

CHAPTER 320

HAWKERS AND PEDDLERS

General Provisions

320:1 Definition. The terms "hawker" and "peddler" shall mean and include any person, as defined by RSA 358-A:1, either principal or agent, who:

I. Travels from town to town or from place to place in the same town selling or bartering or carrying for sale or barter or exposing therefor, any goods, wares, or merchandise, either on foot or from any animal, cart, or vehicle; or

II. Travels from town to town, or place to place in the same town, offering to perform personal services for household repairs or improvements, or solicits or induces any person to sign any contracts relating to household repairs and improvements, including contracts for the replacement or installation of siding on any residence or building; or

III. Keeps a regular place of business, open during regular business hours at the same location, but who offers for sale or sells and delivers, personally or through his agents, at a place other than his regular place of business, goods, wares or merchandise.

320:2 Prohibition; Selling on State Property; Contracts Void; Penalty. No hawker or peddler shall sell or barter or carry for sale or barter, or expose therefor, any goods, wares or merchandise, unless he holds a license to do so as herein provided. **No person may operate as a hawker or a peddler in any building or on any land owned, leased or controlled by the state, except as provided in RSA 186-B:13.** Any person violating this section shall, notwithstanding the provisions of Title LXII, be guilty of violation and fined not more than \$500. The clerk of the district or municipal court shall dispose of fines so collected by the court as provided in RSA 502:14 or RSA 502-A:8. Any contract relating to household repairs and improvements or for siding for any building or residence solicited by any person who has not obtained the licenses as herein provided for shall be void and unenforceable, and any sale or barter of any goods, wares or merchandise by any such person shall be voidable. Provided further that any time before midnight, at the expiration of 3 business days following the signing of any solicited home repair, home improvement installment contract or cash sale of \$25 or more by the parties solicited or the owner, the parties solicited or the owner may serve a notice of cancellation upon the licensee or principal vendor.

320:3 Exceptions. The provisions of this chapter shall not apply to the following:

I. Itinerant vendors as defined in RSA 321:1

II. Any person selling the product of his own labor or the labor of his family or the product of his own farm or the one he tills.

III. Any person conducting sales of personal household goods on his own property.

IV. Any nonprofit organization, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes when no part of the entity's earnings benefit any private shareholder or individual.

V. Any person conducting business in any industry or association trade show.

VI. Any person who sells exclusively antiques, used goods, or vintage items.

320:4-7 (Repealed 1969, 481:10)

320:8 State Licenses

I. Upon compliance with this section and upon payment of **\$50 for a state license**, the Secretary of State may grant special state licenses. Applications for such licenses shall be made upon blanks prepared by the Secretary of State requiring such information regarding the applicant's character and qualifications as the Secretary shall deem pertinent.

II. Any person so licensed may do business as a hawker or peddler in any city or town in this state, provided the licensee complies with all local ordinances, bylaws and regulations, including those adopted under RSA 31:102-a. If an applicant, not a natural person, applies for a license under this chapter, the sum of \$5000 deposited with the Secretary of State in cash or surety bond shall be required, and the employees or agents of such corporation shall remain effective for at least 60 days after the annual renewal date. All such agents or employees shall be permitted to apply for licenses under such cash payment or surety bond.

III. The annual license renewal fee shall be \$50. At the time the renewal fee is submitted to the Secretary of State, the licensee shall:

(a) Update information pertaining to license, if necessary.

(b) Submit written proof that any surety bond required by paragraph II is in effect and will remain in effect as required in paragraph II.

320:9 Term; Transfer. All licenses issued under the provisions of this chapter shall bear the date on which they are issued and shall continue in force, subject to the provisions of RSA 320:8, III, unless revoked by the Secretary of State under RSA 320:14. Any hawker or peddler who does not comply with the requirements for license renewal under RSA 320:8, III shall be subject to the same penalty as if he had no license. Said licenses may not be transferred.

320:10 Record. The Secretary of State shall keep records of all licenses issued by him with the number of each, the names and residences of the persons licensed and the sums received therefor, and all such records shall be open for public inspection.

