

2018 -- S 2502 SUBSTITUTE A

LC004926/SUB A/2

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- HAWKERS AND PEDDLERS

Introduced By: Senators Euer, Jabour, Goldin, Satchell, and Quezada

Date Introduced: March 01, 2018

Referred To: Senate Commerce

(Dept. of Business Regulation)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 5-11-1.1 of the General Laws in Chapter 5-11 entitled "Hawkers
2 and Peddlers" is hereby amended to read as follows:

3 **5-11-1.1. "Hawkers", "peddlers", and "door-to-door salespersons" defined --**
4 **Authority to issue rules and regulations.**

5 (a) For purposes of this chapter:

6 (1) "Door-to-door salespersons" means persons who deliver goods, wares, or
7 merchandise to customers for which payment has already been made or is to be made at the time
8 of delivery;

9 (2) "Hawker" means any person selling or offering for sale any goods, wares, or
10 merchandise, including any food or beverage, on any public street, highway, or public right of
11 way in the state from a stationary location;

12 (3) "Peddler" means any person selling or offering for sale any goods, wares, or
13 merchandise, ~~including any food or beverage,~~ from a vehicle, cart, or any other conveyance that
14 is not stationary, [subject to § 5-11-1.1\(c\)](#); and

15 (4) No "hawker" or "peddler" shall sell or offer for sale any single good, ware, or item
16 having a retail value of more than three hundred dollars (\$300). However, this dollar limitation
17 shall not apply to any non-profit corporation duly authorized to do business in Rhode Island. A
18 non-profit corporation means a non-profit corporation that has applied under 26 U.S.C. §
19 501(c)(3) for approval as a § 501(c)(3) corporation with the Internal Revenue Service, or has been

1 so approved.

2 (b) Persons selling farm or garden produce, including flowers, and persons selling works
3 of art or crafts of their own making at an art or crafts show or exhibition are not hawkers or
4 peddlers, provided, that:

5 (1) Cumberland. The town of Cumberland has the power to license and regulate persons
6 selling farm or garden produce, including flowers, and persons selling works of art or crafts of
7 their own making at an art or crafts show or exhibition;

8 (2) West Warwick. The town of West Warwick has the power to license and regulate
9 persons selling farm or garden produce, including flowers, and persons selling works of art or
10 crafts of their own making at an art or crafts show or exhibition;

11 (3) Bristol. The town of Bristol has the power to license and regulate persons selling farm
12 or garden produce, including flowers, and persons selling works of art or crafts of their own
13 making at an art or crafts show or exhibition;

14 (4) Warwick. The city of Warwick has the power to license and regulate persons selling
15 farm or garden produce, including flowers, and persons selling works of art or crafts of their own
16 making at an art or crafts show or exhibition;

17 (5) East Providence. The city of East Providence has the power to license and regulate
18 persons selling farm or garden produce, including flowers; and

19 (6) Woonsocket. The city of Woonsocket has the power to license and regulate peddlers
20 selling or offering flowers.

21 (c) "Mobile food establishments" registered pursuant to chapter 11.1 of title 5, and any
22 regulations promulgated thereunder are not hawkers or peddlers and are explicitly exempted from
23 this chapter.

24 SECTION 2. Title 5 of the General Laws entitled "BUSINESSES AND PROFESSIONS"
25 is hereby amended by adding thereto the following chapter:

26 CHAPTER 11.1

27 STATE MOBILE FOOD ESTABLISHMENT REGISTRATION ACT

28 **5-11.1-1. Short title.**

29 This chapter shall be known and may be cited as the "State Mobile Food Establishment
30 Registration Act."

31 **5-11.1-2. Purpose.**

32 The intent of this chapter is to standardize the registration process for mobile food
33 establishments in the state by authorizing the department of business regulation to issue state
34 mobile food establishment registrations. Furthermore, this chapter explicitly exempts the selling

1 of food or beverages from the provisions of chapter 11 of title 5 which applies to hawkers and
2 peddlers.

