CHAPTER 51-04
TRANSIENT MERCHANTS

51-04-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Merchandise" does not include any livestock or agricultural product.
2. "Transient merchant" includes any person, individual, copartnership, corporation, or limited liability company, either as principal or agent, who engages in, does, or transacts any temporary or transient business in this state, either in one locality, or in traveling from place to place in this state, selling, or soliciting orders for future delivery of, goods, wares, merchandise, personal property, and personal services including spraying, trimming, or pruning of trees and shrubs of all species, painting or repairing buildings or structures, pest or rodent control, and taking photographs for present or future delivery, who does not intend to become and does not become a permanent merchant of such place.

51-04-02. Application for license.

Any transient merchant desiring to engage in, do, or transact business by auction or otherwise, in any county in this state, shall file an application for a license for that purpose with the attorney general as provided in section 51-04-07, which must be in writing and include the following:

1. Applicant's name, present residence, present home address, present business address, and current telephone numbers.
2. Applicant's residence and business address for the prior two-year period, if different from the present residence and address.
3. Type of business in which applicant has been engaged in the previous two years.
4. Proposed location of the business to be licensed.
5. Kind of business to be conducted.
6. Length of time desired or estimated for completion of sale in the state.
7. Name and address of the auctioneer, if any, who will conduct the sale.
8. An itemized list of merchandise to be offered for sale reciting as to each item a description thereof including serial number, if any, the owner's actual cost thereof, and a designation by number corresponding with a number to be affixed to each item by a tag which must be kept fastened to the item at all times until sold.

51-04-02.1. Application to attorney general for license.

Repealed by S.L. 1983, ch. 529, § 5.

51-04-03. License fee - Bond or cash surety - License issuance.

An applicant for a transient merchant's license shall pay to the attorney general a license fee of two hundred dollars to cover the cost of licensing and shall give a surety bond, or the deposit of cash in lieu thereof, which must be not less than one thousand dollars nor more than fifty thousand dollars, the surety on which must be a surety company authorized to transact business in the state of North Dakota. The contents and surety therein are subject to the approval of the attorney general and must be conditioned that the applicant will in all things conform to the laws relating to transient merchants and further conditioned upon full compliance with all material oral or written statements and representations made by the applicant, the applicant's agents, representatives, or auctioneers with reference to merchandise sold or offered for sale, and on faithful performance under all warranties made with reference thereto. The bond may not be revocable nor terminate prior to passage of two years' time after the expiration of the license issued pursuant thereto nor until due notice that the terms of the bond are to be canceled has been given to the attorney general.

No license is valid for more than one person unless that person is a bona fide member of a copartnership. Licenses issued by the attorney general are valid in all counties of the state and expire after one year from the dates of their issuance.

No sale under the purview of this chapter may be conducted in the name of any person other than the bona fide owner of the goods, wares, and merchandise.

The files and records of the attorney general pertaining to transient merchants must be kept in convenient form and open for public inspection.

51-04-03.1. License to be carried by licensee and exhibited on demand.

Every transient merchant licensed under this chapter shall have the license in immediate possession at all times when engaging in or transacting any business regulated by this chapter. The licensee shall display the license when requested to do so by any court, law enforcement official, peace officer, or consumer. However, a person charged with violating this requirement may not be convicted, fined, or assessed the administration fee if the license is produced in court or to the arresting officer and if the license was valid at the time of the arrest.

51-04-04. Affidavit required for certain sales.

It is unlawful for any transient merchant to advertise, represent, or hold forth as being sold for an insurance, bankrupt, insolvent, assignee, trustee, testator, executor, administrator, receiver, syndicate, wholesaler, or manufacturer, or closing out sale, or as a sale of any goods, wares, and merchandise damaged by smoke, fire, water, or otherwise, or in any similar form, unless such transient merchant shall file with the person's application for a transient merchant license an affidavit showing all the facts relating to the reasons and character of the sale so to be advertised or represented, and showing that the sale is in fact as it is to be advertised and represented, including a statement of:

1. The names of the persons from whom the goods, wares, and merchandise were obtained;
2. The date of their delivery to the applicant;
3. The place from which the goods, wares, and merchandise were last taken; and
4. All details necessary to exactly locate and fully itemize all goods, wares, and merchandise to be sold.

51-04-05. Failure of affidavit.