320:11 Persons Exempt. Any soldier or sailor disabled in any war in which the United States has been engaged or by sickness or disability contracted therein or since his discharge because of such service, and the widow of any such soldier or sailor so long as she remains unmarried, or any citizen of this state over 70 years of age, shall be exempt from paying the license fees required by this chapter.

320:12 Endorsing License; Exhibiting License. Every person licensed as a hawker or peddler shall endorse his usual signature upon his license. When this license is demanded of him by a mayor, selectmen, alderman, city or town clerk, sheriff or his deputy, any constable or police officer or the person to whom he sells or offers or exposes for sale his wares, he shall forthwith exhibit the same; and, if he neglects or refuses to do so, he shall be liable to the same penalty as if he had no license.

320:13 License, Effective Where. (Repealed 1969, 481:10 eff. Sept. 1, 1969)

320:13-a Veterans' Convention. Licenses granted pursuant to the provisions of this chapter shall entitle a peddler or hawker to operate at meetings or conventions of recognized veterans' organizations, but only at such meetings or conventions with the specific approval of the organization concerned.

320:14 Revocation of Licenses. Any license granted by the Secretary of State may be revoked by him after hearing (1) upon conviction of the licensee of any offense which in the judgement of the Secretary of State warrants such revocation or (2) upon the submission to the Secretary of State of evidence satisfactory to him that, during the term of the license, and acting under cover thereof, the licensee has accepted or solicited money, otherwise than through a bona fide sale or barter of goods, wares or merchandise or has in manner solicited alms from the public, or (3) upon a finding by him that the applicant has willfully falsified his application for license or (4) upon consideration of evidence that the holder of said license is insane, a sexual psychopath, is or has been guilty of assault upon others or whose conduct has been otherwise disorderly and is of such violent or offensive demeanor that to permit him to retain such license would constitute a threat to the peace or safety of the public or (5) that the holder of said license is at large pending appeal from a conviction for a violation of the law involving extreme moral turpitude. Whenever any person is convicted of a violation of any provision of this chapter relative to hawkers and peddlers, the clerk of the court or the trial justice by whom such person was convicted shall notify the Secretary of State. Any person whose license has been revoked under this section shall be ineligible to be licensed as a hawker or peddler in this state for a period of not less than one year or more than 5 years from the date of said revocation. Any person whose license has been revoked, as a condition precedent to issuance of any new license, shall be required to furnish to the revoking authority satisfactory evidence of renewed reputation and character or mental health in addition to the certificate required to qualify for such license under RSA 320:8.

320:14-a Appeal. Any person whose license is revoked under this chapter shall have the right of appeal provided by RSA 541.

320:15 Counterfeiting Licenses etc. Whoever counterfeits or forges a license, or has a counterfeited or forged license in his possession with the intent to utter or use the same as true, knowing it to be false or counterfeit, or attempts to sell under a license which has expired or has been revoked or cancelled, or which has not been issued or transferred to him, or has in his possession another's license with intent to use the same shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

320:16 Assistance for Issuance. The Secretary of State is authorized to employ such assistance and to incur such expense for the issuance of state licenses hereunder as the Governor and Council may approve, and the Governor is authorized to draw his warrant therefor.

SALE OF ARTIFICIAL FLOWERS, ETC.

320:17 Prohibition. No person, except as hereinafter provided, shall sell or offer for sale on the streets, or any other place frequented by the public in any city or town, any artificial flower or miniature flag.

320:18 Permission Granted. The mayor and aldermen of a city or the selectmen of towns may, in their discretion, authorize from time to time the sale or the offering for sale on the streets, or any other place frequented by the public in said city or town, of artificial flowers or miniature flags by the American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, United Spanish War Veterans and organizations affiliated with them and other recognized charitable, patriotic, fraternal, labor or military organizations chartered in this state; provided, however, that nothing in this section shall be construed to

320:18 continued:

prohibit the sale or the offering for sale by bona fide merchants in their stores or other business establishments of such merchandise as herein named.

