

SENATE BILL NO. 43
INTRODUCED BY RAPP-SVRCEK

IN THE SENATE

JANUARY 2, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
JANUARY 7, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 9, 1989	PRINTING REPORT.
JANUARY 10, 1989	SECOND READING, DO PASS.
JANUARY 11, 1989	ENGROSSING REPORT.
JANUARY 12, 1989	THIRD READING, PASSED. AYES, 48; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 12, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
FEBRUARY 20, 1989	FIRST READING.
MARCH 2, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 4, 1989	SECOND READING, CONCURRED IN.
MARCH 6, 1989	ON MOTION RULES SUSPENDED AND BILL PLACED ON SECOND READING THIS DAY.
	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 8, 1989	THIRD READING, CONCURRED IN. AYES, 82; NOES, 11.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 11, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 14, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 SENATE BILL NO. 43
2 INTRODUCED BY RAPP-SVRCEK
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ITINERANT
5 MERCHANT'S LICENSE FEE; AMENDING SECTIONS 80-3-701,
6 80-3-704, AND 80-3-706, MCA; AND PROVIDING AN EFFECTIVE
7 DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 80-3-701, MCA, is amended to read:

11 "80-3-701. Definitions. For the purpose of this part,
12 the following definitions apply:

13 (1) "Itinerant merchant" means a person who buys,
14 offers to buy, sells, or offers to sell in this state at a
15 temporary location, at wholesale or retail, any produce as
16 defined by 80-3-601, who does not hold a license under the
17 provisions of part 6 of this chapter and transports the
18 produce in this state by use of a motor vehicle or by any
19 other method of transportation, except as otherwise
20 provided, or who has not secured a permit of exemption. The
21 term "itinerant merchant" does not include the following:

22 (a) a person using a motor vehicle owned by him,
23 whether operated by him or his agent, for the transportation
24 of produce produced by him on owned or leased premises when
25 the entire course of the transportation extends not more

1 than 150 miles from his residence, whether the residence is
2 within or outside this state;

3 (b) a person handling produce grown by him who has
4 secured from the department of agriculture, before offering
5 the produce for sale, a permit of exemption. The permit
6 shall be issued by the department upon application and
7 payment of a fee of \$20. The applicant must first be able to
8 satisfactorily show that he will sell or offer for sale only
9 produce of his own production. The permit shall allow only
10 the sale of produce of his own production and is forfeited
11 if the holder sells or offers to sell any produce not of his
12 own production.

13 (c) a person transporting property owned by him in a
14 motor vehicle owned by him, whether operated by him or his
15 agent, when the transportation is incident to a business
16 conducted by him at an established place of business
17 operated by him, either within or outside this state, and
18 when the property is being transported to or from an
19 established place of business operated by him in this state;

20 (d) a person transporting property for his own
21 consumption or use and not for sale.

22 (2) "Established place of business" means a permanent
23 warehouse, building, or structure in which a permanent
24 business is carried on in good faith and not for the purpose
25 of evading this part and in which stocks of the property

1 being transported are produced, stored, or kept in
 2 quantities reasonably adequate for and usually carried for
 3 the requirements of the business and which is recognized,
 4 licensed, and taxed as a permanent business at the place.
 5 The term does not mean residences, tents, temporary stands
 6 or other temporary quarters, a railway car, or permanent
 7 quarters occupied under a temporary arrangement.

8 (3) "Temporary location" means any building or part of
 9 any building, trailer or trailer house, or public or
 10 quasi-public place temporarily occupied for business as
 11 described in subsection (1)."

12 **Section 2.** Section 80-3-704, MCA, is amended to read:

13 **"80-3-704. Application for license -- fee. (1)** An
 14 application for a license to engage in business as an
 15 itinerant merchant shall be made to the department upon
 16 forms prepared by it.

