

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 129

Short Title: Flea Market Disclosure.

(Public)

Sponsors: Representatives Flaherty; and Sexton.

Referred to: Rules, Calendar, and Operations of the House.

February 14, 1994

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CERTAIN ITINERANT MERCHANTS TO PROVIDE LAW
ENFORCEMENT OFFICERS, UPON REQUEST, INFORMATION ABOUT THE
SOURCES OF MERCHANDISE OFFERED FOR SALE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-53 reads as rewritten:

"§ 105-53. Peddlers, itinerant merchants, and specialty market operators.

(a) Peddler. – Every person engaged in business or employed as a peddler shall obtain a license from the Secretary of Revenue for the privilege of peddling goods and shall pay a tax for the license in the amount specified in this section. A 'peddler' is a person who travels from place to place with an inventory of goods, who sells the goods at retail or offers the goods for sale at retail, and who delivers the identical goods he carries with him. A peddler of only farm products shall pay a tax of twenty-five dollars (\$25.00) regardless of the number of counties in which he peddles goods. A peddler who travels from place to place on foot, selling goods other than or in addition to farm products, shall pay a tax of ten dollars (\$10.00) for each county in which he peddles goods. A peddler who travels from place to place by vehicle, selling goods other than or in addition to farm products, shall pay a tax of twenty-five dollars (\$25.00) for each county in which he peddles goods.

(b) Itinerant Merchant. – Every person engaged in business as an itinerant merchant shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax for the license of one hundred dollars (\$100.00) for each county in which he is engaged in business. An 'itinerant merchant' is a merchant, other than a merchant with an established retail store in the county, who

1 transports an inventory of goods to a building, vacant lot, or other location in a county
2 and who, at that location, displays the goods for sale and sells the goods at retail or
3 offers the goods for sale at retail. An itinerant merchant's license is not required to
4 engage in the business of a specialty market vendor at a location licensed as a specialty
5 market under subsection (c) of this section or at a specialty market that is exempt from
6 the license requirement under subsection (c) because the specialty market operator is the
7 State or a unit of local government. A merchant who sells goods, other than farm
8 products, in a county for less than six consecutive months is considered an itinerant
9 merchant unless he stopped selling goods in that county because of his death or
10 disablement, the insolvency of his business, or the destruction of his inventory by fire or
11 other catastrophe.

12 (c) Specialty Market Operator. – Every person, other than the State or a unit of
13 local government, engaged in business as a specialty market operator shall obtain a
14 license from the Secretary of Revenue for the privilege of engaging in business and
15 shall pay a tax for the license of two hundred dollars (\$200.00) for each county in which
16 he is engaged in business. A 'specialty market operator' is a person, other than the State
17 or a unit of local government, who rents space, at a location other than a permanent
18 retail store, to others for the purpose of selling goods at retail or offering goods for sale
19 at retail.

20 (d) Specialty Market Vendor. – The requirements and penalties set out in
21 subsections (i) through (m) of this section apply to every person engaged in business as
22 a specialty market vendor who is liable for retail sales tax under Article 5 of this
23 Chapter. A 'specialty market vendor' is a merchant, other than a merchant with an
24 established retail store in the county, who transports an inventory of goods to a specialty
25 market licensed under subsection (c) of this section and who, at that location, displays
26 the goods for sale and sells the goods at retail or offers the goods for sale at retail. A
27 'specialty market' is a location, other than a permanent retail store, where space is rented
28 to others for the purpose of selling goods at retail or offering goods for sale at retail.

29 (e) Exemptions. – This section does not apply to the following:

- 30 (1) A peddler or itinerant merchant:
- 31 a. Who sells farm or nursery products produced by him;
 - 32 b. Who sells crafts or goods made by him or his own household
33 personal property;
 - 34 c. Who is a nonprofit charitable, educational, religious, scientific,
35 or civic organization;
 - 36 d. Who sells printed material, wood for fuel, ice, seafood, meat,
37 poultry, livestock, eggs, dairy products, bread, cakes, or pies; or
 - 38 e. Who is an authorized automobile dealer licensed pursuant to
39 Chapter 20 of the General Statutes.
- 40 (2) A peddler who maintains a fixed permanent location from which he
41 makes at least ninety percent (90%) of his sales, but who sells some
42 goods in the county of his fixed location by peddling.
- 43 (3) An itinerant merchant:
- 44 a. Who locates at a farmer's market;

