

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By CHAIRMAN BOB BACHINI, on January 24, 1991, at 8 a.m.

ROLL CALL

Members Present:

Bob Bachini, Chairman (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Tim Dowell (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Steppler (D)
Rolph Tunby (R)
Norm Wallin (R)

Members Excused: REP. BRENT CROMLEY

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: HB 224 would be heard today.

HEARING ON HOUSE BILL 224

Presentation and Opening Statement by Sponsor:

REP. RAY PECK, HD 15, Havre, chief sponsor explained HB 224 is an act creating the offense of unlawful appropriation of dairy cases; prescribing penalties; providing for registration of names or marks identifying dairy cases; allocating fine proceeds; and amending Section 3-10-601, MCA.

Proponents' Testimony:

Tom Dowling, Montana Food Distributors Association, said the Montana Food Distributors Association is a group of independent grocers and includes some dairies. The cost to the dairies because of the loss of dairy cases is \$276,000, and in 11 years as County Prosecutor in Lewis & Clark County he had never prosecuted a case involving dairy cases. Many people have them because they make a convenient step into a camper, or to put the tongue of a camper on; dairies did not have them marked for identification.

Bill Stevens, Montana Food Distributors Association spoke in favor of House Bill 224 and gave written testimony which is attached as EXHIBIT 1.

Dave Duffy, Darigold showed a dairy case, told the amount of gold and red cases they had bought and said every one was gone. He told stories of having thousands of gallons of milk to put into cases, no cases, and the time, cost and frustration of trying to get the milk out. He handed out EXHIBIT 2 showing the expense to replace cases in the years 1987-1990.

Ed McHugh, Clover Leaf Dairy, said they are a small dairy but have the same problem. Their loss of cases and their down time would be well over \$10,000 a year. He said this is an operating cost. The case cost is included in the cost of the milk when the price is determined by the Milk Control Board, and is therefore a direct cost to the consumer.

Ted Doney, Lobbyist for the Montana Dairymen's Association, said they are in support of the bill.

Opponents' Testimony: None

Questions From Committee Members:

REP. LARSON asked if he had contact with the law enforcement agencies and questioned how they were going to enforce the legislation. Mr. Dowling said this would be enforced the same way they would enforce a traffic ticket.

REP. LARSON asked why they did not charge the retailer a deposit on the case. Mr. McHugh answered that most of the industry in Montana does keep as close track of their cases as they can. Their case losses are probably controlled as closely as they can be because their distribution area is smaller. The problem is the record keeping where a lot of small deliveries such as one case are involved. He said they do charge one dollar but it isn't enough to cover the loss.

REP. DOWELL said it was mentioned about \$200,000 is lost because of the loss of dairy cases. Assuming we could make a real impact in lessening that amount, what kind of an effect would that have on the price of milk? Mr. Doney said he could not estimate the

savings to the consumer, but could only repeat what Mr. McHugh had said, the Milk Control Board takes the loss into consideration in setting milk prices.

REP. ELLIS asked if this was \$25 for any amount of cases. REP. PECK said this was \$25 per case. REP. ELLIS asked what the volume of milk business is in the state. Mr. McHugh said their volume in the state would be in the neighborhood of \$100 million in gross sales. They do 5% of the business in the state including ice cream.

REP. KILPATRICK asked if he liked a case and wanted to buy it, is there some way to do that? Mr. McHugh said in their case they do not sell any of their cases, and he felt the other distributors did not do so either. Mr. Duffy said they do not sell any case with their name on it.

REP. PAVLOVICH asked if October was not too late to start since school started in September. REP. PECK said this was probably a good idea.

CHAIRMAN BACHINI referred to Page 1, Section 1, line 13 "a dairy case means a wire or plastic container". Are containers made of any other components? Mr. McHugh answered no. CHAIRMAN BACHINI asked if the definition could be expanded in the future and both Mr. McHugh and Mr. Dowling thought it could be expanded.