17 (2) A separate application and license ~~is~~ are required
 18 for each temporary location and for each motor vehicle to be
 19 operated. The application shall contain those facts the
 20 department requires. The fee for each license is 10% of the
 21 applicant's previous year's gross receipts, with a minimum
 22 fee of \$50 and a maximum fee of \$200, for the calendar year
 23 in which it is issued, and each license expires December 31
 24 of the calendar year in which issued. The proper fee shall
 25 accompany the application. The application shall be signed

1 and sworn to by the applicant. An itinerant merchant
 2 applying for a license for the first time or who was not
 3 engaged in the business of an itinerant merchant in the
 4 previous calendar year shall pay a fee of \$50."

5 **Section 3.** Section 80-3-706, MCA, is amended to read:

6 **"80-3-706. License -- issuance, form, and display.**
 7 Upon approval of the application and bond and upon
 8 compliance with this part, the department shall issue the
 9 applicant an itinerant merchant's license in a form
 10 prescribed by the department. The license shall at all times
 11 be carried by the driver of the motor vehicle described or
 12 conspicuously posted at the temporary location and is at all
 13 times subject to inspection by any person."

14 **Section 4. Extension of authority.** Any existing
 15 authority to make rules on the subject of the provisions of
 16 [this act] is extended to the provisions of [this act].

17 **Section 5. Effective date.** [This act] is effective
 18 July 1, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB043, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


SB 043 clarifies the definition of an itinerant merchant and establishes the fee for each license at 10% of the applicant's previous year's gross receipts, with a minimum fee of \$50 and a maximum fee of \$200 for a calendar year.

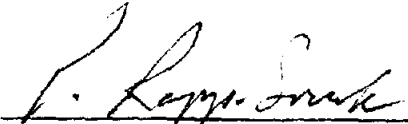
ASSUMPTIONS:

1. There will continue to be approximately 29 itinerant merchants licensed each year.
2. Any costs associated with implementing SB043, will be absorbed within the current Department of Agriculture budget because the primary purpose of the proposed legislation is clarification of current law.

FISCAL IMPACT:

	Current <u>Law</u>	FY90 Proposed <u>Law</u>	<u>Difference</u>	Current <u>Law</u>	FY91 Proposed <u>Law</u>	<u>Difference</u>
<u>Revenues:</u>						
General Fund	\$5,810	\$5,960	\$150	\$5,810	\$5,960	\$150


RAY SHACKLEFORD, BUDGET DIRECTOR
Office of Budget and Program Planning
DATE 1/6/89


PAUL RAPP-SVRCEK, PRIMARY SPONSOR
DATE 1/10/88

Fiscal Note for SB043, as introduced

SB 43

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

SENATE BILL NO. 43

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(a) a person using a motor vehicle owned by him, whether operated by him or his agent, for the transportation

of produce produced by him on owned or leased premises when the entire course of the transportation extends not more than 150 miles from his residence, whether the residence is within or outside this state;

(b) a person handling produce grown by him who has secured from the department of agriculture, before offering the produce for sale, a permit of exemption. The permit shall be issued by the department upon application and payment of a fee of \$20. The applicant must first be able to satisfactorily show that he will sell or offer for sale only produce of his own production. The permit shall allow only the sale of produce of his own production and is forfeited if the holder sells or offers to sell any produce not of his own production.

(c) a person transporting property owned by him in a motor vehicle owned by him, whether operated by him or his agent, when the transportation is incident to a business conducted by him at an established place of business operated by him, either within or outside this state, and when the property is being transported to or from an established place of business operated by him in this state;

(d) a person transporting property for his own consumption or use and not for sale.

(2) "Established place of business" means a permanent warehouse, building, or structure in which a permanent

business is carried on in good faith and not for the purpose of evading this part and in which stocks of the property being transported are produced, stored, or kept in quantities reasonably adequate for and usually carried for the requirements of the business and which is recognized, licensed, and taxed as a permanent business at the place. The term does not mean residences, tents, temporary stands or other temporary quarters, a railway car, or permanent quarters occupied under a temporary arrangement.

(3) "Temporary location" means any MOTOR VEHICLE, building or part of any building, trailer or trailer house, or public or quasi-public place temporarily occupied for business as described in subsection (1)."

