



**House  
Legislative  
Analysis  
Section**

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**TRANSIENT MERCHANTS**

**RECEIVED**

**Senate Bill 717 with House committee amendments  
First Analysis (5-25-88)**

**JUL 08 1988**

**Sponsor: Sen. Norm Shinkle  
Senate Committee: Commerce and Technology Law Library  
House Committee: State Affairs**

***THE APPARENT PROBLEM:***

Recently there has been an increase in the number of transient merchants who set up roadside or parking lot businesses for short periods of time. Although these merchants often sell many of the same products found in retail stores (cut flowers, T-shirts, etc.), there is no way to ensure that they collect and pay sales tax on the merchandise. Since merchants who do not collect and pay sales tax can sell their merchandise for less than what it would cost to purchase the merchandise from a merchant who does collect the tax, the merchant who does not collect the tax enjoys an unfair competitive advantage over a merchant who does. It has been suggested, therefore, that some mechanism be enacted to ensure that transient merchants collect and pay sales tax.

***THE CONTENT OF THE BILL:***

The bill would amend Public Act 51 of 1925, which provides for the licensure and regulation of transient merchants, to increase the amount of information required on a license application, permit the impoundment and public sale of goods offered for sale by unlicensed merchants, and broaden the category of merchants not covered by the act. The bill would take effect July 1, 1988. Specifically, the bill would:

- require applicants for a transient merchant license to include on their application to the county treasurer their federal taxpayer and state employer identification numbers and number of employees, and to attach a copy of their Michigan sales tax license to the application (except for those who sell food that is not "consumed immediately" as defined in a section of the General Sales Act, who would be exempt from the requirement to attach a copy of their Michigan sales tax license to the application);
- require the county treasurer to send a copy of the license and completed application to the state treasurer within 10 days after issuing a license;
- require the licensed transient merchant to display his or her license in full view at the location of the business; and
- increase the penalty provisions for those found guilty of violating the act and revise procedures for local enforcement of the provisions in the bill.

**Fines, enforcement procedures.** The bill would specify that a person who violated the provisions in the bill could be fined \$1,000 or ten percent of the value of any property impounded as specified in the bill, whichever amount was greater, as well as court costs. If the law enforcement officer had probable cause to believe that a person was violating the provisions in the bill, the officer would be required to impound all goods offered for sale by a transient merchant until the matter had been taken up by a court of proper jurisdiction. The transient merchant could obtain his or her goods prior to adjudication by the court

by paying, either in cash or by security bond, \$1,000 or an amount equal to the value of the impounded goods, whichever was greater. If the transient merchant was convicted of violating the act and failed to pay the fine and court costs as provided in the bill within seven days after the date of conviction, the law enforcement officer would have to sell the impounded goods by publishing notice in a newspaper of general circulation in the county at least five days prior to the sale. The notice would have to describe the property and state the time and place of the public auction at which the goods would go to the highest bidder. The officer would have to conduct the sale and would have to deposit from the proceeds of the sale an amount equal to the fine and court costs with the court in which the transient merchant had been convicted. Any proceeds of the sale that exceeded the fine would have to be returned to the transient merchant. The bill would specify that any local law enforcement officer who disposed of property in the manner provided for under the bill would not be liable to the transient merchant for the sale.

The bill would expand the list of those exempt from the requirements of the act to include:

- a person who solicits orders by sample, brochure or sales catalog for future delivery or makes sales at residential premises by invitation of the owner or legal occupant of the premises; and
- a person selling at an art fair or festival, or a similar event, at the invitation of the event's sponsor — if the sponsor is a governmental entity or nonprofit organization, if the person provides the sponsor with the person's sales tax license number, and if the sponsor provides a list of the event's vendors and their sales tax license numbers to the county and state treasurers.

MCL 445.371 et al.

***HOUSE COMMITTEE ACTION:***

The House Committee on State Affairs adopted amendments to the bill which would: exclude certain types of food merchants from having to include a copy of the applicant's state sales tax license with the application for a transient merchants license, exempt from the act merchants invited to sell at government/non-profit organization-sponsored fairs or festivals (with specific conditions), require a merchant licensed under the act to display his or her license at the location of the merchant's business, and specify that the act could be enforced by any local law enforcement officer.

***FISCAL IMPLICATIONS:***

According to the Department of Commerce, the bill would result in a minor increase in revenue for the state. The amount would depend on vendor compliance with the bill. (5-25-88)

S.B. 717 (5-25-88)

## ***ARGUMENTS:***

### ***For:***

By requiring that transient merchants possess a sales tax license, the bill would help reduce unfair competition for retailers who pay sales tax on goods sold, and would ensure that the state is not deprived of important sales tax income from the sales of goods by transient merchants. The bill's provisions regarding specific procedures for local enforcement of the act, as well as stiffer penalties for those found violating the act, would help to better regulate transient sellers of various goods.

## ***POSITIONS:***

The Department of Commerce supports the bill. (5-25-88)

The Department of Treasury supports the bill. (5-24-88)

The Michigan Consumers Council supports the bill.  
(5-24-88)

The Michigan Retailers Association supports the bill.  
(5-24-88)

The Michigan Merchants Council supports the bill. (5-24-88)

The Michigan Floral Association supports the bill. (5-25-88)