

HOUSE BILL NO. 838

Introduced: 02/15/83

Referred to Committee on Business & Industry: 02/15/83

Hearing: 2/18/83

Died in Committee

House BILL NO. 838

INTRODUCED BY

J. Brown

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING SALES BY  
TRANSIENT MERCHANTS; ESTABLISHING LICENSING REQUIREMENTS,  
FEES, AND BONDS; PROVIDING PENALTIES; AND PROVIDING AN  
IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. For purposes of [this act],  
the following definitions apply:

(1) "Sale of merchandise" includes a sale in which the  
personal services rendered upon or in connection with the  
merchandise constitutes the greatest part of value for the  
price received but does not include a farm auction sale,  
conducted by or for a resident farmer, of personal property  
used on the farm or the sale of produce or perishable  
products at retail or wholesale by a resident of this state.

(2) "Transient merchant" means a person who engages in  
the sale of merchandise at any place in the state  
temporarily and who does not intend to become and does not  
become a permanent merchant at such place within 12 months  
of such sale.

Section 2. License required. No transient merchant may  
advertise or conduct an auction sale, liquidation sale, or

other sale of merchandise in any location in this state  
unless licensed to do so by:

(1) the city in which the sale is proposed to be held;

or

(2) the county in which the sale is proposed to be  
held if not proposed to be held in a city.

Section 3. Application for license. (1) Any person  
desiring a license under [this act] shall, at least 10 days  
before the sale is to be held, file with the county clerk  
and recorder or, if the sale is to be held within a city,  
with the city clerk a sworn application that contains the  
following:

(a) the applicant's name, residence, and business  
address for the prior 2-year period;

(b) the type of business in which he has been engaged  
during the previous 2 years;

(c) in the case of an auction sale, the name, address,  
and occupational history of the auctioneer;

(d) whether the applicant will be present and in  
continuous attendance at the proposed sale;

(e) the exact time and place of the sale;

(f) whether the applicant or anyone interested in the  
sale has, within 2 years prior to the application, conducted  
or had any connection with a similar sale either in the same  
place or any other place in the county and, if so, the dates

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1 and places of such other sales; and

2 (g) any other information required under any city or  
3 county ordinance adopted under [this act].

4 (2) The county clerk and recorder or city clerk shall  
5 forward a copy of the application to the department of  
6 revenue.

7 Section 4. Inventory required. (1) The applicant shall  
8 attach to the application an itemized list of all  
9 merchandise to be offered for sale, reciting a description  
10 of each item, including:

11 (a) the serial number, if any;

12 (b) the owner's actual cost; and

13 (c) a designation of number corresponding with the  
14 number to be affixed to the item by a tag, which must be  
15 fastened to the item at all times until sold.

16 (2) No item may be offered for sale at any sale of  
17 merchandise unless so listed and tagged.

18 Section 5. Fee and bond. Before receiving a license  
19 under [this act], the transient merchant shall pay to the  
20 city clerk or county clerk and recorder a license fee of  
21 \$100 for each day the items will be offered for sale. In  
22 addition, the applicant shall post a corporate surety bond  
23 with the clerk in the sum of \$2,000 with a surety approved  
24 by the clerk; however, the aggregate liability of the surety  
25 for all losses may not exceed the sum of the bond. The bond

1 must be conditioned on:

2 (1) compliance with all applicable laws;

3 (2) compliance with all material oral or written  
4 representations made by or on behalf of the transient  
5 merchant with reference to merchandise sold or offered for  
6 sale; and

7 (3) faithful performance under all warranties made  
8 with reference to such merchandise.

9 Section 6. Appointment of clerk as attorney. Before  
10 receiving a license under [this act], the applicant shall  
11 appoint, in writing, the city clerk or county clerk and  
12 recorder as his attorney for acceptance of service of  
13 process in any action commenced against the applicant  
14 arising out of a sale. Any action must be brought in the  
15 county where the sale was held.

16 Section 7. Clerk to notify enforcement officers.  
17 Whenever a license is issued under [this act], the county  
18 clerk and recorder shall notify the sheriff and county  
19 attorney or the city clerk shall notify the chief of police  
20 and city attorney. Upon notice, the attorney shall take all  
21 necessary steps to enforce [this act].

22 Section 8. Attendance. A person who has received a  
23 license for a sale of merchandise under [this act] shall  
24 remain in continuous attendance at all times during the sale  
25 and is responsible for any violation of [this act].

1       Section 9. Previous sale. No license may be granted  
2 for any sale of merchandise if it appears that the applicant  
3 or his agent, affiliate, or assignee has, within 1 year  
4 prior to the application, conducted a sale of merchandise at  
5 the same place or at any place in the city.

6       Section 10. False bids. No person may offer any false  
7 bid at a merchandise auction sale for the purpose of raising  
8 the bidding on any article offered for sale or on articles  
9 to be sold subsequently at such auction.

10       Section 11. Sale in name of bona fide owner. No  
11 merchandise sale may be conducted in the name of any person  
12 other than the bona fide owner of the merchandise.

13       Section 12. Merchandise exhibit. No merchandise may be  
14 sold at any merchandise sale that has not been placed on the  
15 sales premises at least 48 hours before the sale begins and  
16 made available for the inspection of interested persons  
17 between 10 a.m. and 10 p.m. during the 48-hour period.

18       Section 13. City and county ordinances. Any city or  
19 county may adopt an ordinance that substantially conforms to  
20 [this act] and may provide for forfeitures for violation of  
21 such ordinance. A county ordinance adopted under this  
22 section does not apply within a city in the county.

23       Section 14. Penalties -- enforcement. (1) A person  
24 who violates [this act] is guilty of a misdemeanor and upon  
25 conviction may be fined not less than \$100 or more than \$200

1 or imprisoned for not to exceed 60 days, or both. Each day  
2 of violation is a separate offense.

3       (2) [This act] must be enforced by the appropriate  
4 officers, whether or not an ordinance is in force in a city  
5 or county.

6       Section 15. Severability. If a part of this act is  
7 invalid, all valid parts that are severable from the invalid  
8 part remain in effect. If a part of this act is invalid in  
9 one or more of its applications, the part remains in effect  
10 in all valid applications that are severable from the  
11 invalid applications.

12       Section 16. Effective date. This act is effective on  
13 passage and approval.

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