Section 2. Section 80-3-704, MCA, is amended to read:

"80-3-704. Application for license -- fee. (1) An application for a license to engage in business as an itinerant merchant shall be made to the department upon forms prepared by it.

(2) A separate application and license ~~is~~ are required for ~~each temporary location and for each motor vehicle to be operated.~~ The application shall contain those facts the department requires. The fee for each license is 10% of the applicant's previous year's gross receipts, with a minimum fee of \$50 and a maximum fee of \$200, for the calendar year in which it is issued, and each license expires December 31

of the calendar year in which issued. The proper fee shall accompany the application. The application shall be signed and sworn to by the applicant. An itinerant merchant applying for a license for the first time or who was not engaged in the business of an itinerant merchant in the previous calendar year shall pay a fee of \$50."

SECTION 3. SECTION 80-3-705, MCA, IS AMENDED TO READ:

"80-3-705. Surety bond. A ~~(1)~~ Except as provided in subsection (2), a license may not be issued until the applicant has filed a surety bond or its equivalent, as established by the department by rule, issued by a company authorized to do business in the state. The bond or its equivalent must first be approved by the department and ~~shall may not~~ be for not less than \$1,000. The bond or its equivalent ~~shall~~ must be in a form prescribed by the department and ~~shall~~ must be conditioned upon the delivery of honest weights, measures, or grades; accurate representation as to quality or class of produce; the actual payment of checks, drafts, or other obligations delivered by the itinerant merchant in exchange for the purchase of produce; and the payment of all other obligations incurred by him.

(2) An itinerant merchant who has sold less than \$2,000 of produce in the year immediately preceding his application or whose total inventory or projected cumulative

1 inventory for the license year is less than \$2,000 is exempt
2 from the bond requirement."

3 **Section 4.** Section 80-3-706, MCA, is amended to read:

4 "80-3-706. License -- issuance, form, and display.
5 Upon approval of the application and bond and upon
6 compliance with this part, the department shall issue the
7 applicant an itinerant merchant's license in a form
8 prescribed by the department. The license shall at all times
9 be carried by the driver of the motor vehicle described or
10 conspicuously posted at the temporary location and is at all
11 times subject to inspection by any person."

12 NEW SECTION. **Section 5.** Extension of authority. Any
13 existing authority to make rules on the subject of the
14 provisions of [this act] is extended to the provisions of
15 [this act].

16 NEW SECTION. **Section 6.** Effective date. [This act] is
17 effective July 1, 1989.

-End-

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(a) a person using a motor vehicle owned by him, whether operated by him or his agent, for the transportation

of produce produced by him on owned or leased premises when the entire course of the transportation extends not more than 150 miles from his residence, whether the residence is within or outside this state;

(b) a person handling produce grown by him who has secured from the department of agriculture, before offering the produce for sale, a permit of exemption. The permit shall be issued by the department upon application and payment of a fee of \$20. The applicant must first be able to satisfactorily show that he will sell or offer for sale only produce of his own production. The permit shall allow only the sale of produce of his own production and is forfeited if the holder sells or offers to sell any produce not of his own production.

(c) a person transporting property owned by him in a motor vehicle owned by him, whether operated by him or his agent, when the transportation is incident to a business conducted by him at an established place of business operated by him, either within or outside this state, and when the property is being transported to or from an established place of business operated by him in this state;

(d) a person transporting property for his own consumption or use and not for sale.

(2) "Established place of business" means a permanent warehouse, building, or structure in which a permanent

business is carried on in good faith and not for the purpose of evading this part and in which stocks of the property being transported are produced, stored, or kept in quantities reasonably adequate for and usually carried for the requirements of the business and which is recognized, licensed, and taxed as a permanent business at the place. The term does not mean residences, tents, temporary stands or other temporary quarters, a railway car, or permanent quarters occupied under a temporary arrangement.

