

By Mr. Manning of Milton, petition of M. Joseph Manning for legislation to make certain changes in the trade law providing further regulations for the use of milk cases. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT TO AMEND THE REGULATION OF TRADE LAW IN RELATION TO THE USE OF MILK CASES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 110 of the General Laws, as appearing
2 in the 1988 Official Edition, is hereby amended by striking out
3 the caption preceding section 21.

1 SECTION 2. Said chapter 110 is hereby amended by striking
2 out section 21 as so appearing and inserting in place thereof the
3 following section: —

4 Section 21. A person engaged in buying, selling or dealing in
5 milk or cream in cans, or who uses cans, tubs, cabinets or dairy
6 cases in the sale, transportation or storage of frozen desserts
7 and/or frozen dessert mix or dairy products with his name and
8 the word “registered” produced in a permanent manner in or upon
9 such cans, tubs, cabinets or dairy cases may register such articles
10 by filing in the office of the clerk of the city or town where his
11 principal place of business is situated, and also in the office of
12 the state secretary, a description of the name so used by him, and
13 paying the fee provided by clause (64) of section thirty-four of
14 chapter two hundred and sixty-two, and shall publish such
15 description once in each of four successive weeks in a newspaper
16 published in the city or town where the description has been filed.

17 The term “dairy case” as used in this section and in
18 sections twenty-two through twenty-five shall mean a wire or

19 plastic container which holds sixteen quarts or more of beverage
20 and is used by milk dealers, distributors, retailers or their agents
21 as a means to transport, store or carry dairy products.

1 SECTION 3. Said chapter 110 is hereby amended by inserting
2 after section 21, the following section: —

3 Section 21A. Each dairy case used for the sale or delivery of
4 milk and milk products to wholesale customers in the
5 commonwealth or is furnished to another milk dealer or other
6 person for sale and delivery shall have the name or other business
7 identification of the owner clearly printed, embossed, inscribed
8 or otherwise permanently marked on each such dairy case as
9 prescribed in section twenty-one.

10 The commissioner of food and agriculture shall, within
11 sixty days after the effective date of this act, promulgate rules and
12 regulations regulating the adoption, use, registration, and
13 identification of an owner of dairy cases and the amount of the
14 deposit fee to be charged by and paid to said owner of each such
15 dairy case.

16 It shall be unlawful to willingly or knowingly with the intent
17 to deprive the owner of such a container of possession, or remove
18 such container from the premises or parking area of any retail
19 establishment, if such a container has the name or mark
20 prominently displayed and permanently affixed to it that identifies
21 the owner of such a container, notifies the public that the
22 unauthorized removal of such a container from the premises or
23 parking area, or the unauthorized possession of such a container,
24 is a violation of state law, and lists a telephone number or address
25 for returning such container or containers to the owner; or deface,
26 obliterate, destroy, cover up or otherwise remove or conceal a
27 name or mark on such a container, or be in possession of any
28 such container whose name or mark has been altered, defaced,
29 obliterated, destroyed, covered up or otherwise removed or
30 concealed, without the consent of the owner of such a container.

31 The requiring, taking or accepting of any deposits, upon
32 delivery of a dairy case under an agreement to refund the same
33 upon redelivery of a dairy case shall not constitute a purchase
34 thereof, optional or otherwise.

35 This section shall not apply to the owner of a container, or to
36 any person having the consent of the owner of the container to
37 remove it from the premises or the parking area of the retail
38 establishment. For the purposes of this section, "consent" shall
39 include tokens or other indicia of consent which may be
40 established by the owner of the container.

41 A knowing violation of this section shall be punishable by a
42 civil penalty of not more than one hundred dollars. Each violation
43 shall constitute a separate offense.

44 No person in unlawful possession of a dairy case or cases, who
45 returns the same to its owner within sixty days after the effective
46 date of this act shall be prosecuted under the provisions of this
47 section, or of section twenty-eight or of section one hundred and
48 forty-four of chapter two hundred and sixty-six.

1 SECTION 4. Said chapter 110 is hereby amended by striking
2 out section 22 as so appearing and inserting in place thereof the
3 following section: —

4 Section 22. No person shall, without the consent of the owner,
5 take, detain, use, buy, sell, traffic in or otherwise dispose of any
6 registered can, tub, cabinet or dairy case. Possession of any such
7 registered can, tub, cabinet or dairy case by a person in the
8 transaction of his business or converted to his own private use
9 shall be prima facie evidence of violation of this section.

1 SECTION 5. Said chapter 110 is hereby amended by striking
2 out section 23 as so appearing and inserting in place thereof the
3 following section: —

4 Section 23. No person shall without the consent of an owner
5 willfully destroy, mutilate or deface any registered can, tub,
6 cabinet or dairy case bearing such owner's name, or willfully erase,
7 mar, cover or change any work or name branded, engraved, blown
8 or otherwise produced in a permanent manner in or upon such
9 can, tub, cabinet or dairy case.

1 SECTION 6. Said chapter 110 is hereby amended by striking
2 out section 24 as so appearing and inserting in place thereof the
3 following section: —

4 Section 24. Whoever puts an unclear or foul substance into any
5 registered can, tub, cabinet or dairy case, or uses any of said
6 articles for any purposes other than its intended use shall for the
7 first offense be punished by a fine of not less than fifty cents nor
8 more than five dollars for each can, tub, cabinet, or dairy case
9 with respect to which the violation occurs and for any subsequent
10 offense by a fine of not less than two nor more than twenty dollars
11 for each such can, tub, cabinet or dairy case.

1 SECTION 7. Said chapter 110 is hereby amended by striking
2 out section 25 as so appearing and inserting in place thereof the
3 following section: —

4 Section 25. Upon complaint of a person who has complied
5 with section twenty-one, or his agent, to a district court that he
6 has reason to believe and does believe that a person has wrongfully
7 in his possession or is secreting any of his registered cans, tubs,
8 cabinets or dairy cases, said court may issue a search warrant to
9 discover and obtain the same, and may also cause to be brought
10 before him the person or his agent or employee in whose
11 possession such cans, tubs, cabinets or dairy cases are found, and
12 shall thereupon inquire into the circumstances of such possession;
13 and, if said court finds that such person has been guilty of a willful
14 violation of any of the provisions of the three preceding sections,
15 he shall impose the penalty prescribed therefor and shall also order
16 the property taken upon such search warrant to be delivered to
17 the owner.

1 SECTION 8. Said chapter 110 is hereby amended by striking
2 out section 28 as so appearing and inserting in place thereof the
3 following section: —

4 Section 28. Violation of any provision of sections twenty-two
5 or twenty-three shall be punished for the first offense by a fine
6 of not more than one hundred dollars and for any subsequent
7 offense by a fine of not more than three hundred dollars for each
8 such can, tub, cabinet or milk case.

1 SECTION 9. This act shall take effect upon its passage.