

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
4

As Engrossed: H3/15/07

A Bill

HOUSE BILL 2713

5 By: Representatives Bond, Wells
6
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For An Act To Be Entitled

9 AN ACT TO AMEND THE TRANSIENT MERCHANT LICENSING
10 ACT OF 1983; AND FOR OTHER PURPOSES.
11

Subtitle

12 AN ACT TO AMEND THE TRANSIENT MERCHANT
13 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 § 17-49-102 is amended to read as follows:
20 17-49-102. Purpose.

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

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

24 ~~(2) Provide that the license fees, bonding requirements, and~~
25 ~~penalties prescribed in this subchapter for transient merchants shall be~~
26 ~~minimum license fees, bond requirements, and penalties and shall not be~~
27 ~~construed to limit or restrict the authority of counties, cities, and towns~~
28 ~~in the state to levy additional license fees and to require additional~~
29 ~~bonding for transient merchants engaging in business in counties, cities, and~~
30 ~~towns.~~

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



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

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

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

11
12 SECTION 2. Arkansas Code § 17-49-103 is amended to read as follows:
13 17-49-103. Definitions.

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

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

17 (2) "Temporary or transient business" means any business
18 conducted for the sale or offer for sale of goods, wares, or merchandise
19 which is carried on in any building, structure, motor vehicle, railroad car,
20 or real estate for a period of less than six (6) months in each year without
21 written evidence of a right to occupy the premises on which a person is
22 conducting business; and

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

30
31 SECTION 3. Arkansas Code § 17-49-106 is amended to read as follows:
32 17-49-106. License Registration required - Penalty for violation.

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

1 and shall have otherwise complied with the requirements of this subchapter.

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

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

11
12 SECTION 4. Arkansas Code § 17-49-107 is amended to read as follows:

13 17-49-107. ~~Application for license~~ Registration for business.

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

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

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

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

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

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

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

35 (6) There shall be attached to the application a receipt or
36 statement showing that any personal property taxes due on goods, wares, or

1 merchandise to be offered for sale have been paid.

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

6
7 SECTION 5. Arkansas Code § 17-49-108 is amended to read as follows:
8 17-49-108. Service of process, notice, or demand.

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

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

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

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

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

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

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

34
35 SECTION 6. Arkansas Code § 17-49-109 is amended to read as follows:
36 17-49-109. ~~License~~ Registration fee and bond.

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

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

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

24
25 SECTION 7. Arkansas Code § 17-49-110 is amended to read as follows:

26 17-49-110. Issuance and terms of license registration certificate.

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

30 (b) The license registration certificate shall:

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

36 (c) A license registration certificate so issued shall be valid for

1 only one (1) person, unless the person ~~shall be~~ is a member of a partnership
2 or employee of a firm or corporation obtaining the ~~license~~ registration
3 certificate.

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/s/ Bond, et al