

MAINE STATE LEGISLATURE

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NEW DRAFT OF S. P. 97, L. D. 91.

N I N E T Y - F I R S T L E G I S L A T U R E

Legislative Document

No. 429

S. P. 308

In Senate, February 10, 1943.

In senate reported by Senator Sanborn of Cumberland from Committee on Legal Affairs and laid on table to be printed under joint rules.

ROYDEN V. BROWN, Secretary.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-THREE

AN ACT Relating to Itinerant Vendors.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., c. 46, §§ 11 to 27, repealed. Sections 11 to 27 of chapter 46 of the revised statutes are hereby repealed.

Sec. 2. R. S., c. 46, additional. Chapter 46 of the revised statutes is hereby amended by adding thereto the following new sections to be numbered sections 11 to 27, and to read as follows:

'Sec. 11. Itinerant vendors not to sell without license; penalty. Any itinerant vendor who sells or exposes for sale, at public or private sale, any goods, wares, and merchandise without state and local licenses therefor, issued as hereinafter provided, shall be punished for each offense by a fine of not more than \$200 or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

Sec. 12. Penalty for advertising sale before licenses are issued. All persons, both principals and agents, who by circular, handbill, newspaper, or in any other manner, advertise any such sales as those referred to in the preceding section, before proper licenses shall have been issued to the vendor, shall be punished by a fine of not more than \$50 or by imprisonment for not more than 60 days, or by both such fine and imprisonment.

Sec. 13. Vendors to take out state and local licenses; rights of municipal officers unaffected. Every itinerant vendor, whether principal or agent, before commencing business, shall take out a state license and local licenses in the manner hereinafter set forth, but nothing herein contained shall affect the right of any municipal officers to make such regulations relative to itinerant vendors as may be permissible under the general law or under any municipal charter.

Sec. 14. Vendors to make deposit before procuring license; license not transferable; licensee may have assistants. Every itinerant vendor desiring to do business in this state shall deposit with the secretary of state the sum of \$500 as a special deposit, and after such deposit, upon application in proper form and the payment of a further sum of \$100 as a state license fee, the secretary of state shall issue to him an itinerant vendor's license, authorizing him to do business in the state in conformity with the provisions of this chapter for the term of 1 year from the date thereof. Every license shall set forth a copy of the application upon which it is granted. Such license shall not be transferable nor give authority to more than one person to sell goods as an itinerant vendor, either by agent or clerk or in any other way than in his own proper person, but any licensee may have the assistance of 1 or more persons in conducting his business, who may aid that principal but shall not 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 any one time, and any license obtained, held or used in violation of this section is void.

Sec. 15. Applications for state licenses to disclose name and residence of owners. All applications for state licenses shall be sworn to, shall disclose the names and residences of the owners or parties in whose interests said business is conducted, and shall be kept on file by the secretary of state, and a record shall be kept by him of all licenses issued upon such applications. All files and records, both of the secretary of state and of the several towns, relative to such licenses, shall be in convenient form, and open for public inspection.

Sec. 16. Local license to be obtained; proceedings. Every itinerant vendor intending to sell goods in any town shall file his state license and an application for a local license with the collector of taxes for such town, and before selling, offering, or exposing for sale any goods in such town shall pay to the collector for the use of such town, as a further local license fee for such sale in such town, a sum to be computed as provided in the following section. A receipt for said local license fee when paid shall be

indorsed by said collector on the back of such state license, which shall remain on file with such collector so long as such sale shall continue or such goods be kept, exposed, or offered for sale in such town. 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 said goods were last exposed or offered for sale. Such local license fee shall be computed and collected in each town respectively, in which said goods shall be successively offered or exposed for sale.

Sec. 17. Assessors to examine stock and certify amount of local license fee; license restricted to goods described; vendor to pay additional fee when stock is increased; penalty. The collector of taxes for any town upon receiving an application in due form as provided in the preceding section, accompanied by the applicant's state license shall forthwith give notice thereof to the assessors of said town. Said assessors, or a majority of them, shall as soon as practicable examine the stock of goods described in such application, and shall compute and certify to said collector the amount of said applicant's local license fee for such intended sale in said town which shall be a percentage on the full value of said stock of goods equal to the rate per cent of the last preceding taxation in said town. The payment of said local license fee to said collector shall authorize such applicant who has complied with all other requirements of law to sell within the limits of said town, such goods, wares, and merchandise as are described in his application, and for that purpose to carry in stock in said town, goods only of the kind or line specified in his application, not exceeding in amount at any one time the valuation on which his local license fee for such town was computed; such license shall continue in force so long as such licensee shall in good faith continuously keep, offer, or expose for sale the same kind or line of goods specified in his application, except that such license and authority shall in any event terminate and expire on the 1st day of April next following the date of application. Any itinerant vendor, who after applying or paying for a local license increases his stock kept, offered, or exposed for sale in the town for which such local license fee was paid, above the valuation on which such local license fee was computed, without first making seasonable written application to the collector of such town for a supplemental license for such excess of stock, shall be punished by a fine of not less than \$20, nor more than \$50, and for each day such excess of stock is kept, offered, or exposed for sale without payment of local license fee therefor shall be punished by a fine of

not less than \$20, nor more than \$50, and shall forfeit his state license. Supplemental licenses shall be applied for, and the fees therefor shall be computed, certified and collected in the manner provided for local license fees.