320:20 Right to Solicit and Sell. (Repealed 1987, 260:4, II, eff. July 19, 1987)

320:21 Exemptions (Repealed 1987, 260:4, III, eff. July 19, 1987)

320:21-a Certain Negotiable Instruments Prohibited. In a consumer credit sale or consumer lease by a hawker or peddler, other than a sale or lease primarily for an agricultural purpose, the hawker or peddler may not take a negotiable instrument other than a check as evidence of the obligation of the buyer or lessee. A holder is not in good faith if he takes a negotiable instrument with notice that it is issued in violation of this section.

320:21-b When Assignee not Subject to Defenses. With respect to a consumer credit sale or consumer lease, by a hawker or peddler, other than a sale of lease primarily for an agricultural purpose, an assignee of the rights of the hawker or peddler is subject to all claims and defenses of the buyer or lessee against the hawker or peddler arising out of the sale or lease notwithstanding an agreement to the contrary, but the assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Rights of the buyer or lessee under this section can only be asserted as a matter of defense to or set-off against a claim by the assignee.

320:22 Penalty. Any person violating the provisions of this subdivision shall be guilty of a misdemeanor.

31:102-a Hawkers, Peddlers and Vendors. The governing board of a city, town or village district may adopt, by ordinance or regulation, provisions for the licensure and regulation of itinerant vendors, hawkers, peddlers, traders, farmers, merchants, or other persons who sell, offer to sell, or take orders for merchandise from temporary or transient sales locations within a town or who go from town to town or place to place within a town for such purposes. Any person who violates any provision of such ordinance or regulation shall be guilty of a class B misdemeanor, and each continuing day of violation after notice shall constitute a separate offense. A city, town or village district shall be specifically prohibited, however, from licensing or regulating a candidate for public office in the process of obtaining signatures on nomination papers, who seeks to have the candidate's name placed on the ballot for the state general election by submitting nomination papers under RSA 655:40. Provisions adopted under this section shall be in addition to any requirements imposed by the state under either RSA 320 or RSA 321 and may include, but shall not be limited to:

- I. Classification of licensees consistent with constitutional requirements of equal protection.
- II. Imposition of reasonable requirements, including fees, for the issuance of a license.
- III. Restrictions as to the areas of the municipality open to licensees and the hours and days of their operations; and
- IV. Other reasonable conditions and terms deemed necessary for public convenience and safety as the governing board determines.

31:102-b Background Checks for Certain Vendors. I. Any municipality may require persons who go from door to door, place to place within a town, or town to town, who sell, offer to sell, or take orders for merchandise or offer to perform personal services for household repairs or improvements, to submit to a state

records check only, or both a federal and state records check. Municipalities that require a criminal history records check shall have such person submit to the municipality a notarized criminal history records release form, as provided by the division of state police, which authorizes the release of the person's criminal records, if any. To obtain a federal records check, such person shall also submit to the municipality, with the release form, a complete set of fingerprints.

II. For a state and federal criminal records check, the municipality shall request that such person submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the department of safety. The municipality shall submit the criminal history records release form and inked fingerprint card to the division of state police who shall conduct a criminal records check through its records and through the Federal Bureau of Investigation. Fingerprints taken digitally by Live Scan or similar device shall be transmitted directly to the New Hampshire division of state police. In the event that the first set of fingerprints is invalid due to insufficient pattern, the municipality may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 10 years. Upon completion of the records check, the division of state police shall release copies of the criminal history records to the local law enforcement agency of the municipality which shall maintain the confidentiality of all criminal history records information received pursuant to this section. The municipality may charge a fee to recover the costs of such investigation.

III. To obtain a state records check only, the municipality shall submit a state criminal history records release form, completed by such person, to the division of state police.

IV. Such person shall also include the location of all municipalities in which such person seeks to transact business. Such municipalities, in accordance with their licensing requirements, shall have access to the result of the criminal history records check and the New Hampshire division of state police shall release copies of the criminal history records to such municipalities. Such person shall be responsible for any additional fees for any administrative costs incurred by the New Hampshire division of state police under this section.

186-B:10 Definitions. In this subdivision:

I. "Blind person" means a person whose central acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200 is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual shall select.

II. "Blind services" means the administrative unit for the blind services program within the Bureau of Vocational Rehabilitation, Department of Education.

