

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007

A Bill

HOUSE BILL 1335

4
5 By: Representative Bond

For An Act To Be Entitled

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8
9 AN ACT TO REPEAL THE TRANSIENT MERCHANT LICENSING
10 ACT OF 1983; AND FOR OTHER PURPOSES.

Subtitle

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12
13 AN ACT TO REPEAL THE TRANSIENT MERCHANT
14 LICENSING ACT OF 1983.

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

18
19 SECTION 1. Arkansas Code Title 17, Chapter 49, Subchapter 1 is
20 repealed.

21
22 ~~17-49-101. Title.~~

23 ~~This subchapter shall be known and may be cited as the "Transient~~
24 ~~Merchant Licensing Act of 1983".~~

25
26 ~~17-49-102. Purpose.~~

27 ~~It is the purpose and intent of this subchapter to:~~

28 ~~(1) Protect the public from improper sales techniques by~~
29 ~~providing for the licensing and regulation of transient merchants; and~~

30 ~~(2) Provide that the license fees, bonding requirements, and~~
31 ~~penalties prescribed in this subchapter for transient merchants shall be~~
32 ~~minimum license fees, bond requirements, and penalties and shall not be~~
33 ~~construed to limit or restrict the authority of counties, cities, and towns~~
34 ~~in the state to levy additional license fees and to require additional~~
35 ~~bonding for transient merchants engaging in business in counties, cities, and~~
36 ~~towns.~~



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~~17-49-103. Definitions.~~

~~As used in this subchapter, unless the context otherwise requires:~~

~~(1) "Person" means any individual, corporation, partnership, association, or other entity;~~

~~(2) "Temporary or transient business" means any business conducted for the sale or offer for sale of goods, wares, or merchandise which is carried on in any building, structure, motor vehicle, railroad car, or real estate for a period of less than six (6) months in each year; and~~

~~(3) "Transient merchant" means any person, firm, corporation, partnership, or other entity which engages in, does, or transacts any temporary or transient business in the state, either in one (1) locality or in traveling from place to place in the state, offering for sale or selling goods, wares, merchandise, or services, and includes those merchants who hire, lease, use, or occupy any building, structure, motor vehicle, railroad car, or real estate for the purpose of carrying on such a business.~~

~~17-49-104. Exemptions.~~

~~(a) The provisions of this subchapter shall not apply to:~~

~~(1) Sales at wholesale to retail merchants by commercial travelers or selling agents in the usual course of business;~~

~~(2) Wholesale trade shows or conventions;~~

~~(3) Sales of goods, wares, or merchandise by sample catalogue or brochure for future delivery;~~

~~(4) Fairs and convention center activities conducted primarily for amusement or entertainment;~~

~~(5) Any general sale, fair, auction, or bazaar sponsored by any church or religious organization;~~

~~(6) Garage sales held on the premises devoted to residential use;~~

~~(7) Sales of crafts or items made by hand and sold or offered for sale by the person making the crafts or handmade items;~~

~~(8) Sales of agricultural products, except nursery products and foliage plants;~~

~~(9) Sales made by a seller at residential premises pursuant to an invitation issued by the owner or legal occupant of the premises; or~~

1 ~~(10) School sponsored bazaars and sales, concessions at school~~
2 ~~athletic and other events, and sales of paraphernalia used in the celebration~~
3 ~~of any nationally recognized holiday or used in connection with any public~~
4 ~~school, university, or college related activities, flea markets, retail~~
5 ~~fireworks establishments, gun shows, sales by charitable organizations, sales~~
6 ~~of coins, and expositions sponsored by government entities or by nonprofit~~
7 ~~trade associations.~~

8 ~~(b) A transient merchant not otherwise exempted from the provisions of~~
9 ~~this subchapter shall not be relieved or exempted from the provisions of this~~
10 ~~subchapter by reason of associating himself or herself temporarily with any~~
11 ~~local dealer, auctioneer, trader, contractor, or merchant or by conducting~~
12 ~~such temporary or transient business in connection with or in the name of any~~
13 ~~local dealer, auctioneer, trader, contractor, or merchant.~~

14
15 ~~17-49-105. Enforcement.~~

16 ~~It is the duty of the county sheriff and other law enforcement officers~~
17 ~~in each county and the prosecuting attorney for each county to enforce the~~
18 ~~provisions of this subchapter.~~

19
20 ~~17-49-106. License required—Penalty for violation.~~

21 ~~(a) It is unlawful for any transient merchant to transact business in~~
22 ~~any county in this state unless the merchant and the owners of any goods,~~
23 ~~wares, or merchandise to be offered for sale or sold, if such are not owned~~
24 ~~by the merchant, shall have first secured a license and shall have otherwise~~
25 ~~complied with the requirements of this subchapter.~~

26 ~~(b) Any person or entity that transacts a transient business as~~
27 ~~defined in § 17-49-103 without having first obtained a license in accordance~~
28 ~~with the provisions of this subchapter, or who knowingly advertises, offers~~
29 ~~for sale, or sells any goods, wares, merchandise, or services in violation of~~
30 ~~the provisions of this subchapter, shall be guilty of a Class A misdemeanor.~~

31 ~~(c) The penalty prescribed in this section shall be in addition to any~~
32 ~~other penalties prescribed by law for any criminal offense committed by the~~
33 ~~licensee.~~

34
35 ~~17-49-107. Application for license.~~

36 ~~(a) Any transient merchant desiring to transact business in any county~~

1 in this state shall make application for and obtain a license in each county
2 in which the merchant desires to transact business.

