

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

HOUSE BILL

1220

By: Representative Fuller

For An Act To Be Entitled

"AN ACT TO AMEND CHAPTER 36 OF TITLE 5 OF THE ARKANSAS CODE OF 1987 TO ADD A NEW SECTION TO PROVIDE FOR IDENTIFICATION, POSSESSION AND UNLAWFUL USE OF DAIRY CASES, BAKERY TRAYS, BAKERY BASKETS, AND SHOPPING CARTS; AND PROVIDING PENALTIES FOR VIOLATIONS."

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

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

"5-36-119. Use of cases, trays, baskets, carts, and other reusable containers.

(a) A person owning reusable containers or shopping carts as defined in this section, may adopt and use a name or mark on such containers or carts identifying the name of the owner and containing a warning that the theft or unlawful possession or use thereof is subject to fine and imprisonment.

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

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

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

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

(c) Presumption of possession.--Any person who is in possession of any reusable container or shopping cart which has a name or mark and is not on the

premises of the owner or an adjacent parking area shall be presumed to be in possession of stolen property.

(d) Transportation of containers; bill of lading.--It shall be unlawful for any common carrier or private carrier for hire, except those engaged in the transporting of dairy products to and from farms where they are produced, to receive or transport any reusable container marked with a name or mark unless the carrier has in his possession a bill of lading or invoice therefor.

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

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

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

(f) Illegal use of shopping carts.--If a shopping cart has a mark or name and contains the warning provided in subsection (a) of this section, it shall be a violation of this section:

(1) To remove any such shopping cart from the premises or parking area of a retail establishment with intent to temporarily or permanently deprive the owner of the cart, or the retailer, of possession of the cart.

(2) To remove any such shopping cart without written authorization from the owner of the cart, from the premises or parking area of any retail establishment.

(3) To possess, without the written permission of the owner or retailer in lawful possession thereof, any such shopping cart whose name or mark appears thereon.

(4) To remove, obliterate or alter any serial number, name or mark affixed to a shopping cart.

(g) Deposits.--The requiring, taking or accepting of any deposit, upon delivery of a reusable container or shopping cart shall not be deemed a sale thereof, optional or otherwise.

(h) Penalty.--A person who violates this section shall be guilty of a Class B misdemeanor and shall be punished accordingly. Each violation shall

constitute a separate offense.

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

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

(1) 'Bakery basket.'--A wire or plastic container which holds bread or other baked goods and is used by a distributor or retailer, or his agent, as a means to transport, store or carry bakery products.

(2) 'Bakery tray.'--A wire or plastic container which holds bread or other baked goods and is used by a distributor or retailer, or his agent, as a means to transport, store or carry bakery products.

(3) 'Container.'--A bakery basket, bakery tray, dairy case, or any other container intended for reuse, used to transport, store or carry any products.

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

(5) 'Name' or 'mark.'--Any permanently affixed or permanently stamped name or mark which is used for the purpose of identifying the owner of dairy cases, bakery trays, bakery baskets, or shopping carts.

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

(7) 'Shopping cart.'--A basket which is mounted on wheels, or a similar device, generally used in a retail establishment by a customer for the purpose of transporting goods of any kind.

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

(k) No person who returns a container or shopping cart which was removed from the premises of the owner prior to the effective date of this act, to its

owner within sixty (60) days after the effective date of this act shall be prosecuted under the provisions of this section.

(1) The provisions of this section are intended to be supplemental to other provisions of this chapter and shall repeal only such laws or parts of laws as are in conflict herewith."

SECTION 2. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 3. EMERGENCY. It is hereby found and determined by the General Assembly that the theft of dairy cases, bakery trays and bakery baskets, and shopping carts is resulting in losses of thousands of dollars each year to retail merchants, bakeries and dairies which use said products for the delivery of merchandise or for the convenience of customers while trading in retail establishments; that such thefts necessitate the increase of retail prices of such products and thereby are injurious to the public welfare and safety and that immediate steps are needed to discourage the theft of dairy cases, bakery trays and bakery baskets, and shopping carts in order to promote economy and efficiency in the use of such containers and that the immediate passage of this Act is necessary to impose stringent penalties to discourage such thefts. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.