

SENATE BILL NO. 446

2/18 Introduced
2/18 Referred to Judiciary
2/21 Hearing
2/23 Committee Report-Bill Pass As Amended
2/26 2nd Reading Pass
2/27 3rd Reading Pass

Transmitted to House

3/06 Referred to Business & Labor
3/19 Hearing
3/20 Comm Report-Bill Concurred As Amended
3/23 Rereferred to Judiciary
3/28 Comm Report-Bill Concurred As Amended
3/30 2nd Reading Not Concurred
3/30 Bill Killed

1 Senate BILL NO. 446
2 INTRODUCED BY Hager Hagist
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
5 OFFENSE OF UNLAWFUL APPROPRIATION OF RETAILER PROPERTY;
6 DECLARING UNLAWFUL THE REMOVAL OR POSSESSION OF DAIRY CASES,
7 EGG BASKETS, AND SHOPPING CARTS; PROVIDING FOR REGISTRATION
8 OF NAMES OR MARKS FOR IDENTIFICATION OF DAIRY CASES, EGG
9 BASKETS, AND SHOPPING CARTS; AND PRESCRIBING PENALTIES."

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

12 Section 1. Definitions. As used in [section 2], the
13 following definitions apply:

14 (1) "Dairy case" means a wire or plastic container
15 that holds 16 quarts or more of dairy products and is used
16 by distributors, retailers, or their agents as a means to
17 transport, store, or carry milk or other dairy products.

18 (2) "Egg basket" means any type of container that
19 holds 4 dozen or more poultry eggs and is used by
20 distributors, retailers, or their agents as a means to
21 transport, store, or carry eggs or other poultry products.

22 (3) "Parking area" means a parking lot or other
23 designated area provided by a retail establishment in which
24 customers may park motor vehicles while conducting business
25 in that establishment.

1 (4) "Registered name or mark" means any permanently
2 affixed or permanently stamped name or mark that has been
3 registered with the secretary of state pursuant to [section
4 3] and is used for the purpose of identifying the owner of
5 dairy cases, egg baskets, or shopping carts.

6 (5) "Shopping cart" means a metal or plastic basket
7 mounted on wheels, or a similar device, generally used in a
8 retail establishment by a customer for the purpose of
9 transporting goods or food products of any kind.

10 Section 2. Unlawful appropriation of retailer
11 property. (1) A person commits the offense of unlawful
12 appropriation of retailer property if, without the consent
13 of the owner or his agent, he purposely or knowingly removes
14 a dairy case, egg basket, or shopping cart from the premises
15 or parking area of a retail establishment with the intent to
16 temporarily or permanently deprive the owner of such dairy
17 case, egg basket, or shopping cart.

18 (2) If a person is found to be in possession of a
19 dairy case, egg basket, or shopping cart off the retail
20 premises and parking area of the owner thereof and such
21 property bears a registered name or mark, such person is
22 presumed to be in possession of unlawfully appropriated
23 property. Such possession places a burden on the person
24 having possession to remove the effect of such possession as
25 a circumstance to be considered with all other evidence

-2-
INTRODUCED BILL
SB 446



1 presented at trial.

2 (3) A person convicted of the offense of unlawful
3 appropriation of retailer property may be fined an amount
4 not to exceed \$500 or imprisoned in the county jail for a
5 term not to exceed 6 months, or both.

6 Section 3. Registration of dairy cases, egg baskets,
7 and shopping carts. Any person, firm, corporation, or
8 association owning dairy cases, egg baskets, or shopping
9 carts may register with the secretary of state a description
10 of the name or mark affixed or stamped on such cases,
11 baskets, or carts for identification purposes. If the
12 secretary of state determines that the name or mark does not
13 duplicate or so closely resemble any other name or mark
14 registered under this section as to be misleading,
15 deceiving, or confusing, the secretary of state shall
16 register and record such name or mark.

17 Section 4. Codification instruction. (1) Sections 1
18 and 2 are intended to be codified as an integral part of
19 Title 45, chapter 6, and the provisions of Title 45 apply to
20 sections 1 and 2.

21 (2) Section 3 is intended to be codified as an
22 integral part of Title 30, chapter 13.

-End-

STATE OF MONTANA

REQUEST NO. FNN 516-85

FISCAL NOTE

Form BD-15

In compliance with a written request received March 14, 19 85, there is hereby submitted a Fiscal Note for S.B. 466 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act levying a state mill levy on centrally assessed property; providing that such property is not subject to any other mill levy; providing for the remittance to a taxing authority of a portion of the revenue derived from the state mill levy; and providing an applicability date and an immediate effective date.

FISCAL IMPACT:

The proposed legislation would generate approximately \$86,601,072 for the general fund levy each year (taxable value of \$430,851,103 x .201). Under current law this type of centrally assessed property would generate about \$88,065,965 per year (\$430,851,103 x .2044). The net effect of the proposed bill using a mill levy of 201 mills would generate about \$1.5 million less revenue.

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

The fixed levy of 201 mills would eventually shift the tax burden away from this class of property if the mill levy on other property increased and the legislature did not adjust the millage rate of 201 mills for centrally assessed property.

David L. Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: March 20, 1985

SB 466

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

- (1) If S.B. 48 is passed, approximately \$2.5 million in additional revenue would be generated from centrally assessed property (SB 48 amended fiscal note: (\$12,318,095 additional taxable value for centrally assessed property x .201 mills)).
- 2) It may be necessary to amend certain sections of current law in order to insure that local governing authorities are required to anticipate in their budgeting process the reimbursement revenue made available to them under section 3 of the proposed legislation. This could be done, for example, by amending page 78, line 10, following "61-3-536," to include the words "and [Section 3]." The same amendment could be made on page 78, line 1. Other sections of the MCA may need to be similarly amended.
- 3) It is not clear whether the 201 mills includes the 6 mills for the University System since the provisions of Section 2 (3) rely on the definition of "taxing authority" in Section 2(1)(b) which does not include the state. The same definitional problem exists in Section 3 (5) when the county treasurer allocates state aid due to each "taxing authority".

