

ITINERANT VENDORS
RSA Chapter 321

321:1 Defined. – For the purposes of this chapter, the words "itinerant vendors" mean all persons (as defined by RSA 358-A:1), both principals and agents, including those persons whose principal place of business is not in this state, who engage in a temporary or transient business in this state, either in one locality or traveling from place to place, selling goods, wares and merchandise, with a total value greater than \$500, from stock or by sample for future delivery, and who, for the purpose of carrying on such business, hire or occupy a temporary place of business. A "temporary place of business" means any public or quasi-public place including, but not limited to, a hotel, motel, rooming house, storeroom, building, part of a building, tent, vacant lot, railroad car, or trailer temporarily occupied for the purpose of making retail sales of goods to the public.

321:2 Local Association. – No itinerant vendor shall be exempt from the provisions of this chapter by reason of associating himself temporarily with any local dealer, trader or merchant, or by conducting such temporary or transient business in connection with, or as a part of the business of, or in the name of, any local dealer, trader or merchant.

321:3 Exceptions. – The provisions of this chapter **shall not apply to the following:**

- I. Sales made to dealers by commercial travelers or selling agents.
- II. Hawkers and peddlers, as defined in RSA 320:1.
- III. 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.
- IV. Any person who operates a permanent business in this state, occupies temporary premises, and prominently displays the permanent business' name and permanent address while business is conducted from the temporary premises.
- V. Any nonprofit corporation, 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.
- VI. Any person conducting business in any industry or association trade show.
- VII. Any person who sells exclusively antiques, used goods, or vintage items.

321:4 Deposit; Fee; Issue.

I. Every itinerant vendor desiring to do business in this state shall make a special deposit of \$5,000, in the form of cash or a surety bond, with the secretary of state, and, thereafter, upon application in proper form and the further payment of \$250 as a state license fee, the secretary of state shall issue to him an itinerant vendor's license, authorizing him to do business in this state in conformity with the provisions of this chapter for the term of one year from the date of application. The license shall contain a copy of the application upon which it is granted. Any person whose bond, deposited pursuant to this section, is cancelled prior to the original expiration date of such bond shall be responsible to notify the secretary of state of such cancellation within 2 business days of the cancellation.

II. Every employee or agent of an itinerant vendor, operating in this state as an itinerant vendor as defined by RSA 321:1, may in lieu of an application under paragraph I, upon application in proper form and payment of a \$250 state license fee to the secretary of state, be issued an itinerant vendor's license for a period of one year. Licenses issued under this paragraph, however, shall be null and void upon expiration of the itinerant vendor's license held by the employer, the cancellation or expiration of a surety bond filed by the employer with the secretary of state, or upon termination of employment with said licensed vendor.

321:5 Effect; Limitations. – Such license shall not be transferable, nor give authority to more than one person to sell goods nor in any other way than in his own proper person; but any licensee may have the assistance of other persons in conducting his business, who shall have authority to aid the principal, but not to act for or without him. No person shall be entitled to hold, or directly or indirectly receive the benefit of, more than one state license at the same time.

321:6 Applications; Record. – Applications for state 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. All applications for state licenses shall be sworn to, shall state the name and residence of the owners or parties in whose interests the business is conducted, and shall be kept on file by the secretary of state, who shall keep a record of all licenses issued by him.

321:7 Cancellation. – Any state license may be surrendered for cancellation at any time. Upon the expiration and return or surrender of any state license, the secretary of state shall cancel the same, endorse the date of delivery and cancellation thereon and place it on file. He shall thereafter hold the special deposit provided for in RSA 321:4 for 60 days. The secretary of state shall satisfy all claims made against any itinerant vendor from the cash deposited by such vendor, or by demanding payment of such claims from the issuer of any bond filed on behalf of such vendor. After satisfying the claims made upon the deposit under RSA 321:8, the secretary of state shall return the balance of any cash deposit to the licensee. No deposit shall be paid to the licensee so long as there are notices of outstanding claims against it.

321:8 Application of Deposits. – Each deposit made with the secretary of state, whether in the form of cash or a surety bond, shall be subject, so long as it remains in his hands, to attachment under trustee process and execution in behalf of creditors whose claims arise in connection with the business done in the state, and he shall pay over or demand payment from the issuer of the surety bond, under order of court, or upon execution, of such sum as he may be charged with upon his disclosure.