3 **5-11.1-3. Definitions.**

4 As used in this chapter, the following terms shall have the following meanings:

5 (1) "Department" means the department of business regulation.

6 (2) "Director" means the director of the department of business regulation.

7 (3) "Event permit" means a permit that a city or town issues to the organizer of a public
8 mobile food establishment event located on public property.

9 (4) "Fire safety code" shall have the meaning set forth in chapter 28.1 of title 23 and shall
10 include any regulations promulgated thereunder.

11 (5) "Mobile food establishment" means a food service operation that is operated from a
12 movable motor driven or propelled vehicle, portable structure, or watercraft that can change
13 location. Mobile food establishments specifically includes but is not limited to, food trucks, food
14 carts, ice-cream trucks/carts, and lemonade trucks/carts.

15 (6) "Mobile food establishment event" means an event where an individual has ordered or
16 commissioned the operation of one or more mobile food establishments at a private or public
17 gathering.

18 (7) "Mobile food establishment operator" or "operator" means a person or corporate
19 entity who owns, manages, or controls, or who has the duty to manage or control, the operation of
20 a mobile food establishment.

21 (8) "Mobile food establishment vendor" or "vendor" means a person who prepares, sells,
22 cooks, or serves food or beverages from a mobile food establishment.

23 (9) "Municipal mobile food establishment permit" means a permit issued by a city or
24 town to a mobile food establishment operator that possesses a current state mobile food
25 establishment registration.

26 (10) "Registrant" means the holder of a "state mobile food establishment registration."

27 (11) "RIDOH" means the Rhode Island department of health.

28 (12) "State mobile food establishment registration" or "registration" means a registration
29 issued by the department which authorizes a mobile food establishment to operate in the state.

30 (13) "Temporary mass gathering":

31 (i) Means an actual or reasonably anticipated assembly of five hundred (500) or more
32 people that continues, or reasonably can be expected to continue, for two (2) or more hours per
33 day; or an event that requires a more extensive review to protect public health and safety because
34 the event's nature or conditions have the potential of generating environmental or health risks.

1 (ii) Includes, but is not limited to, "special events" as defined in the food code regulations
2 promulgated by RIDOH, and festivals and concerts.

3 (iii) Shall not include an assembly of people at a location with permanent facilities
4 designed for that specific assembly.

5 **5-11.1-4. Practices for which registration is required.**

6 Beginning on July 1, 2019, it shall be unlawful for any person or entity to operate a
7 mobile food establishment, in this state without first receiving a registration from the department
8 and any applicable municipal permit(s) in accordance with this chapter.

9 **5-11.1-5. Registration applications and requirements.**

10 (a) An application for a state mobile food establishment registration shall be made to the
11 department on forms adopted by the department and accompanied by the required fee, which will
12 be set by the department in regulations.

13 (b) The application shall, at a minimum, include the following information:

14 (1) The name and address of the applicant and, if the applicant is an entity, the name and
15 address of at least one natural person who is in responsible charge of the operations on behalf of
16 the applicant;

17 (2) Evidence of a current:

18 (i) Mobile food service license from RIDOH;

19 (ii) Fire safety permit, if applicable;

20 (iii) Motor vehicle registration, if applicable;

21 (iv) Motor vehicle insurance, if applicable;

22 (v) Evidence of financial responsibility that is acceptable to the department; and

23 (vi) Permit to make sales at retail from the Rhode Island division of taxation.

24 (3) Any other such information as the department shall require.

25 (c) If an applicant or registrant operates more than one mobile food establishment, the
26 applicant or registrant shall submit a separate application for each mobile food establishment and
27 pay a separate application fee per year for each mobile food establishment registered by the
28 department.

29 (d) The fees for initial registration, renewal and late renewals shall be determined by the
30 department and established by regulation.

31 (e) The department shall receive applications for initial registration and renewal and
32 establish administrative procedures for processing applications and issuing and renewing
33 registrations.

