

2016 -- H 7590

LC004093

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- ITINERANT VENDORS

Introduced By: Representatives Serpa, and Fellela

Date Introduced: February 12, 2016

Referred To: House Small Business

(General Treasurer)

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 5-15 of the General Laws entitled "Itinerant Vendors" is hereby
2 repealed in its entirety.

3 ~~CHAPTER 5-15~~

4 ~~Itinerant Vendors~~

5 ~~**5-15-1. Persons subject to chapter.** --- For the purposes of this chapter, "itinerant~~
6 ~~vendors", is construed to mean and include all persons, both principals and agents, who engage in~~
7 ~~a temporary or transient business in this state, either in one locality or in traveling from place to~~
8 ~~place selling goods, wares, and merchandise, and who, for the purposes of carrying on that~~
9 ~~business, hire, lease, or occupy any building or structure for the exhibition and sale of goods,~~
10 ~~wares, and merchandise.~~

11 ~~**5-15-1.1. Conducting of business.** --- Every itinerant vendor licensed under the~~
12 ~~provisions of this chapter shall conduct that business from the confines of a building or a portion~~
13 ~~of a building specifically hired, leased, and occupied for the purpose of selling the goods, wares,~~
14 ~~and merchandise covered by the license.~~

15 ~~**5-15-2. Duty to take out license.** --- It is the duty of every itinerant vendor, whether~~
16 ~~principal or agent, before commencing business, to take out a state license and local licenses in~~
17 ~~the manner subsequently prescribed.~~

18 ~~**5-15-3. Deposit with treasurer --- Issuance of license --- Acts permitted.** --- (a) Every~~
19 ~~itinerant vendor desiring to do business in this state shall deposit with the general treasurer:~~

1 ~~(1) The sum of one thousand dollars (\$1,000) as a special deposit, and, after that deposit,~~
2 ~~upon application in proper form, which includes proof that the itinerant vendor has been issued a~~
3 ~~permit to make sales at retail by the division of taxation, and the payment of a further sum of five~~
4 ~~hundred dollars (\$500) as a state license fee, the general treasurer shall issue to him or her an~~
5 ~~itinerant vendor's license, authorizing him or her to do business in this state, in conformity with~~
6 ~~the provisions of this chapter, for the term of three (3) months from the date of the issuance; or~~

7 ~~(2) The sum of one thousand dollars (\$1,000) as a special deposit, and, after that deposit,~~
8 ~~upon application in proper form, which includes proof that the itinerant vendor has been issued a~~
9 ~~permit to make sales at retail by the division of taxation, and the payment of a further sum of fifty~~
10 ~~dollars (\$50.00) per day for each day the itinerant vendor proposes to do business in this state as a~~
11 ~~state license fee, the general treasurer shall issue to him or her an itinerant vendor's license~~
12 ~~authorizing him or her to do business in the state, in conformity with the provisions of this~~
13 ~~chapter, for the number of days from the date of issuance for which the state license fee has been~~
14 ~~paid.~~

15 ~~(b) Every license shall contain a copy of the application upon which it is granted. That~~
16 ~~license is not transferable and does not give authority to more than one person to sell goods as an~~
17 ~~itinerant vendor either by agent or clerk, or in any other way than in his or her own proper person.~~
18 ~~Any licensee may have the assistance of one or more persons in conducting his or her business,~~
19 ~~who have authority to aid their principal but not to act for or without him or her.~~

20 ~~**5-15-4. Contents of application -- Records of licenses.** All applications for license~~
21 ~~shall be sworn to, shall disclose the names and residences of the owners or parties in whose~~
22 ~~interest the business is conducted, and shall be kept on file by the general treasurer; and a record~~
23 ~~shall be kept by him or her of all licenses issued upon those applications. All files and records,~~
24 ~~both of the general treasurer and of the town or city clerks, shall be in convenient form and open~~
25 ~~for public inspection.~~

26 ~~**5-15-5. Local licenses -- Recording and endorsement of state license.** (a) At least~~
27 ~~fourteen (14) days prior to selling under a state license, every itinerant vendor shall exhibit the~~
28 ~~state license to the clerk of each town or city where the itinerant vendor proposes to make sales,~~
29 ~~and upon: (1) payment to the clerk of each town or city having a population of less than fifteen~~
30 ~~thousand (15,000), of a further local license fee of one hundred dollars (\$100) and to the clerk of~~
31 ~~any city or town having more than fifteen thousand (15,000) inhabitants, a further license fee of~~
32 ~~three hundred fifty dollars (\$350); (2) the proof of payment of all other license fees, if any, that~~
33 ~~are legally chargeable upon local sale; and (3) making an application, in writing, and under oath~~
34 ~~showing all the facts as to the sale which the itinerant vendor proposes to conduct and the place~~