3 (b) The application for license shall be filed with the county clerk
4 and shall include the following information:

5 (1) The name and permanent address of the transient merchant
6 making the application and, if the applicant is a firm or corporation, the
7 name and address of the members of the firm or the officers of the
8 corporation, as the case may be;

9 (2) If the applicant is a corporation, there shall be stated on
10 the application form the date of incorporation, the state of incorporation,
11 and, if the applicant is a corporation formed in a state other than the State
12 of Arkansas, the date on which the corporation qualified to transact business
13 as a foreign corporation in the State of Arkansas;

14 (3) A statement showing the kind of business proposed to be
15 conducted, the length of time for which the applicant desires to transact
16 such business, and the location of the proposed place of business;

17 (4) The name and permanent address of the transient merchant's
18 registered agent or office;

19 (5) Proof that the applicant has acquired all other required
20 city, county, and state permits and licenses; and

21 (6) There shall be attached to the application a receipt or
22 statement showing that any personal property taxes due on goods, wares, or
23 merchandise to be offered for sale have been paid.

24 (c) The county clerk in each county shall design and cause to be
25 printed appropriate forms for applications for licenses and for the license
26 certificates to be issued to applicants under this subchapter.

27
28 17-49-108. Service of process, notice, or demand.

29 (a) Each registered agent designated by a transient merchant in the
30 application for a license shall be a resident of the county and shall be
31 agent of the transient merchant upon whom any process, notice, or demand
32 required or permitted by law to be served upon the transient merchant may be
33 served.

34 (b) The registered agent shall agree in writing to act as such agent,
35 and a copy of the agreement to so act shall be filed by the applicant with
36 the application for a license.

1 ~~(c) The county clerk of each county shall maintain an alphabetical~~
 2 ~~list of all transient merchants in the county and the names and addresses of~~
 3 ~~their registered agents.~~

4 ~~(d) If any transient merchant doing business or having done business~~
 5 ~~in any county within the state shall fail to have or maintain a registered~~
 6 ~~agent in the county or if the registered agent cannot be found at his or her~~
 7 ~~permanent address, the county clerk shall be an agent of the transient~~
 8 ~~merchant for service of all process, notices, or demands.~~

9 ~~(e) Service on the county clerk shall be made by delivering to and~~
 10 ~~leaving with him or her, or any person designated by the clerk to receive the~~
 11 ~~service, duplicate copies of the process, notice, or demand.~~

12 ~~(f) When any process, notice, or demand is served on the clerk, he or~~
 13 ~~she shall immediately cause one copy to be forwarded by registered or~~
 14 ~~certified mail to the permanent address of the transient merchant.~~

15 ~~(g) The provisions of this section shall not limit or otherwise affect~~
 16 ~~the right of any person to serve any process, notice, or demand in any other~~
 17 ~~manner now or hereafter authorized by law.~~

18
 19 ~~17-49-109. License fee and bond.~~

20 ~~(a) Each application for a transient merchant license shall be~~
 21 ~~accompanied by a license fee of two hundred fifty dollars (\$250) and by a~~
 22 ~~cash bond or a surety bond issued by a corporate surety authorized to do~~
 23 ~~business in the state in the amount of two thousand dollars (\$2,000) or five~~
 24 ~~percent (5%) of the wholesale value of any goods, wares, merchandise, or~~
 25 ~~services to be offered for sale, whichever sum is lesser.~~

26 ~~(b) The surety bond shall be in favor of the State of Arkansas and~~
 27 ~~shall assure the payment by the applicant of all taxes that may be due from~~
 28 ~~the applicant to the state or any political subdivision of the state, the~~
 29 ~~payment of any fines that may be assessed against the applicant or its agents~~
 30 ~~or employees for violation of the provisions of this subchapter, and for the~~
 31 ~~satisfaction of all judgments that may be rendered against the transient~~
 32 ~~merchant or its agents or employees in any cause of action commenced by any~~
 33 ~~purchaser of goods, wares, merchandise, or services within one (1) year from~~
 34 ~~the date of the sale by the transient merchant.~~

35 ~~(c) The bonds shall be maintained so long as the transient merchant~~
 36 ~~conducts business in the county and for a period of one (1) year after the~~

1 ~~termination of the business. The bonds shall be released only when the~~
2 ~~transient merchant furnishes satisfactory proof to the county clerk that it~~
3 ~~has satisfied all claims of purchasers of goods, wares, merchandise, or~~
4 ~~services from the merchant and that all state and local sales taxes and other~~
5 ~~taxes have been paid.~~

6
7 ~~17-49-110. Issuance and terms of license.~~

8 ~~(a) A transient business license shall be issued hereunder only when~~
9 ~~all requirements of this subchapter have been met.~~

10 ~~(b) The license shall:~~

11 ~~(1) Not be transferable;~~

12 ~~(2) Be valid only within the territorial limits of the issuing~~
13 ~~county;~~

14 ~~(3) Be valid only for a period of ninety (90) days; and~~

15 ~~(4) Be valid only for the business stated in the application.~~

16 ~~(c) A license so issued shall be valid for only one (1) person, unless~~
17 ~~the person shall be a member of a partnership or employee of a firm or~~
18 ~~corporation obtaining the license.~~

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