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of the calendar year in which issued. The proper fee shall accompany the application. The application shall be signed and sworn to by the applicant. An itinerant merchant applying for a license for the first time or who was not engaged in the business of an itinerant merchant in the previous calendar year shall pay a fee of \$50."

SECTION 3. SECTION 80-3-705, MCA, IS AMENDED TO READ:

"80-3-705. Surety bond. A (1) Except as provided in subsection (2), a license may not be issued until the applicant has filed a surety bond or its equivalent, as established by the department by rule, issued by a company authorized to do business in the state. The bond or its equivalent must first be approved by the department and shall may not be for not less than \$1,000. The bond or its equivalent shall must be in a form prescribed by the department and shall must be conditioned upon the delivery of honest weights, measures, or grades; accurate representation as to quality or class of produce; the actual payment of checks, drafts, or other obligations delivered by the itinerant merchant in exchange for the purchase of produce; and the payment of all other obligations incurred by him.

(2) An itinerant merchant who has sold less than \$2,000 of produce in the year immediately preceding his application or whose total inventory or projected cumulative

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3 **Section 4.** Section 80-3-706, MCA, is amended to read:

4 **"80-3-706. License -- issuance, form, and display.**
5 Upon approval of the application and bond and upon
6 compliance with this part, the department shall issue the
7 applicant an itinerant merchant's license in a form
8 prescribed by the department. The license shall at all times
9 be carried by the driver of the motor vehicle described or
10 conspicuously posted at the temporary location and is at all
11 times subject to inspection by any person."

12 **NEW SECTION. Section 5. Extension of authority.** Any
13 existing authority to make rules on the subject of the
14 provisions of [this act] is extended to the provisions of
15 [this act].

16 **NEW SECTION. Section 6. Effective date.** [This act] is
17 effective July 1, 1989.

-End-

COMMITTEE OF THE WHOLE AMENDMENT
SENATE BILL 43
Representative VERN KELLER

March 6, 1989 12:29 pm
Page 1 of 1

Mr. Chairman: I move to amend SENATE BILL 43 (third reading copy
-- blue).

Signed: *Vern Keller*
Representative Vern Keller

And, that such amendments to SENATE BILL 43 read as follows:

1. Page 3, lines 22 through 24.

Following: "is" on line 22

Strike: "10%" on line 22 through "\$200," on line 24

Insert: "\$60"

2. Page 4, lines 3 through 6.

Following: "applicant."

Strike: "An itinerant" on line 3 through "\$50." on line 6

ADOPT

REJECT

(B) HOUSE
521228CW.HBV
SB 43

SENATE BILL NO. 43

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of produce produced by him on owned or leased premises when the entire course of the transportation extends not more than 150 miles from his residence, whether the residence is within or outside this state;

(b) a person handling produce grown by him who has secured from the department of agriculture, before offering the produce for sale, a permit of exemption. The permit shall be issued by the department upon application and payment of a fee of \$20. The applicant must first be able to satisfactorily show that he will sell or offer for sale only produce of his own production. The permit shall allow only the sale of produce of his own production and is forfeited if the holder sells or offers to sell any produce not of his own production.

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business is carried on in good faith and not for the purpose of evading this part and in which stocks of the property being transported are produced, stored, or kept in quantities reasonably adequate for and usually carried for the requirements of the business and which is recognized, licensed, and taxed as a permanent business at the place. The term does not mean residences, tents, temporary stands or other temporary quarters, a railway car, or permanent quarters occupied under a temporary arrangement.

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5 Upon approval of the application and bond and upon
6 compliance with this part, the department shall issue the
7 applicant an itinerant merchant's license in a form
8 prescribed by the department. The license shall at all times
9 be carried by the driver of the motor vehicle described or
10 conspicuously posted at the temporary location and is at all
11 times subject to inspection by any person."

12 **NEW SECTION. Section 5.** Extension of authority. Any
13 existing authority to make rules on the subject of the
14 provisions of [this act] is extended to the provisions of
15 [this act].

16 **NEW SECTION. Section 6.** Effective date. [This act] is
17 effective July 1, 1989.

-End-