1 ~~and manner of conducting the sale including an inventory of the goods, wares, and merchandise~~
2 ~~to be sold at the sale together with the established retail price of the goods, wares, and~~
3 ~~merchandise, and a statement, as far as possible, of the names of the persons from whom the~~
4 ~~goods, wares, and merchandise to be sold were obtained, the date of the delivery of the goods,~~
5 ~~wares, and merchandise to the person applying for the license and the place from which the~~
6 ~~goods, wares, and merchandise were last taken and all details to fully identify the goods, wares,~~
7 ~~and merchandise so to be sold, the clerk shall record the state license in full, endorse upon its~~
8 ~~words "Local License, Fees Paid", and affix his or her official signature, together with the date of~~
9 ~~the endorsement. The clerk shall then issue a local license authorizing sales within the limits of~~
10 ~~the town or city; provided, that no local license shall issue without proof that the itinerant vendor~~
11 ~~has been issued a permit to make sales at retail by the division of taxation. Any failure to obtain a~~
12 ~~local license and have proper endorsements made on the state license is subject to the same~~
13 ~~penalty as though no state license had been issued.~~

14 ~~(b) Notwithstanding the provisions of subsection (a) of this section, this chapter does not~~
15 ~~apply to those individuals involved in retail selling or the retail sale of farm produce; provided,~~
16 ~~that the Town of Bristol has the power to license and regulate itinerant vendors selling cut~~
17 ~~flowers, potted plants and nursery stock including Christmas trees in the Town of Bristol.~~

18 ~~**5-15-6. False statements -- Failure to comply with requirements.** -- Any false~~
19 ~~statement in an application, either original or supplementary, for a license, and any failure on the~~
20 ~~part of any licensee to comply with all the requirements of § 5-15-12 shall subject the itinerant~~
21 ~~vendor to the same penalty as if he or she had no license, and to the further and additional penalty~~
22 ~~of a fine of two hundred dollars (\$200), paid to the person first filing the complaint with the~~
23 ~~prosecuting officer.~~

24 ~~**5-15-7. Duration of state licenses.** -- All state licenses expire by limitation three (3)~~
25 ~~months from the date of issuance, and may be, if desired, surrendered at any time prior to~~
26 ~~expiration for cancellation.~~

27 ~~**5-15-8. Cancellation of license -- Return of deposit.** -- Upon the expiration and return~~
28 ~~or surrender of each state license, the state treasurer shall cancel the license, endorse the date of~~
29 ~~delivery and cancellation on it, and place the license on file. He or she shall then hold the special~~
30 ~~deposit of each licensee, as provided in this chapter, for the period of sixty (60) days; and after~~
31 ~~satisfying any and all claims made upon the deposit under § 5-15-9, shall return the deposit or any~~
32 ~~portion of it remaining in his or her hands to the licensee depositing it.~~

33 ~~**5-15-9. Enforcement of claims against deposit.** -- Each deposit made with the general~~
34 ~~treasurer is subject, as long as it remains in his or her hands, to attachment and execution in~~

1 ~~behalf of creditors whose claims arise in connection with business done in the state, and to the~~
2 ~~payment of any fines and penalties incurred by the licensee through violations of this chapter.~~
3 ~~Claims under civil process shall be enforced against the general treasurer as garnishee or trustee~~
4 ~~by action in the usual form. All claims upon each deposit shall be satisfied after judgment in the~~
5 ~~order in which notice of the claim is received by the general treasurer, until all those claims are~~
6 ~~satisfied, or the deposit exhausted; but no notice filed after the expiration of the sixty (60) days~~
7 ~~limit referred to in § 5-15-8 is valid. No deposits shall be paid over by the general treasurer to~~
8 ~~licensees so long as there are any outstanding claims or notices of claims against them~~
9 ~~respectively, unless he or she finds that there is unreasonable delay in enforcing those claims.~~

10 ~~**5-15-10. Penalty for vending without license.** --- Every itinerant vendor who sells or~~
11 ~~exposes for sale, at public auction or private sale, any goods, wares, and merchandise without~~
12 ~~required state and local licenses, issued as provided in this chapter, is guilty of a misdemeanor~~
13 ~~and shall be punished by a fine of not less than five hundred dollars (\$500) nor more than one~~
14 ~~thousand dollars (\$1,000), and by imprisonment of not less than thirty (30) nor more than ninety~~
15 ~~(90) days.~~

16 ~~**5-15-11. Advertising unlicensed sale.** --- All persons, both principals and agents, who, by~~
17 ~~circular, handbill, newspaper, or in any other manner, advertise any sale referred to in § 5-15-10~~
18 ~~before proper licenses are issued to the vendor shall be guilty of a misdemeanor, and upon~~
19 ~~conviction shall be fined not more than fifty dollars (\$50.00) or be imprisoned not more than~~
20 ~~sixty (60) days.~~

21 ~~**5-15-12. Disclosures as to special sales.** --- No itinerant vendor may advertise, represent,~~
22 ~~or represent any sale as an insurance, bankrupt, insolvent, assignee, trustee, estate, executor,~~
23 ~~administrator, receiver, wholesale or manufacturer's or closing out sale, or as a sale of any goods~~
24 ~~damaged by smoke, fire, water, or otherwise, or in any similar form, unless he or she, before so~~
25 ~~doing, states under oath to the general treasurer, either in the original application for a state~~
26 ~~license, or in a supplementary application subsequently filed and copied on the license, all the~~
27 ~~facts relating to the reasons and character of that special sale advertised or represented, including:~~