REP. WALLIN asked if the dairy would have to appear in all these hearings, and Mr. Dowling answered no.

REP. BARNETT said in America we believe in the free enterprise system, and the law of supply and demand. Do you feel you may have met the demand and now the supply would not be depleted? Mr. Duffy said EXHIBIT 2 shows the loss continues at about the same rate.

REP. BACHINI asked how the business houses that were using the cases for various purposes would be handled. Mr. Dowling said it would affect them the same way an individual would be treated.

Mr. McHugh felt in view of the information it would be prudent for dairies to get together and place ads in the newspapers informing them of the law.

REP. WALLIN asked who makes the charges. REP. PECK said any local law enforcement agency can do that. Because the local law enforcement entity will get 50% of the fee they will be encouraged to give tickets on any they find.

REP. TUNBY asked if this new law will pertain to cases that are properly identified in the new section and not the cases that are out there having been used for several years. Mr. DOWLING said only those registered with the Secretary of State and there is a warning on it that it belongs to the dairy.

CHAIRMAN BACHINI said on Page 1, Section 2 it says "unlawful appropriation of dairy case, if without the consent of the owner or his agent". The owner will be involved in these arrests? **REP. PECK** said the officer doesn't know it is without the consent of the owner unless the owner tells him so. **Mr. Dowling** said when first cited, the person cited goes to the J. P. or whoever, and tells them his possession of the case is with permission of the owner; he then has the burden of proving it.

Closing by Sponsor:

REP. PECK said he had spoken to a deputy sheriff and they liked the bill; they thought they could generate some revenue. He said nationally they are passing this type of legislation in other states. He felt it was a good bill because of the distribution of the fines and the local control. The public should not have to be paying for something someone else is stealing, and this is about \$1/4 million per year.

EXECUTIVE ACTION ON HOUSE BILL 224

Motion: **REP. ELLIS MOVED HB 224 DO PASS.**

Discussion: **REPRESENTATIVE ELLIS** said he was in favor of this bill because it affects the way we look at things. A lot of people think stealing from the government or a big corporation like Darigold is not a crime, but it really is, and it erodes the pattern of our society when we look at it differently.

REP. BENEDICT suggested the possibility of putting a bounty on them or something so people would bring them back rather than destroy them to keep from being caught. **REP. LARSON** reminded him they had to be stamped.

REP. SCOTT said this would have the dairy industry ask the law enforcement to take care of something they have been very lax about over the years.

REP. DOWELL agreed with **REP. SCOTT** and gave an example of internal control in his furniture business.

REP. WALLIN said we have a lot of laws such as bad checks which are a risk of the business. You don't prosecute but hope the checks are all right.

REP. STELLA JEAN HANSON said stealing is stealing, but to put a monetary value on it - even though this has a lesser value than a pack of money from a bank, it is still stealing. She said she agrees with the intent of the bill. The people who handle these cases should store them in safer places.

REP. ELLIS said he felt the biggest fault was with the retailer.

When they store them they just throw them out the back and they are easy to take.

REP. PAVLOVICH said he would agree with REP. ELLIS. Is there a law prohibiting stealing shopping carts? One didn't pass when it was in the Legislature.

REP. BENEDICT would support the bill. Once these cases leave the dairy it is very hard to keep track of them.

REP. BACHINI thought the dairy industry could help its self.

REP. STELLA JEAN HANSEN commented delivery trucks are always subject to milk being taken. You can't keep things like milk cases under cover. It is impossible to keep track of the cases every time the driver jumps out of the truck.

Motion/Vote: REP. LARSON moved an amendment to change the effective date to July 1. The motion was unanimously adopted.

The industry is trying to phase out plastic because of the pollution it creates. It is expensive to use wood.

Motion/Vote: REP. ELLIS moved HB 224 AS AMENDED DO PASS. Motion was passed with REPS. DOWELL AND SCOTT voting NO.

ADJOURNMENT

Adjournment: 10:05 a.m.