III. "State property" means any building or land owned, leased or controlled by the state.

IV. "Vending facility" means a vending machine, cafeteria, snack bar, cart service, shelter, counter or any other facility for the vending of newspapers, periodicals, confections, tobacco products, foods or beverages, or any combination of them, whether dispensed automatically or manually, and which are prepared on or off the property.

V. "Vending machine income" means receipts other than those of a blind licensee from the operations of vending machines on state property, after cost of goods sold, where the machines are operated, serviced or maintained by, or with the approval of the state, or commissions paid other than to a blind licensee by a commercial vending concern which operates, services or maintains vending machines on state property for, or with the approval of the state.

186-B:11 Duties. Blind services shall:

- I. Survey the vending facility opportunities on all state property.
- II. Establish, whenever feasible, vending facilities on state property to the extent that such facilities do not adversely affect the interests of the state.
- III. License blind persons for the operation of vending facilities on state property.
- IV. Provide vending facility equipment and an adequate initial stock of suitable articles to licensed blind persons;
- V. Provide the necessary training and supervision to licensed blind persons.
- VI. (Repealed)
- VII. Conduct mandatory training seminars for operators of its vending facilities, which shall address topics concerning the management of vending facilities, including but not limited to, the following:
 - (a) Customer relations
 - (b) Marketing techniques
 - (c) Personnel hiring and training

186-B:11 Duties continued:

- (d) Inventory control
- (e) New products
- (f) Machine repair and maintenance, and
- (g) Accounting

186-B:11-a Rulemaking Authority; Board of Education The State Board of Education shall adopt rules, pursuant to RSA 541-A, to carry out the provisions of this chapter.

186-B:12 Licenses. Blind services shall issue a license for the operation of a vending facility only to a blind person who is able, with such disability, to operate a vending facility. In issuing any license, blind services shall give preference to a blind person who is a resident of this state. Each license issued shall be for an indefinite period, but may be terminated by blind services if it is satisfied that the facility is not being operated in accordance with rules adopted by the Board of Education under RSA 186-B:11-a.

186-B:13 Vending Facilities

- I. No person in control of the maintenance, operation and protection of any state property may offer or grant to any other party a contract or concession to operate a vending facility unless:
 - (a) He has notified blind services and has attempted to make an agreement with blind services for a licensed blind person to operate a vending facility; and

(b) He has determined in good faith that blind services is not willing to establish a vending facility on such property.

II. (Repealed)

III. Blind services, with the cooperation of the person in control of the maintenance, operation and protection of any state property, shall select the type of location of the vending facility to be provided and the person to operate such facility.

IV. If blind services determines that a vending facility operated by a full-time licensed blind person is not feasible on any state property, blind services may install vending machines on such property with income accruing pursuant to RSA 186-B:14.

V. The contract for the operation of any vending facility shall specify that it shall be operated at a reasonable cost consistent with a fair return, high quality food and reasonable prices.

VI. This section shall not apply to Franconia Notch State Park, Mount Sunapee State Park and Mount Washington State Park; nor shall it apply to any state property which operates its own vending facility unless the person in control of the maintenance, operation and protection of the property contracts with blind services to operate the vending facility.

186-B:14 Vending Machine Income

I. If a new vending machine or a replacement for an existing vending machine is installed after August 5, 1975, on any state property, vending machine income shall accrue to the licensed blind person operating a vending facility on the same property, or if none, to blind services. The licensed blind person or blind services shall be responsible for servicing and maintaining the vending machines from which vending machine income is received.

II. Vending machine income which accrues to blind services pursuant to paragraph I may be used to:

(a) Purchase new equipment and replace existing equipment for new and existing vending facilities;

(b) Purchase initial stock and supplies;

(c) Provide training services; and

(d) Establish retirement funds, health insurance contributions, paid sick leave and vacation time for licensed blind persons.

III. If vending machine income which accrues to blind services pursuant to paragraph I is limited, it may be used to earn federal funds on a matching basis.

186-B:15 Appeal. Any person aggrieved by a decision of blind services under this subdivision may apply for rehearing and appeal pursuant to RSA 541.