If the affidavit filed as prescribed in section 51-04-04 shows that the sale is not of the kind or character proposed to be advertised or represented or fails to disclose the facts as required, then the county auditor or the attorney general shall refuse the applicant a license for the sale. Should a license be issued to the applicant, it must state that the applicant is authorized and licensed to sell such goods, wares, and merchandise, and advertise and represent and hold forth the same as being sold as such insurance, bankrupt, insolvent, assignee, trustee, testator, executor, administrator, receiver, syndicate, wholesaler, or manufacturer, or closing out sale, or as a sale of any goods, wares, and merchandise damaged by smoke, fire, water, or otherwise, as shown in the affidavit.

The affidavit must be sworn to by the applicant before a person authorized to administer oaths.

51-04-06. Evidence.

When it appears that any stock of goods, wares, and merchandise has been brought into any county of this state by a person not a resident of the county, and that it is claimed, represented, or advertised that such stock is to be closed out at reduced prices, such facts are prima facie evidence that the person, copartnership, corporation, limited liability company, or agency so offering the goods, wares, and merchandise for sale is a transient merchant.

51-04-07. Service of process - Appointment of agent.

1. A transient merchant may not engage in any temporary business, or be licensed by any city, without first having complied with this section.
2. Prior to the issuance of a transient merchant license and approval of the transient merchant's bond, the applicant shall in writing appoint the attorney general as the

applicant's agent to accept service of process in any action or proceeding involving the applicant and arising out of the sale for which the license is sought.

3. Each transient merchant required by the attorney general to do so shall appoint an agent in this state who is a resident of this state. The agent shall accept service of process on behalf of the transient merchant in any suit filed against the transient merchant and the agent is responsible for processing any warranty, claim, or merchandise sold by the transient merchant.
4. The name and street address of the agent must be filed with the attorney general's office. In addition, the name and address of the agent must be furnished in writing to each person purchasing an item from the transient merchant along with a written statement that the agent is the proper person to accept service of process in any suit filed against the vendor and is the proper person to process any warranty claim.

51-04-08. Certain excepted sales.

The provisions of this chapter do not apply to the following:

1. Sales made to dealers by commercial travelers or selling agents in the usual course of business.
2. Sales made by persons soliciting orders of goods, wares, merchandise, or personal property for future delivery, and not from a stock or supply carried by the solicitor or otherwise available for immediate delivery to the purchaser, in which the solicitor does not demand or accept payment of any money or deposit in advance or on delivery without first providing the purchaser with the privilege of examination of the goods, wares, merchandise, or personal property.
3. Sales made by a person who has a sales or use tax permit in accordance with chapter 57-39.2 or 57-40.2, pays contributions to job service North Dakota for unemployment compensation in accordance with chapter 52-04, and who has reported to workforce safety and insurance in accordance with chapter 65-04.
4. Sales made by a seller at residential premises pursuant to an invitation issued by the owner or legal occupant of such premises.

51-04-08.1. Exceptions to requirement of a transient merchant's license.

A transient merchant selling merchandise only in flea markets, craft fairs, fairs, carnivals, circuses, or similar activities regulated by city or county governments, fair associations, convention bureaus, other political subdivisions, or local trade organizations is exempt from the requirements of sections 51-04-02 and 51-04-03.

51-04-09. Regulation by city or other municipality.

Nothing in this chapter may be construed as prohibiting, or in any way limiting or interfering with, the right of any city or other municipal corporation or governmental subdivision of the state to regulate or license the carrying on within such municipality the business of a transient merchant if authority has been, or shall hereafter be, conferred upon it so to do, but the requirements of this chapter are in addition thereto. The governing body of a city or other municipal corporation or governmental subdivision, by resolution, ordinance, or order, may require transient merchants licensed under this chapter and making or intending to make sales within the city limits to comply with any reasonable regulations, in addition to this chapter, as that body may deem necessary for their local control and may require the payment by every such merchant of a per diem license fee not exceeding twenty-five dollars. Every such merchant making sales or offering to do so without complying with the regulations applicable to transient merchants is subject to the penalty provided as if no state license had been issued by the attorney general.

51-04-10. Penalty.

Any person violating any of the provisions of this chapter, for which another penalty is not specifically provided, is guilty of a class B misdemeanor. The state's attorney or attorney general may enforce this chapter. The attorney general in enforcing this chapter has all the powers

provided in this chapter and chapter 51-15 and may seek all remedies in this chapter and chapter 51-15. A violation of this chapter constitutes a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law. The attorney general may bring an action pursuant to this section in either the county where the transient merchant conducted business or Burleigh County.