

Hall of the House of Representatives

86th General Assembly - Regular Session, 2007

Amendment Form

Subtitle of House Bill No. 2713

"AN ACT TO AMEND THE TRANSIENT MERCHANT LICENSING ACT OF 1983."

Amendment No. 1 to House Bill No. 2713.

Amend House Bill No. 2713 as originally introduced:

Add Representative Wells as a cosponsor of the bill

AND

Delete everything following the enacting clause and substitute the following:

"SECTION 1. Arkansas Code § 17-49-102 is amended to read as follows:
17-49-102. Purpose.

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

~~(1) Protect the public from improper sales techniques by providing for the licensing and regulation of transient merchants; and
(2) Provide that the license fees, bonding requirements, and penalties prescribed in this subchapter for transient merchants shall be minimum license fees, bond requirements, and penalties and shall not be construed to limit or restrict the authority of counties, cities, and towns in the state to levy additional license fees and to require additional bonding for transient merchants engaging in business in counties, cities, and towns.~~

(a) The General Assembly finds that because of the temporary nature of the business conducted by transient merchants, consumers in the State of Arkansas are not likely to be able to obtain proper contact information to resolve disputes with, serve legal process upon, or satisfy monetary judgments against transient merchants doing business in the State of Arkansas.

(b) It is the purpose and intent of this subchapter to:

(1) Provide the consumers of the State of Arkansas with contact information regarding potential monetary recourse against transient merchants; and

(2) Provide that the registration fees and bonding requirements in this subchapter for transient merchants shall be minimum registration fees and bonding requirements and shall not be construed to limit or restrict the authority of counties, cities, and towns in the state to levy additional license fees and to require additional bonding for transient merchants engaged in business in counties, cities, and towns.



SECTION 2. Arkansas Code § 17-49-103 is amended to read as follows:
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 without written evidence of a right to occupy the premises on which a person is conducting business; 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.~~

SECTION 3. Arkansas Code § 17-49-106 is amended to read as follows:
17-49-106. License Registration required - Penalty for violation.

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

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

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

SECTION 4. Arkansas Code § 17-49-107 is amended to read as follows:
17-49-107. ~~Application for license~~ Registration for business.

(a) Any transient merchant desiring to transact business in any county in this state shall ~~make application for and obtain a license~~ register in each county in which the merchant desires to transact business.

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

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

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

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

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

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

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

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

SECTION 5. Arkansas Code § 17-49-108 is amended to read as follows:
17-49-108. Service of process, notice, or demand.

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

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

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

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

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

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

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

SECTION 6. Arkansas Code § 17-49-109 is amended to read as follows:
17-49-109. License Registration fee and bond.

(a) Each application for a transient merchant license registration certificate shall be accompanied by a license registration fee of ~~two hundred fifty dollars (\$250)~~ fifty dollars (\$50) and by a cash bond or a surety bond issued by a corporate surety authorized to do business in the state in the amount of two thousand dollars (\$2,000) or five percent (5%) of the wholesale value of any goods, wares, merchandise, or services to be offered for sale, whichever sum is lesser.

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

(c) The bonds shall be maintained so long as the transient merchant conducts business in the county and for a period of one (1) year after the termination of the business. The bonds shall be released only when the transient merchant furnishes satisfactory proof to the county clerk that it has satisfied all claims of purchasers of goods, wares, merchandise, or services from the merchant and that all state and local sales taxes and other taxes have been paid.

SECTION 7. Arkansas Code § 17-49-110 is amended to read as follows:
17-49-110. Issuance and terms of license registration certificate.

(a) A transient business license registration certificate shall be issued ~~hereunder~~ under this section only when all requirements of this subchapter have been met.

(b) The license registration certificate shall:

- (1) Not be transferable;
- (2) Be valid only within the territorial limits of the issuing county;
- (3) Be valid only for a period of ninety (90) days; and
- (4) Be valid only for the business stated in the application.

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

The Amendment was read _____
By: Representative Bond
MBM/LNS - 03-14-2007 11:24
MBM648 _____ Chief Clerk