28 ~~(1) A statement of the names of the persons from whom the goods, wares, and~~
29 ~~merchandise were obtained;~~

30 ~~(2) The date of delivery to the person applying for the license;~~

31 ~~(3) The place from which those goods, wares, and merchandise were last taken; and~~

32 ~~(4) All details necessary to exactly locate and fully identify all goods, wares and~~
33 ~~merchandise to be sold.~~

34 ~~**5-15-13. Enforcement -- Failure to produce license as evidence -- Seizure.** --- (a) It is~~

1 ~~the duty of the officers in each town and city in this state to see that the provisions of this chapter~~
2 ~~are complied with and to prosecute for violations of those provisions. All of those officers shall~~
3 ~~have power to demand the production of the proper state and local licenses from any itinerant~~
4 ~~vendor advertising or actually engaged in business, and any failure to produce those licenses shall~~
5 ~~be prima facie evidence against the vendor that he or she has none.~~

6 ~~(b) Property held out for sale by any itinerant vendor in this state without a permit to~~
7 ~~make sales at retail issued by the division of taxation is subject to seizure, without a warrant, by~~
8 ~~the tax administrator, his or her agents or employees, or by any deputy sheriff, or police officer of~~
9 ~~the state when directed by the tax administrator to do so. Any property seized may be offered by~~
10 ~~the tax administrator for sale at public auction to the highest bidder after advertisement to~~
11 ~~discharge any tax liability owed to the state; provided, that any property seized in that manner is~~
12 ~~not released until the tax administrator is satisfied that all taxes owed to the state are paid and the~~
13 ~~retailer is in compliance with the sales/use tax law.~~

14 ~~**5-15-14. Jurisdiction of prosecutions.** -- Prosecutions under this chapter may be heard~~
15 ~~and determined by any court having criminal jurisdiction over other offenses punishable by law to~~
16 ~~the same extent as previously provided.~~

17 ~~**5-15-15. Exempt sales.** -- The provisions of this chapter do not apply to sales made to:~~

- 18 ~~(1) Dealers by commercial travelers or selling agents in the usual course of business;~~
- 19 ~~(2) Bona fide sales of goods, wares, and merchandise by sample for future delivery;~~
- 20 ~~(3) Hawkers on the streets;~~
- 21 ~~(4) Peddlers from vehicles;~~
- 22 ~~(5) Sheriffs, constables, or public officers of the state selling goods, wares, and~~
23 ~~merchandise according to law;~~
- 24 ~~(6) Bona fide assignees, for the benefit of creditors residing within this state;~~
- 25 ~~(7) Receivers appointed in this state, selling goods, wares, and merchandise in this state;~~
- 26 ~~(8) The owner or owners or the occupants of any land, building, or structure upon which~~
27 ~~a tax is annually assessed by the city or town in which it is located, selling goods, wares, and~~
28 ~~merchandise during the course of any fair, exposition or similar public event; or~~
- 29 ~~(9) Sales made within the confines of an enclosed shopping mall.~~

30 ~~**5-15-16. Towns to which chapter inapplicable.** -- The provisions of this chapter do not~~
31 ~~apply to the towns or cities of Narragansett, New Shoreham, South Kingstown, Westerly or~~
32 ~~Newport. The town or city councils of those towns or cities shall be authorized and empowered to~~
33 ~~make ordinances licensing itinerant vendors, and those town or city councils may prescribe~~
34 ~~penalties for the violation of those ordinances; provided, that the ordinance does not include the~~

1 ~~licensing of hotels and inns as itinerant vendors; and provided, that the cities and towns~~
2 ~~mentioned in this section do not issue a license to any vendor without the vendor providing proof~~
3 ~~that the itinerant vendor has been issued a permit to make sales at retail by the division of~~
4 ~~taxation.~~

5 ~~**5-15-17. Prohibited sales.**~~ (a) ~~No itinerant vendor, except an authorized~~
6 ~~manufacturer's representative, shall offer for sale any of the following items:~~

7 ~~(1) Food manufactured and packaged for sale for consumption by a child under the age~~
8 ~~of two (2) years; or~~

9 ~~(2) Drugs, medical devices, and cosmetics as defined in § 21-31-2.~~

10 ~~(b) Any person who violates the provisions of this section shall be punished by a fine of~~
11 ~~up to one hundred dollars (\$100) for each item offered for sale or sold.~~

12 SECTION 2. This act shall take effect upon passage.

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LC004093
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESSES AND PROFESSIONS -- ITINERANT VENDORS

1 This act would repeal the chapter of the general laws regulating itinerant vendors and
2 their various licensing requirements, responsibilities, and duties.

3 This act would take effect upon passage.

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