- 1 b. Who is part of the State Fair or an agriculture fair which is
2 licensed by the Commissioner of Agriculture pursuant to G.S.
3 106-520.3; or
4 c. Who sells goods at an auction conducted by an auctioneer
5 licensed pursuant to Chapter 85B of the General Statutes.
6 (4) A peddler who complies with the requirements of G.S. 25A-38
7 through G.S. 25A-42, or who complies with the requirements of G.S.
8 14-401.13.

9 (f) Person Defined. – As used in this section, 'person' has the same meaning as in
10 G.S. 105-164.3(11).

11 (g) County Exemption. – The board of county commissioners of any county in
12 this State, upon proper application, may exempt from the annual license tax levied upon
13 peddlers and itinerant merchants in this section disabled veterans of World War I,
14 World War II, Korean Conflict, and Vietnam Era, who have been bona fide residents of
15 this State for 12 or more months continuously, and widows with dependent children;
16 and when so exempted, the board of county commissioners shall furnish such person or
17 persons with a certificate of exemption, and such certificate shall entitle the holder
18 thereof to sell within the limits of the county without payment of any license tax to the
19 State.

20 (h) Repealed by Session Laws 1989, c. 435, s. 1.

21 (i) Display and Possession of ~~Licenses and Identification~~ Licenses; Identification of
22 Seller and Source of Merchandise. – An itinerant merchant shall keep both the license
23 required by this section and the retail sales tax license conspicuously and prominently
24 displayed, so as to be visible for inspection by patrons of the itinerant merchant at the
25 places or locations at which the goods are to be sold or offered for sale. A peddler shall
26 have the license required by this section and the retail sales tax license with him at all
27 times he offers goods for sale and must produce them upon the request of any customer,
28 State or local revenue agent, or law enforcement agent. A specialty market vendor shall
29 keep the retail sales tax license conspicuously and prominently displayed, so as to be
30 visible for inspection by patrons of the specialty market vendor at the places or locations
31 at which the goods are to be sold or offered for sale. A specialty market operator shall
32 have the license required by this section available for inspection during all times that the
33 specialty market is open and must produce it upon the request of any customer, State or
34 local revenue agent, or law enforcement agent.

35 Upon the request of any customer, State or local revenue agent, or law enforcement
36 agent, a peddler, itinerant merchant, specialty market operator, or specialty market
37 vendor shall provide its name and permanent address. If the peddler, itinerant merchant,
38 specialty market operator, or specialty market vendor is not a corporation, he shall, upon
39 the request of any customer, State or local revenue agent, or law enforcement agent,
40 provide a valid driver's license, a special identification card issued under G.S. 20-37.7,
41 military identification, or a passport bearing a physical description of the person named
42 reasonably describing the peddler, itinerant merchant, specialty market operator, or
43 specialty market vendor. If the peddler, itinerant merchant, specialty market operator,
44 or specialty market vendor is a corporation, it shall, upon the request of any customer,

1 State or local revenue agent, or law enforcement agent, give the name and registered
2 agent of the corporation and the address of the registered office of the corporation, as
3 filed with the North Carolina Secretary of State.

4 Upon the request of a law enforcement agent, a peddler, an itinerant merchant, or a
5 specialty market vendor shall provide evidence of the source of merchandise offered for
6 sale by the peddler or merchant. The evidence may be a receipt or an invoice from the
7 person who sold the merchandise to the peddler or itinerant merchant or other
8 documentation that establishes the source of the merchandise. If a peddler or an
9 itinerant merchant does not provide evidence of the source of merchandise when
10 requested to do so by a law enforcement agent, the agent may take the merchandise into
11 custody until its source is established.

12 (j) Permission of Property Owner. – An itinerant merchant or a peddler who
13 travels from place to place by vehicle, in addition to other requirements of this section,
14 shall obtain a written statement signed by the owner or lessee of any property upon
15 which the itinerant merchant or peddler offers goods for sale giving the owner's or
16 lessee's permission to offer goods for sale upon the property of the owner or lessee.
17 Such statement shall clearly state the name of the owner or lessee, the location of the
18 premises for which the permission is granted, and the dates during which the permission
19 is valid. Further, such statement shall be conspicuously and prominently displayed, so
20 as to be visible for inspection by patrons of the itinerant merchant or peddler, at the
21 places or locations at which the goods are to be sold or offered for sale.

