SYWSGOOD

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING BRAND OWNERSHIP INFORMATION AS A PART
 5 OF A LIVESTOCK INSPECTION CERTIFICATION; REQUIRING THE SECRETARY OF STATE TO PROVIDE
 6 CERTAIN FINANCING STATEMENT INFORMATION TO A LICENSED LIVESTOCK AUCTION MARKET AND
 7 TO THE DEPARTMENT OF LIVESTOCK UPON REQUEST AND PROVIDING FOR PAYMENT OF COSTS
 8 ASSOCIATED WITH THE PROCESS; REQUIRING THE SECRETARY OF STATE TO CONTACT THE
 9 APPROPRIATE FEDERAL AGENCIES TO OBTAIN VERIFICATION THAT A BRAND CERTIFICATION FILED
 10 IN THE UNIFORM COMMERCIAL CODE PUBLIC ACCESS SYSTEM MEETS THE STATE FILING
 11 REQUIREMENTS OF THE FEDERAL FOOD SECURITY ACT OF 1985; REMOVING LIABILITY OF LIVESTOCK
 12 MARKETS AND DEALERS FROM THE COLLECTION AND PAYMENT OF MONEY DUE THE HOLDER OF A
 13 LIVESTOCK SECURITY AGREEMENT; REQUIRING THAT NOTICES OF RENEWAL OF SECURITY
 14 AGREEMENTS AND ASSIGNMENTS BE FILED WITH THE SECRETARY OF STATE; ELIMINATING A
 15 PORTION OF THE BRAND LIEN SECURITY AGREEMENT PROCESS; AMENDING SECTIONS 30-9-203,
 16 81-8-261, 81-8-303, AND 81-8-305, MCA; AND REPEALING SECTIONS 30-9-423, 81-8-301, AND
 17 81-8-302, MCA."

18
19 STATEMENT OF INTENT

20 A statement of intent is required for this bill because [section 2] allows the secretary of state to
 21 establish by rule a new fee to cover costs associated with providing brand information under the Uniform
 22 Commercial Code public access system. It is intended that the fee be limited to the actual cost involved
 23 in an informational transaction and that the fee be set through established administrative procedures,
 24 including the opportunity for public hearings and input.

25

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

27

28 **Section 1.** Section 81-8-261, MCA, is amended to read:

29 **"81-8-261. Inspection of public markets.** Livestock inspectors, including stock inspectors of a
 30 county or district, the sheriff of a county, or a representative of the department of livestock, may enter

1 upon the premises where livestock ~~is~~ are being held or sold and ~~shall~~ must be accorded every facility by
 2 the owners ~~thereof~~ of the premises in determining whether a violation of the law is being committed or is
 3 likely to be committed. The inspection may not unnecessarily interfere with the conduct of the sales.
 4 Livestock sold at the market may not be delivered to the purchaser until ~~he~~ the purchaser has first received
 5 ~~an inspection certificate~~ a market clearance issued by one of the officers mentioned in this section, showing
 6 clearly and explicitly that the person making the inspection is satisfied as to the ownership of the livestock,
 7 the ownership of the livestock brand, and the health of all livestock ~~se~~ sold at the market."

8

9 **NEW SECTION. Section 2. Certain U.C.C. information to be provided -- duties of secretary of state**
 10 **-- payment of costs and fees.** (1) The secretary of state shall, upon request, provide to a licensed livestock
 11 auction market and to the department online access to Uniform Commercial Code public access system
 12 information related to any financing statement. The information must include the specific brand
 13 identification information listed on the Uniform Commercial Code filing form, including the brand and brand
 14 identification code.

15 (2) The secretary of state shall determine the amount of actual cost associated with providing
 16 information under subsection (1) and shall by rule set a fee to cover the actual cost. The secretary of state
 17 shall notify the lienholder of record listed on the financing statement, and that lienholder is responsible for
 18 payment of the associated costs or fees.

19

20 **Section 3.** Section 30-9-203, MCA, is amended to read:

21 **"30-9-203. Attachment and enforceability of security interest -- proceeds, formal requisites.** (1)
 22 Subject to the provisions of 30-4-208 on the security interest of a collecting bank, 30-8-321 on security
 23 interests in securities, and 30-9-113 on a security interest arising under the Chapter on Sales, a security
 24 interest is not enforceable against the debtor or third parties with respect to the collateral and does not
 25 attach unless:

26 (a) the collateral is in the possession of the secured party pursuant to agreement or the debtor has
 27 signed a security agreement which contains a description of the collateral and in addition, when the security
 28 interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

29 (b) value has been given; and

30 (c) the debtor has rights in the collateral.

1 (2) A security interest attaches when it becomes enforceable against the debtor with respect to
 2 the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place
 3 unless explicit agreement postpones the time of attaching.

4 (3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds
 5 provided by 30-9-306.

6 (4) A transaction, although subject to this chapter, is also subject to Title 23, chapter 2, part 5,
 7 to Title 23, chapter 2, part 6, to Title 32, chapter 5, as enacted by Chapter 283, Laws of Montana 1959,
 8 to Title 31, chapter 1, part 2, as enacted by Chapter 282, Laws of Montana 1959, and to ~~81-8-304~~
 9 ~~through 81-8-304~~, 81-8-305, Title 61, chapter 3, Title 16, chapters 1 through 6, and Title 31, chapter 1,
 10 part 4, as amended, and in the case of conflict between the provisions of this chapter and any such statute,
 11 the provisions of ~~such~~ the statute control. Failure to comply with any applicable statute has only the effect
 12 ~~which that~~ that is specified ~~therein~~ in that statute."