321:9 Fines. – Said cash deposit or surety bond shall also be subject to the payment of all fines and penalties incurred by the licensee for violations of this chapter, and the clerk of the court in which such fine or penalty is imposed shall thereupon notify the secretary of state of the name of the licensee against whom such fine or penalty is adjudged and the amount thereof. The secretary of state, if he has in his hands a sufficient sum, shall pay the same to said clerk or demand payment of such sum from the issuer of the surety bond; otherwise he shall make payment as aforesaid of so much as he has in his hand or as much as he can recover from the issuer of the surety bond.

321:10 Order of Payment. – All claims upon the cash deposit or surety bond shall be satisfied after judgment in the order in which notice thereof was received by the secretary of state, until all claims are satisfied or the cash deposit or surety bond exhausted; but no notice filed after the expiration of said 60 days shall be allowed.

321:11 Procuring. – Every itinerant vendor intending to sell goods in any town shall file the vendor's state license and an application for a local license with the local licensing official, or designee, for such municipality, before selling, offering for sale, or exposing for sale any goods, and shall pay such reasonable license fee as determined by the municipality.

321:12 Application. – Every application for a local license shall be signed by the holder of the accompanying state license, and shall specify the kind and line of goods then in stock in such town, the name of the town from which said goods were last shipped, and the name of the town in which they were last exposed or offered for sale.

321:13 Fee. – [Repealed 1995, 27:5, eff. June 23, 1995.]

321:14 Lien for. – Every town in which is kept, exposed or offered for sale an itinerant vendor's stock of goods shall have a lien on such goods for the amount due such town for the local license fee, to be enforced by suit and judgment within 10 days from the time when such goods were first publicly offered or exposed for sale in such town.

321:15 Receipt; Filing State License. – A receipt for such local license fee, when paid, shall be endorsed by the local licensing official, or designee, on the back of such state license, and a copy shall remain on file with the local licensing official, or designee, so long as such sale shall continue, or such goods be kept, offered or exposed for sale in such town.

321:16 Conditions. – The payment of such local license fee shall authorize such applicant to sell, within the limits of said town, goods only of the kind or line specified in his application, and for that purpose to carry in stock such goods, not to exceed in amount at any one time the value on which the local license fee was computed; and such license shall terminate and expire on April 1 next following the date of application.

321:17 Neglect to Apply; Fraud; Penalty. – Whoever, as principal or agent, having in his care, custody or keeping any goods for the sale of which a local license is required, neglects or refuses to file the application for such license, or makes a false or fraudulent representation or statement in such application, shall be guilty of a violation for each day such goods are so kept, offered or exposed for sale.

321:18 Increase of Stock. – Any itinerant vendor who, after applying or paying for a local license, shall increase his stock kept, offered or exposed for sale in the town for which such local license fee was paid, above the valuation upon which the license was computed, shall make application for a supplementary license for such excess of stock in like manner as for his original license, and the fees therefor shall be computed, certified and collected in like manner.

321:19 Advertisement. – No itinerant vendor shall advertise, represent or hold forth any sale as an insurance, bankrupt, insolvent, assignee's, trustee's, testator's, executor's, administrator's, receiver's, wholesale, manufacturer's or closing-out sale, or as a sale of goods damaged by fire, smoke, water or otherwise, or in any similar form, unless such vendor shall, before so doing state under oath to the secretary of state, and to the local licensing official, or designee, of each town where the goods are offered for sale, either in the applications for licenses, or in supplementary applications subsequently filed and copied on the licenses, all the facts relating thereto, the reason for and the character of such sale, including a statement of the names of the persons from whom the goods were obtained, the date of their delivery to the applicant, the place from which they were last taken and all the details necessary to locate and identify them.

321:20 No Advertisement Until Licensed. – No person, either as principal or agent, shall, by circulars, handbills, newspapers or in any other manner, advertise any sale by an itinerant vendor before state and local licenses for such sale have been procured.

321:21 Penalty. – Whoever violates any of the provisions of RSA 321 for which a penalty is not otherwise provided shall be guilty of a misdemeanor.

321:22 Prosecutions. – The attorney general and his agents shall cause to be arrested and prosecuted, and within their respective towns constables and police officers shall arrest and prosecute, every itinerant vendor whom they may have reason to believe guilty of violating any provision of this chapter.

321:23 Alternate Local Licensing. – In lieu of the licensing requirements of RSA 321:11, a city, town or village district may require licensure under RSA 31:102-a, provided that the licensure requirements of the ordinance or regulation adopted under that section shall not be less stringent than those of this chapter. Any itinerant vendor licensed under RSA 31:102-a shall also comply with this chapter except as to its local licensing provisions which are superseded by local ordinance or regulation under RSA 31:102-a.