22 (k) Specialty Market Registration List. – A specialty market operator shall
23 maintain a daily registration list of all specialty market vendors selling or offering goods
24 for sale at the specialty market. This registration list shall clearly and legibly show each
25 specialty market vendor's name, permanent address, and retail sales and use tax
26 registration number. The specialty market operator shall require each specialty market
27 vendor to exhibit a valid retail sales tax license for visual inspection by the specialty
28 market operator at the time of registration, and shall require each specialty market
29 vendor to keep the retail sales tax license conspicuously and prominently displayed, so
30 as to be visible for inspection by patrons of the specialty market vendor at the places or
31 locations at which the goods are offered for sale. Each daily registration list maintained
32 pursuant to this subsection shall be retained by the specialty market operator for no less
33 than two years and shall at any time be made available upon request to any law
34 enforcement officer.

35 (l) Penalty. – It shall be a Class 3 misdemeanor for a person ~~to~~ to do any of the
36 following:

- 37 (1) Fail to obtain a license as required by this ~~section;~~ section.
38 (2) Knowingly give false information in the application process for a
39 license or when registering pursuant to subsection ~~(k);~~ (k).
40 (3) If the person is an itinerant merchant, fail to display the license as
41 required by subsection ~~(i);~~ (i); or if the person is a peddler or specialty
42 market operator, fail to produce the license as required by subsection
43 ~~(i) or (j);~~ (i); or, if the person is required to do so, fail to comply with
44 subsection (j). Whenever satisfactory evidence shall be presented in

1 any court of the fact that a license was required by this section and
2 such license was not displayed or produced as required by subsection
3 (i), or that permission was required by subsection (j) of this section and
4 was not displayed, the peddler, itinerant merchant, or specialty market
5 operator shall be found not guilty of that violation provided he
6 produces in court a valid license or valid permission which had been
7 issued prior to the time he was charged with such ~~violation; or~~
8 violation.

9 (4) Fail to provide name, address, or identification upon request as
10 required by subsection (i) or provide false information in response to
11 such a request.

12 (5) Fail to provide evidence of the source of merchandise offered for sale
13 when requested by a law enforcement agent under subsection (i) or to
14 provide false information in response to the request.

15 (11) ~~Additional Penalties.~~ Misdemeanor Violations. – It shall be a Class 3
16 misdemeanor, which may include a fine of up to one thousand dollars (\$1,000), for a
17 specialty market operator to fail to comply with subsection (k) or for a specialty market
18 vendor to fail to display the retail sales tax license as required by subsection (i). For the
19 purposes of this section, the requirement that a retail sales tax license be displayed is
20 satisfied if the vendor displays either (i) a copy of the license or (ii) evidence that the
21 license has been applied for and the applicable license fee has been paid within 30 days
22 before the date the license was required to be displayed. Whenever satisfactory
23 evidence shall be presented in any court of the fact that display of a retail sales tax
24 license was required by this section and such license was not displayed, the specialty
25 market operator or vendor shall not be found guilty of that violation provided he
26 produces in court a valid license which had been issued prior to the time he was charged
27 with the violation.

28 (12) Felony Violation. – A peddler, an itinerant merchant, or a specialty market
29 vendor who fails to provide evidence of the source of nonlegend drugs having a value of
30 more than one hundred dollars (\$100.00) when requested to do so by a law enforcement
31 agent, as required by subsection (i), or who provides false information in response to the
32 request after having been advised of his constitutional rights commits a Class I felony.

33 (m) Local License. – Counties and cities may levy a license tax on a business
34 taxed under this section in an amount that does not exceed the State tax. Further, this
35 section does not affect the authority of a county or city to impose additional
36 requirements on peddlers, itinerant merchants, specialty market vendors, or specialty
37 market operators by an ordinance adopted under G.S. 153A-125 or G.S. 160A-178."

38 Sec. 2. This act becomes effective January 1, 1995.