13
 14 **Section 4.** Section 81-8-303, MCA, is amended to read:

15 **"81-8-303. Duty of secured parties to file satisfactions of security agreements -- filing of renewals**
 16 **with secretary of state.** (1) The secured parties, who filed notices of security agreements, renewals, and
 17 assignments with the department ~~of livestock~~, as provided for in this part, shall file notices of satisfaction
 18 of the security agreements with the department immediately upon the satisfaction of the security
 19 agreement.

20 **(2) A renewal of a notice of a security agreement or an assignment of a security interest on file with**
 21 **the department on [the effective date of this act] must be filed with the secretary of state. Upon filing of**
 22 **the renewal, the department shall transfer the security agreement to the secretary of state.**"

23
 24 **Section 5.** Section 81-8-305, MCA, is amended to read:

25 **"81-8-305. Department ~~of livestock~~ and livestock auction market and dealer not responsible for**
 26 **collection or payment of money under security agreements.** (1) The department ~~of livestock~~, and its agents
 27 and employees, are not responsible or liable to either a debtor or secured party for the collection or payment
 28 of any money due the holder of any security agreement covering livestock or renewals, satisfactions, or
 29 assignments ~~thereof as provided in this part~~, that have been filed with the secretary of state or with the
 30 department if this part is carried out the department and its agents and employees acted in good faith.

1 (2) A livestock auction market acting under a certificate of public convenience and necessity issued
2 by the department and a livestock dealer licensed under this chapter are not responsible or liable to a
3 secured party for the collection or payment of any money due the holder of any security agreement
4 covering livestock or renewals, satisfactions, or assignments that have been filed with the secretary of state
5 or with the department if the livestock auction market or dealer acted in good faith."
6

7 **NEW SECTION. Section 6. Verification of filing requirements by secretary of state.** The secretary
8 of state shall contact the appropriate federal agencies to obtain verification that a brand certification filed
9 in the Uniform Commercial Code public access system meets the state filing requirements of the federal
10 Food Security Act of 1985.

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12 **NEW SECTION. Section 7. Repealer.** Sections 30-9-423, 81-8-301, and 81-8-302, MCA, are
13 repealed.
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15 **NEW SECTION. Section 8. Codification instruction.** [Section 2] is intended to be codified as an
16 integral part of Title 81, chapter 8, part 3, and the provisions of Title 81, chapter 8, part 3, apply to
17 [section 2].
18

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0042, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

Requiring brand ownership information as part of a livestock inspection certification; requiring the Secretary of State to provide certain financing statement information to a licensed livestock auction market and to the Department of Livestock upon request and providing for payment of costs associated with the process; requiring the Secretary of State to contact the appropriate federal agencies to obtain verification that a brand certification filed in the Uniform Commercial Code (UCC) public access system meets the state filing requirements of the Federal Food Security Act of 1985; removing liability of livestock markets and dealers from the collection and payment of money due the holder of a livestock security agreement; requiring that notices of renewal of security agreements and assignments be filed with the Secretary of State.

ASSUMPTIONS:


Secretary of State's Office:

1. Significant computer system modifications of about \$150,000 will be required in fiscal 1996 to bring the current UCC system into compliance with the specifics of the bill. Since the bill has no effective date, and will therefore be effective October 1, 1995, the system modifications will be made separate from, rather than part of, the system changes funded in the agency request in the Governor's Executive Budget.
2. Additional computer equipment in the amount of \$30,000 will be required in fiscal 1996 to provide graphics capabilities required by the brand system.
3. It is the intent of the bill to replace existing Agricultural Lien Filings currently perfected on the UCC system; therefore, no additional lien filing revenue will be created.
4. New fees will be established by rule to charge lienholders for brand information inquiries made by livestock markets and the Department of Livestock equivalent to the actual public assess cost of providing the information.

Department of Livestock:

5. Brand lien security agreements will no longer be filed with the Department of Livestock.
6. An indeterminable number of satisfactions of security agreements will be filed with the department. Any security agreements not satisfied by April, 1998 will be purged from department records at that time.
7. The portion of the FTE currently assigned to process security agreement filings will be reassigned to other priorities within the department.
8. There will be an estimated decrease in operating expenses of \$25,000 per year.
9. Although brand security agreements may be filed at any time, there is a required renewal of all mortgages at five-year intervals. The annual average state special revenue from these renewals is \$46,000.

(continued)


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

CHARLES SWYSGOOD, PRIMARY SPONSOR DATE

Fiscal Note for SB0042, as introduced

SB 42

(continued)

FISCAL IMPACT:

Expenditures:

<u>Secretary of State:</u>	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Operating expenses	157,800	7,800
Equipment	<u>30,000</u>	<u>0</u>
Total	187,800	7,800
 Proprietary (06)	 187,800	 7,800
 <u>Department of Livestock:</u>		
Operating expenses	(25,000)	(25,000)
 State Special Revenue (02)	 (25,000)	 (25,000)

Revenues:

<u>Secretary of State:</u>		
Lienholder fees (06)	7,800	7,800
 <u>Department of Livestock:</u>		
Mortgage renewals (02)	(46,000)	(46,000)

Net Impact:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Sec of State-Proprietary (06)	180,000	0
Livestock - State spec rev (02)	(21,000)	(21,000)

TECHNICAL NOTES:

Automatic fee charge-backs to lienholders as provided in section 2(2) may represent a questionable contract between the state and the lienholder such that the lienholder is liable for an unknown amount based upon the actions of other individuals whom they can not control.