

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 708
HOUSE BILL 27

AN ACT REGULATING PEDDLERS, ITINERANT MERCHANTS, FLEA MARKET
VENDORS AND FLEA MARKET OPERATORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-53 is amended in the catch line by inserting immediately before the word "and" the words "flea market vendors".

Sec. 2. G.S. 105-53(b) is amended by deleting the third sentence of that subsection and substituting the following sentence:

"An itinerant merchant's license is not required to engage in the business of a flea market vendor at a location licensed as a flea market under subsection (c) of this section."

Sec. 3. G.S. 105-53(d) is rewritten to read as follows:

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

- (1) A peddler, itinerant merchant, or flea market vendor:
 - a. who sells farm or nursery products produced by him;
 - b. who sells crafts or goods made by him or his own household personal property;
 - c. who is a nonprofit charitable, educational, religious, scientific, or civic organization;
 - d. who sells printed material, wood for fuel, ice, seafood, meat, poultry, livestock, eggs, dairy products, bread, cakes, or pies; or
 - e. who is an authorized automobile dealer licensed pursuant to Chapter 20 of the General Statutes.
- (2) A peddler who maintains a fixed permanent location from which he makes at least ninety percent (90%) of his sales, but who sells some goods in the county of his fixed location by peddling.
- (3) An itinerant merchant:
 - a. who locates at a farmer's market;
 - b. who is part of the State Fair or an agriculture fair which is licensed by the Commissioner of Agriculture pursuant to G.S. 106-520.3; or
 - c. who sells goods at an auction conducted by an auctioneer licensed pursuant to Chapter 85B of the General Statutes.
- (4) A peddler who complies with the requirements of G.S. 25A-38 through G.S. 25A-42, or who complies with the requirements of G.S. 14-401.13."

Sec. 4. G.S. 105-53 is amended by adding a new subsection (d) as follows:

"(d) Flea Market Vendor. Every person engaged in business as a flea market vendor shall obtain a license from the Secretary of Revenue for the privilege of engaging in such business and shall pay an annual tax of twenty-five dollars (\$25.00) for a statewide license. A 'flea market vendor' is a merchant, other than a merchant with an established retail store in the county, who transports an inventory of goods to a flea market licensed under subsection (c) of this section and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. A 'flea market' is a location, other than a permanent retail store or the enclosed area of a mall or shopping center, where space is rented to others for the purpose of selling goods at retail or offering goods for sale at retail."

Sec. 5. G.S. 105-53(g) is deleted and G.S. 105-53(e) is redesignated G.S. 105-53(g) and is amended by adding the words "County Exemption." immediately before the words "The board" the first time they appear and by adding the words "upon peddlers, itinerant merchants and flea market vendors" after the word "levied", and by substituting the word "sell" for the word "peddle".

Sec. 6. G.S. 105-53 is amended by adding the following new subsections:

"(h) Information to Department of Revenue. When a peddler, itinerant merchant, flea market vendor or flea market operator applies to the Department of Revenue for a license, he shall provide the name and permanent address of the peddler, itinerant merchant, flea market vendor or flea market operator. In providing this information, if the peddler, itinerant merchant, flea market vendor or flea market operator is not a corporation, he must provide a copy of a valid driver's license, a special identification card issued under G.S. 20-37.7, military identification or a passport bearing a physical description of the person named reasonably describing the peddler, itinerant merchant, flea market vendor or flea market operator. If the peddler, itinerant merchant, flea market vendor or flea market operator is incorporated, he shall give the name and the registered agent of the corporation and the address of the registered office of the corporation, as filed with the North Carolina Secretary of State.

(i) Display and Possession of Licenses. An itinerant merchant or flea market vendor shall keep both the license required by this section and the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant or flea market vendor, at the places or locations at which the goods are to be sold or offered for sale. A peddler shall have the license required by this section and the retail sales tax license with him at all times he offers goods for sale and must produce them upon the request of any person. A flea market operator shall have the license required by this section available for inspection during all times that the flea market is open and must produce it upon the request of any person.

(j) Permission of Property Owner. An itinerant merchant or a peddler who travels from place to place by vehicle, in addition to other requirements of this section, shall obtain a written statement signed by the owner or lessee of any property upon which the itinerant merchant or peddler offers goods for sale giving the owner's or lessee's permission to offer goods for sale upon the property of the owner or lessee. Such statement shall clearly state the name of the owner or lessee, the location of the

premises for which the permission is granted, and the dates during which the permission is valid. Further, such statement shall be conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant or peddler, at the places or locations at which the goods are to be sold or offered for sale.

(k) Flea Market Registration List. A flea market operator shall maintain a daily registration list of all flea market vendors selling or offering goods for sale at the flea market. This registration list shall clearly and legibly show the flea market vendor's name, permanent address and the flea market vendor's statewide flea market vendor's license number. If the flea market vendor is exempt from licensing under subsections (e) or (g), the list shall show the reason for exemption and be signed by the flea market vendor and the flea market operator. At the time of registration, the flea market operator must require the flea market vendor to exhibit a valid flea market vendor's license or county exemption certificate and retail sales tax license for visual inspection by the flea market operator. Each daily registration list maintained pursuant to this subsection shall be retained by the flea market operator for no less than two years and shall at any time be made available upon request to any law enforcement officer.

(l) Penalty. It shall be a misdemeanor, punishable by imprisonment of up to 30 days, a fine of up to two hundred dollars (\$200.00), or both, for a person to:

- (1) fail to obtain a license as required by this section;
- (2) knowingly give false information in the application process for a license or when registering pursuant to subsection (k);
- (3) if the person is an itinerant merchant or flea market vendor, fail to display the license as required by subsection (i) or if the person is a peddler or flea market operator, fail to produce the license as required by subsection (i) or if the person is required to do so, fail to comply with subsection (j). Whenever satisfactory evidence shall be presented in any court of the fact that a license was required by this section and such license was not displayed or produced as required by subsection (i), or that permission was required by subsection (j) of this section and was not displayed, the peddler, itinerant merchant, flea market vendor or flea market operator shall be found not guilty of that violation provided he produces in court a valid license or valid permission which had been issued prior to the time he was charged with such violation; or
- (4) if the person is a flea market operator, fail to comply with subsection (k) or knowingly allow a flea market vendor to falsely register as exempt under subsection (k).

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

Sec. 7. G.S. 153A-125 is amended in the catch line by adding the words "flea markets" before the word "and", and is further amended in the first sentence by adding

the following words after the word "peddlers,": "flea market operators and flea market vendors".

Sec. 8. G.S. 160A-178 is amended in the catch line by adding the words "flea markets" before the word "and", and is further amended in the first sentence by adding the following words after the word "peddlers,": "flea market operators and flea market vendors".

Sec. 9. G.S. 105-112 is amended by adding a new subsection (d) to read:

"(d) The provisions of this section notwithstanding, violations of G.S. 105-53 shall be punished as provided for in that section."

Sec. 10. All references to any part of G.S. 105-53 in this bill are as it is rewritten by Chapter 213, Session Laws of 1987.

Sec. 11. This act shall become effective July 1, 1988.

In the General Assembly read three times and ratified this the 31st day of July, 1987.