34 (f) All application requirements must be maintained and kept current for the duration of

1 the Registration.

2 (g) The department may work with the state fire marshal to establish fees for fire safety
3 permit inspections by regulation.

4 **5-11.1-6. Issuance and renewal of registration.**

5 (a) A registration issued by the department pursuant to this chapter shall be valid for one
6 year from the date on which it was issued or for another period of time as determined by the
7 department.

8 (b) Every mobile food establishment operator that desires to renew a registration for the
9 next year shall apply for renewal upon a form furnished by the department, accompanied by a fee
10 to be set by the department in regulations, and containing information that is required by the
11 department.

12 (c) Renewal of a registration may be subject to the same provisions as the initial
13 application.

14 **5-11.1-7. Authority to operate a mobile food establishment in any city or town.**

15 (a) To operate in any city or town, a mobile food establishment operator shall provide
16 proof of having a state mobile food establishment registration to the city or town that the mobile
17 food establishment wishes to operate in.

18 (b) If a mobile food establishment presents this registration, then a city or town shall not:

19 (1) Impose additional qualification requirements on the mobile food establishment
20 operator before issuing a municipal mobile food establishment permit to operate within the city or
21 town;

22 (2) Charge a fee for a municipal mobile food establishment permit, event permit or
23 temporary mass gathering permit greater than the maximum fee set by the department and
24 established by regulations;

25 (3) Issue a permit that expires on a date earlier or later than the day on which the state
26 mobile food establishment registration expires; or

27 (4) Require additional municipal mobile food establishment permits or charge additional
28 fees beyond the initial municipal mobile food establishment permit and fee for the operation of
29 that same mobile food establishment in more than one location or on more than one day within
30 the same city and town in the same calendar year.

31 (c) Nothing in this section prevents a city or town from:

32 (1) Requiring a mobile food establishment operator or event organizer to obtain an event
33 permit, provided that the fee is not greater than the maximum set by the department in
34 regulations;

1 (2) Denying, suspending or revoking a permit that the city or town has issued if the
2 operation of the registrant within the city or town violates the city's or town's land use regulations,
3 zoning, or other ordinances in relation to the operation of a mobile food establishment; or

4 (3) Requiring a separate temporary mass gathering permit, provided that the fee is not
5 greater than the maximum set by the department in regulations.

6 (d) Cities and towns will retain the authority to restrict the operation of mobile food
7 establishments in their city or town by ordinance with respect to:

8 (1) Number of permits granted;

9 (2) Location of operation;

10 (3) Hours of operation; and

11 (4) Noise.

12 **5-11.1-8. Municipal compliance.**

13 All cities and towns shall comply with the provisions of this chapter by July 1, 2019.

14 **5-11.1-9. Display of registration and municipal permits.**

15 (a) State mobile food establishment registrations must be affixed to the mobile food
16 establishment in a conspicuous place.

17 (b) When the mobile food establishment is doing business in a city or town that issues
18 permits, the permit must also be affixed to the mobile food establishment in a conspicuous place.

19 **5-11.1-10. Mobile food establishment safety standards.**

20 (a) Mobile food establishments shall comply with RIDOH's statutes, rules, regulations
21 and policies relating to food safety.

22 (b) Mobile food establishments shall comply with the fire safety code, if applicable.

23 **5-11.1-11. Grounds for denial, suspension or revocation of a state mobile food**
24 **establishment registration.**

25 (a) Upon receipt of a written complaint, the request of RIDOH or the state fire marshal,
26 or upon its own initiative, the department may place on probation, suspend, revoke or refuse to
27 issue or renew a state mobile food establishment registration or may levy an administrative
28 penalty or any combination of actions, for any one or more of the following causes:

29 (1) Providing incorrect, misleading, incomplete or materially untrue information in the
30 registration application;