Sec. 18. Penalty for neglect to apply for local license. Whoever as proprietor or clerk, 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 local license required by law, or whoever makes a false or fraudulent representation or statement in any application for a local license, shall be punished by a fine of not less than \$20, nor more than \$50 for each day such goods are kept, offered, or exposed for sale. The penalties provided herein are not to be construed as substitutes for payment of local license fees.

Sec. 19. Town has lien on goods for license fee; collector may maintain action of debt for fee; officers charged with enforcement of law. Every town in which is kept, exposed, or offered for sale an itinerant vendor's stock of goods has a lien on such goods for the amount due such town for local license fee on such stock, to be enforced by suit and attachment within 10 days from the time such goods were first publicly offered or exposed for sale in such town. When any person liable therefor neglects or refuses to pay the local license fee provided in section 17 the tax collector of the town to which such license fee is due may maintain an action of debt by writ of attachment or trustee process therefor in the name of such town or in his own name for the benefit of such town. Tax collectors, police officers, and constables shall prosecute for violations of the provisions hereof relating to itinerant vendors, in their respective towns, and shall report such violations promptly to the assessors for the purpose of computing and certifying such local license.

Sec. 20. Vendor to state to secretary of state all facts relating to sale. 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 or manufacturer's, or closing out sale or as a sale of any goods damaged by smoke, fire, water, or otherwise, or in any similar form, unless he shall before so doing, state under oath to the secretary of state, either in the original application for a state license or in a supplementary application subsequently filed, and copy on the license all the facts relating to the reasons and character of such special sale so advertised or represented, including a statement of the names of the persons from whom the goods, wares, and merchandise were ob-

tained, the date of delivery to the person applying for the license, and the place from which said goods, wares, and merchandise were last taken, and all details necessary to exactly locate and fully identify all goods, wares, and merchandise to be so sold.

Sec. 21. Penalty for making false statement. Any false statement in an application, either original or supplementary, for a license, and any failure on the part of any licensee to comply with all the requirements of the last preceding section shall subject said itinerant vendor to the same penalty as if he had no license.

Sec. 22. State licenses to expire in 1 year. All state licenses issued under section 14 shall expire by limitation 1 year from the date thereof, and may be, if so desired, surrendered at any time prior thereto for cancellation.

Sec. 23. Upon expiration or surrender of license, duty of secretary of state. Upon the expiration and return or surrender of each state license, the secretary of state shall cancel the same, indorse the date of delivery and cancellation thereon, and place the same on file. He shall then hold the special deposit of each licensee hereinbefore mentioned for the period of 60 days, and after satisfying any and all claims made upon the same under the following section, shall return said deposit or such portion of the same, if any, as may remain in his hands, to the licensee depositing it.

Sec. 24. Deposits subject to attachment and execution and to payment of fines and penalties incurred; claims satisfied in order in which notice of claim is received; deposits not to be paid to licensees, so long as there are claims against them. Each deposit made with the secretary of state shall be subject, so long as it remains in his hands, to attachment and execution in behalf of creditors whose claims arise in connection with business done in the state, and the secretary of state may be held to answer as trustee, under the trustee process, in any civil action in debt or case brought against any licensee, and the secretary of state shall pay over, under order of court, or upon execution, such sum of money as he may be chargeable with upon his answer or otherwise. Said deposit shall also be subject to the payment of any and all fines and penalties incurred by the licensee through violation of any of the provisions of the 13 preceding sections, and the clerk or recorder of the court in which, or the trial justice by whom, 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 of the amount of such fine or penalty, and the secretary of

state if he has in his hands a sufficient sum deposited by such licensee shall pay the sum so specified to said clerk, recorder, or trial justice; and if the secretary of state shall not have a sufficient sum so deposited he shall make payment as aforesaid, of so much as he has in his hands. All claims upon the deposit shall be satisfied after judgment, fine, or penalty, in the order in which notice of the claim is received by the secretary of state, until all such claims are satisfied or the deposit exhausted, but no notice filed after the expiration of the 60 days' limit aforesaid shall be valid. No deposits shall be paid over by the secretary of state to the licensees so long as there are any outstanding claims or notices of claims against them, respectively, unless he is satisfied that such claims will not be prosecuted to final judgment or that no fine or penalty will be imposed.

Sec. 25. Construction of words, "itinerant vendors"; vendor not exempt by associating himself with local trader. The words "itinerant vendors" for the purposes of this chapter shall be construed to mean and include all persons, both principals and agents, who engage in a temporary or transient business in this state, either in one locality or in traveling from place to place selling goods, wares, and merchandise, and who, for the purposes of carrying on such business, hire, lease, or occupy any building or structure for the exhibition and sale of such goods, wares, and merchandise, or who sell goods, wares, and merchandise at retail from a car, wagon, or other conveyance, steamer or vessel. No itinerant vendor shall be relieved or exempted from the provisions and requirements hereof 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.

Sec. 26. Persons exempt. The provisions of the 15 preceding sections shall not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business, nor to bona fide sales of goods, wares, and merchandise by sample for future delivery, nor to hawkers or peddlers on the streets or peddlers from vehicles.

Sec. 27. Jurisdiction of prosecutions. Municipal courts and trial justices shall have jurisdiction of all complaints and prosecutions under the 16 preceding sections.'