REP. BOB BACHINI, CHAIRMAN



JO LAHTI, SECRETARY

BB/jl

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

DATE *Jan. 24, 1991*

EXCUSED

[illegible]

Jo Latta 1-24-91
BCH
1:26 p.m.

HOUSE STANDING COMMITTEE REPORT

January 24, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 224 (first reading copy -- white) do pass as amended .

Signed: _____

Bob Bachini
Bob Bachini, Chairman

And, that such amendments read:

1. Title, line 7.

Strike: "AND"

2. Title, line 8.

Following: "MCA"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"

3. Page 5, line 2.

Following: line 1

Insert: "NEW SECTION. Section 6. Effective date. [This act] is effective July 1, 1991."



EXHIBIT En 11
DATE Jan 24, 1991
HB 224

MONTANA FOOD DISTRIBUTORS ASSOCIATION

2700 Airport Way • P.O. Box 5775 • Helena, Montana 59604 • (406) 449-6394 • 1-800-735-1082

Mr. Chairman - Members of the Committee,

For the record I am Bill Stevens with the Montana Food Distributors Association.

I am here today on behalf of one segment of our membership, that of the Milk processors of Montana.

We are here in support of HB 224 and it's intent of curbing the tremendous loss of milk crates and money necessary to replace missing crates each year.

The milk processors of Montana are spending close to \$200,000.00 each year to replace stolen cases. Each case costs between \$4.50 and \$6.25 depending on size and type of construction. At an average cost of \$5.00 almost 40,000 cases are stolen each year.

While it has been against the law to steal these crates for many years, because of the realitively low value of each crate it has been difficult to get law enforcement and the court system personnel too excited about the problem. Additionally with the signing of a complaint being the only recourse the milk processor has against an individual possessing one of these cases the number of complaints to be filed would run into the thousands each year.

HB 224 is patterned after statues in Florida, Texas, and other states which have confronted this problem. It has been drafted to work much in the same manner as a traffic citation with the law enforcement officer taking a bond in the same amount as the fine. Should the possessor of the crate contest the citation in justice court and fail to prove ownership, he forfeits the money amount of the bond.

Also in an effort to entice law enforcement personnel, HB 224 stipulates that part of the bond or fine is to be paid to the agency for which the officer works.

As I indicated earlier, this problem has become a tremendous financial burden for the milk industry of Montana and we urge you to vote "do pass on HB 224".

Thank You,

Plastic Milk Cases - DARI GOLD

\$ Expense Cases bought

Number of Cases bought

1987 - \$65,230.⁰⁰

14,230

1988 - \$75,932.⁰⁰

14,206

1989 - \$65,275.⁰⁰

16,462

1990 - \$70,300.⁰⁰

14,865

Totals \$276,737.⁰⁰

59,763

Gallons of Milk Bottled

1987 - 5,878,148

1988 - 6,079,702

1989 - 6,083,384

1990 - 5,976,536

1987-1990 = 1.67% INCREASE

SUMMARY

A. 1987 Beginning
Inventory = 249,212
CASES

B. 1990 Ending
Inventory = 242,658
CASES

A - B = Decrease 2.63%

EXPENSE to Replace
Lost or Stolen CASES
= \$276,737.⁰⁰ (plus)

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Business & Econ Dev. COMMITTEE BILL NO. HB 224
DATE Jan 24 SPONSOR (S) Rep Peck
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>Dave Duff</u>	<u>Danigold</u>	X	
<u>Tom Sawicki</u>	<u>Mt. Food Distrib</u>	X	
<u>Bill Stevens</u>	<u>NH Food Diet Assn</u>	X	
<u>Ed McHugh</u>	<u>Cham Sup Dairy</u>	X	
<u>Ted J. Doney</u>	<u>MT. Dairymen's Assn.</u>	X	
<u>Frank Coppes</u>	<u>THRIFTWAY FOOD STORES</u>	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.