31 (2) Violating any statutes, rules, regulations, ordinances or policies applicable to the safe
32 operation of a mobile food establishment, specifically including the fire safety code and those set
33 forth by the department, RIDOH, and the state fire marshal;

34 (3) Obtaining or attempting to obtain a registration through misrepresentation or fraud;

1 (4) Having admitted to or been found to have committed any food safety or fire safety
2 violation;

3 (5) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence,
4 untrustworthiness or financial irresponsibility in this state or in another place;

5 (6) Having a registration, or its equivalent, denied, suspended or revoked in any other
6 state, province, district or territory or administrative action under this section;

7 (7) Operating a mobile food establishment without a current and valid registration;

8 (8) Having its mobile food service license or fire safety permit denied, suspended or
9 revoked;

10 (9) Having a substantive complaint of foodborne illness or food related illness; or

11 (10) A mobile food establishment operator, vendor or principal thereof having been
12 convicted of or plead nolo contendere to a felony that is relevant to that person's suitability for a
13 mobile food establishment registration.

14 (b) In the event that the action by the department is to non-renew or to deny an
15 application for a registration, the department shall notify the applicant or registrant and advise, in
16 writing, the reason for the denial or non-renewal of the registration. The applicant or registrant
17 may make written demand upon the department within thirty (30) days for a hearing. The hearing
18 shall be conducted pursuant to the administrative procedures act, chapter 35 of title 42.

19 (c) In addition to or in lieu of any applicable denial, suspension or revocation of a
20 registration, a person may, after hearing, be subject to an administrative penalty not to exceed the
21 maximum set forth by regulation.

22 (d) The department shall retain the authority to enforce the provisions of and impose any
23 penalty or remedy authorized by this chapter and this title against any person or entity who is in
24 violation of this chapter or this title even if the person or entity's registration has been surrendered
25 or has lapsed by operation of the law.

26 **5-11.1-12. Order to cease and desist.**

27 (a) If the department has reason to believe that any person, firm, corporation or
28 association is conducting any activities requiring registration in this chapter without obtaining a
29 registration, or who after the denial, suspension or revocation of a registration conducts any
30 activities requiring registration under this chapter, the department may issue its order to that
31 person, firm, corporation or association commanding them to appear before the department at a
32 hearing to be held no sooner than ten (10) days nor later than twenty (20) days after issuance of
33 that order to show cause why the department should not issue an order to that person or entity to
34 cease and desist from the violation of the provisions of this chapter.

1 (b) All hearings shall be governed by the administrative procedures act, chapter 35 of title
2 42 and by the department's rules of procedure for administrative hearings.

3 **5-11.1-13. Responsibility of registrant for acts of agents/employees.**

4 If a registrant is a firm or corporation, it is sufficient cause for the suspension or
5 revocation of a registration that any officer, director, manager or trustee of the firm or entity or
6 any member or partner, in the case of a partnership, has been found by the department to have
7 engaged in any act or omission that would be cause for denying, suspending, or revoking a
8 registration to that party as an individual. Each registrant shall be responsible for the acts of any
9 person working on their mobile food establishment or any person acting as the agent for that
10 registrant, and for the acts of any chef or other employee acting as the agent for that registrant.

11 **5-11.1-14. Rulemaking authority.**

12 The department is authorized to promulgate rules and regulations for the implementation
13 of this chapter and the registration of mobile food establishments in the state.

14 **5-11.1-15. Revenue.**

15 All fees collected by the department of business regulation from applicants for state
16 mobile food establishment registrations shall be placed in restricted-receipt accounts to support
17 the state's mobile food establishment registration program, including, but not limited to, payment
18 of expenses incurred by the department of business regulation for the administration of the
19 program.

20 SECTION 3. This act shall take effect on January 1, 2019.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESSES AND PROFESSIONS -- HAWKERS AND PEDDLERS

1 This act would provide for the standardization of mobile food establishment registrations
2 by the department of business regulation to streamline the registration process.

3 This act would take effect on January 1, 2019.

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