APPROVED BY COMMITTEE
ON JUDICIARY

1 SENATE BILL NO. 446

2 INTRODUCED BY HAGER, HIRSCH

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20 distributors, retailers, or their agents as a means to
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19 dairy case, egg basket, or shopping cart off the retail
20 premises and parking area of the owner thereof and such
21 property bears a registered name or mark, such person is
22 presumed to be in possession of unlawfully appropriated
23 property. Such possession places a burden on the person
24 ~~having--possession~~ to remove the effect of such ~~possession~~
25 FACT as a circumstance to be considered with all other

1 evidence presented at trial.

2 (3) A person convicted of the offense of unlawful
3 appropriation of retailer property may be fined an amount
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12 secretary of state determines that the name or mark does not
13 duplicate or so closely resemble any other name or mark
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18 and 2 are intended to be codified as an integral part of
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SENATE BILL NO. 446

INTRODUCED BY HAGER, HIRSCH

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(3) "Parking area" means a parking lot or other designated area provided by a retail establishment in which customers may park motor vehicles while conducting business in that establishment.

(4) "Registered name or mark" means any permanently affixed or permanently stamped name or mark that has been registered with the secretary of state pursuant to [section 3] and is used for the purpose of identifying the owner of dairy cases, egg baskets, or shopping carts.

(5) "Shopping cart" means a metal or plastic basket mounted on wheels, or a similar device, generally used in a retail establishment by a customer for the purpose of transporting goods or food products of any kind.

Section 2. Unlawful appropriation of retailer property. (1) A person commits the offense of unlawful appropriation of retailer property if, without the consent of the owner or his agent, he purposely or knowingly removes a dairy case, egg basket, or shopping cart from the premises or parking area of a retail establishment with the intent to temporarily or permanently deprive the owner of such dairy case, egg basket, or shopping cart.

(2) If a person is found to be in possession of a dairy case, egg basket, or shopping cart off the retail premises and parking area of the owner thereof and such property bears a registered name or mark, such person is presumed to be in possession of unlawfully appropriated property. Such possession places a burden on the person ~~having--possession~~ to remove the effect of such possession FACT as a circumstance to be considered with all other



1 evidence presented at trial.

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22 integral part of Title 30, chapter 13.

-End-

STANDING COMMITTEE REPORT

HOUSE

March 20

19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration SENATE

Bill No. 446

third reading copy (blue)
color

PROVIDES FOR THE OFFENSE OF UNLAWFUL APPROPRIATION OF RETAILER PROPERTY

Respectfully report as follows: That SENATE Bill No. 446

BE AMENDED AS FOLLOWS:

1. Page 3, line 7
Following: "carts"
Insert: -- application for registration and renewal"
Following: ". "
Insert: "(1)"
2. Page 3, line 17
Following: line 16
Insert: "(2) The secretary of state shall receive applications for the purpose of registering a name or mark as provided for in subsection (1). Such applications for registration must be submitted on a form to be prescribed by the secretary of state and must be accompanied by a filing fee in an amount commensurate with the actual cost of registration. The registration of a name or mark under this section is effective for a term of 10 years from the date of registration, and upon application filed within 6 months prior to the expiration of such term, the registration may be renewed for another 10 years."

BE CONCURRED IN
AS AMENDED

5/20
3/20

Rep. Bob Pavlovich,

Chairman.

STANDING COMMITTEE REPORT

HOUSE

March 28 19 85
page 1 of 2

March 28 19 85

page 2 of 2 (SP 446)

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 446

Third reading copy (Blue color)

PROVIDES FOR THE OFFENSE OF UNLAWFUL APPROPRIATION OF
RETAILER PROPERTY

Respectfully report as follows: That Senate Bill No. 446

be amended as follows:

1. Title, line 7.
Following: "CARTS;"
Insert: "PROVIDING FOR CIVIL LIABILITY FOR UNLAWFUL APPROPRIATION
OF RETAILER PROPERTY:"

2. Page 1, line 12.
Following: "used in"
Strike: "[section 2]"
Insert: "[sections 2 and 3]"

3. Page 2, following line 17.
Strike: subsection (2) in its entirety

Renumber: subsequent subsections

XXXXXXXX

(continued)

Chairman.

4. Page 3, following line 5.

Insert: "NEW SECTION. Section 3. Unlawful appropriation of
retailer property - civil liability. (1) A person who,
without the consent of the owner or his agent, removes a
dairy case, egg basket, or shopping cart from the premises
or parking area of a retail establishment with the intent
to temporarily or permanently deprive the owner of such
dairy case, egg basket, or shopping cart is liable to the owner
in a civil action as provided in subsection (2).
(2) The amount of damages awarded pursuant to subsection (1)
shall be an amount equal to twice the value of the object
removed.
(3) Possession of a dairy case, egg basket, or shopping
cart off the retail premises and parking area of the owner
thereof if such property bears a registered name or mark
establishes a disputable presumption in an action brought
pursuant to subsection (1) that the person possessing the
property has removed it in violation of subsection (1).
(4) The remedy provided by this section may be pursued
whether or not a criminal penalty is sought under [section
2] or any other statute providing a criminal penalty.
(5) The definitions of terms defined in [section 1] apply
to this section."

Renumber: subsequent sections

5. Page 3, line 21.
Strike: "3"
Insert: "4"

AND AS AMENDED,
BE CONCURRED IN

3.6 8/8

REP. TOM HANNAH

Chairman.