

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representative O. Miller**

A Bill

HOUSE BILL

For An Act To Be Entitled

8 "AN ACT TO AMEND CHAPTER 36 OF TITLE 5 OF THE ARKANSAS
9 CODE OF 1987 TO ADD A NEW SECTION TO PROVIDE FOR
10 IDENTIFICATION OF DAIRY CASES AND TO PROHIBIT THE UNLAWFUL
11 USE THEREOF; PROVIDING PENALTIES FOR VIOLATIONS; AND FOR
12 OTHER PURPOSES."

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14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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16 SECTION 1. Chapter 36 of Title 5 of the Arkansas Code of 1987 is
17 amended by adding thereto a new Section 119 to read as follows:

18 "5-36-119. Use of cases and other reusable containers.

19 (a) In order to make this section effective to prohibit the illegal use
20 of reusable containers, a person owning reusable containers, as defined in
21 this section, is encouraged to adopt and use a name or mark on such containers
22 identifying the name of the owner and to place a label on the containers
23 stating or containing a warning that the theft or unlawful possession or use
24 thereof is subject to fine and imprisonment.

25 (b) It shall be unlawful for a person to do any of the following:

26 (1) Use for any purpose, when not on the premises of the owner or an
27 adjacent parking area, a reusable container of another which is identified
28 with or by any name or mark unless the use is authorized by the owner.

29 (2) Sell, or offer for sale, a reusable container of another which is
30 identified with or by a name or mark unless the sale is authorized by the
31 owner.

32 (3) Deface, obliterate, destroy, cover up or otherwise remove or
33 conceal a name or mark on a reusable container of another without the written
34 consent of the owner.

35 (c) Transportation of containers; bill of lading.--It shall be unlawful

1 for any common carrier or private carrier for hire, except those engaged in
2 the transporting of dairy products to and from farms where they are produced,
3 to receive or transport any reusable container marked with a name or mark
4 unless the carrier has in his possession a bill of lading or invoice therefor.

5 (d) Unlawful removal of containers.--It is a violation of this section
6 for any person to remove a reusable container from the premises, parking area
7 or any other area of any processor, distributor or retail establishment, or
8 from any delivery vehicle, unless legally authorized to do so, if:

9 (1) The reusable container is marked on at least one side with a name
10 or mark.

11 (2) A notice to the public, warning that use by any person other than
12 the owner is punishable by law, is visibly displayed on the reusable
13 container.

14 (e) Deposits.--The requiring, taking or accepting of any deposit, upon
15 delivery of a reusable container shall not be deemed a sale thereof, optional
16 or otherwise.

17 (f) Penalty.--A person who violates this section shall be guilty of a
18 Class B misdemeanor and shall be punished accordingly. Each violation shall
19 constitute a separate offense.

20 (g) Scope of section.--This section shall not apply to the owner of a
21 reusable container or to a customer or any other person who has written
22 consent from the owner of a reusable container or from a retailer, in lawful
23 possession thereof, to remove it from the premises or the parking area of the
24 retail establishment. For the purposes of this section, the term 'written
25 consent' includes tokens and other indicia of consent which may be
26 established by the owner or the retailer.

27 (h) Definitions.--As used in this section, the following words and
28 phrases shall have the meanings given to them in this subsection:

29 (1) 'Container'.--A dairy case or any other container intended for
30 reuse, used to transport, store or carry any dairy products.

31 (2) 'Dairy case'.--A wire or plastic container which holds sixteen
32 (16) quarts or more of beverage and is used by distributors or retailers, or
33 their agents, as a means to transport, store or carry dairy products.

34 (3) 'Name' or 'mark'.--Any permanently affixed or permanently stamped
35 name or mark which is used for the purpose of identifying the owner of dairy

1 cases.

2 (4) 'Parking area'.--A lot or other property provided by a retail
3 establishment for the use of customers to park automobiles or other vehicles
4 while doing business in that establishment.

5 (5) 'Person'.--Person means any and all corporations, partnerships,
6 firms, associations, cooperatives or individuals.

7 (i) No person who returns a container which was removed from the
8 premises of the owner prior to the effective date of this act, to its owner
9 within ninety (90) days after the effective date of this act shall be
10 prosecuted under the provisions of this section.

11 (j) The provisions of this section are intended to be supplemental to
12 other provisions of this chapter and shall repeal only such laws or parts of
13 laws as are in conflict herewith."
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15 SECTION 2. All provisions of this act of a general and permanent nature
16 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
17 Revision Commission shall incorporate the same in the Code.
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19 SECTION 3. If any provision of this act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 act are declared to be severable.
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25 SECTION 4. All laws and parts of laws in conflict with this act are
26 hereby repealed.
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28 SECTION 5. EMERGENCY. It is hereby found and determined by the General
29 Assembly that the theft of dairy cases is resulting in losses of thousands of
30 dollars each year to retail merchants and dairies which use said products for
31 the delivery of merchandise or for the convenience of customers while trading
32 in retail establishments; that such thefts necessitate the increase of retail
33 prices of such products and thereby are injurious to the public welfare and
34 safety and that immediate steps are needed to discourage the theft of dairy
35 cases in order to promote economy and efficiency in the use of such containers

1 and that the immediate passage of this act is necessary to impose stringent
2 penalties to discourage such thefts. Therefore, an emergency is hereby
3 declared to exist and this act being necessary for the preservation of the
4 public peace, health and safety shall be in full force and effect from and
5 after its passage and approval.

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