

HOUSE No. 4941

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act relative to flea market vendors.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 By striking out all after the enacting clause and inserting in place thereof the following:

2 “SECTION 1. Section 1 of chapter 62C of the General Laws, as appearing in the 2008
3 Official Edition, is hereby amended by striking out the definition of ‘Promoter’ and inserting in
4 place thereof the following definition:-

5 ‘Promoter’, a person who, either directly or indirectly, rents, leases or grants a license to
6 use space to a person for the display for sale or for the sale of tangible personal property subject
7 to tax under chapter 64H.

8 SECTION 2. The definition of ‘Show’ in said section 1 of said chapter 62C, as so
9 appearing, is hereby amended by inserting after the word ‘market’, in line 24, the following
10 words:- , either indoor or outdoor.

11 SECTION 3. Section 1 of chapter 101 of the General Laws, as so appearing, is hereby
12 amended by striking out the definitions of ‘Transient vendor’ and ‘Temporary or transient
13 business’ and inserting in place thereof the following 6 definitions:-

14 'Promoter', a business or person who operates for the purpose of either directly or
15 indirectly, renting, leasing or granting a license to use space to any vendor for the display for sale
16 or for the sale of tangible personal property or services subject to tax under chapter 64H;
17 provided, however, that this shall not include a state or county fair as defined in section 1 of
18 chapter 128A; and provided further, that a promoter licensed under this chapter shall comply
19 with sections 8A and 67A of chapter 62C or any regulations pursuant thereto as required by the
20 commissioner of revenue.

21 'Tangible personal property', personal property of any nature consisting of any produce,
22 goods, wares, merchandise and commodities whatsoever, brought into, produced, manufactured
23 or being within the commonwealth.

24 'Temporary or transient business', an exhibition and sale of goods, wares or merchandise
25 which is carried on in a tent, booth, building or other structure unless such place is open for
26 business during usual business hours for a period of at least 12 consecutive months; provided,
27 however, this shall not include a business operating under a written agreement with a licensed
28 promoter.

29 'Transient vendor', a person, either principal or agent, who engages in a temporary or
30 transient business in the commonwealth selling goods, wares or merchandise, either in 1 locality
31 or in traveling from place to place; provided, however, this does not include a person operating
32 under a written agreement with a licensed promoter.

33 'Usual business hours', the time period during which similar businesses in the
34 community conduct business.

35 'Written operating agreement', a written agreement between a promoter, licensed under
36 section 3A and a vendor to conduct business at any location.

37 SECTION 4. Said chapter 101, is hereby amended by inserting after section 3 the
38 following section:-

39 Section 3A. (a) Each business or person, before commencing business as a promoter,
40 shall make a written application, under oath, for a license to the deputy director stating the names
41 and residences of the owners or parties in whose interest the business is to be conducted. Upon
42 the payment of the fee under the fee schedule in subsection (b) the deputy director shall issue a
43 license granting the authority to do business as a promoter. A license shall expire 1 year from
44 the date thereof or on the day of its surrender or of the filing of an affidavit of its loss, if it is
45 earlier surrendered or if such affidavit is earlier filed. The license shall contain a copy of the
46 application therefore and shall not be transferable.

47 (b) For the purpose of determining a single show for this chapter the conduct of an
48 activity or event described in the definition of 'show' in section 1 of chapter 62C held on a single
49 day in the commonwealth shall constitute a single show. The fee schedule for a license as a
50 promoter shall be as follows: \$200 for 1 to 9 single shows to be held per year; \$300 for 10 to 19
51 single shows to be held per year; \$400 for 20 to 29 single shows to be held per year; \$500 for 30
52 to 39 single shows to be held per year; \$600 per show for 40 to 49 single shows to be held per
53 year; and \$1,000 for over 50 single shows to be held per year.

54 (c) Each promoter licensed to conduct business shall maintain a copy of the written
55 operating agreement with each vendor which shall include documentation regarding the identity
56 and location of each vendor, including social security number or tax identification number and a

57 general description of merchandise sold by each vendor. The promoter shall maintain such
58 records for a period of not less than 12 months. The deputy director or law enforcement
59 authorities may request a promoter to provide the records. A promoter licensed under this section
60 shall comply with sections 8A and 67A of chapter 62C or any regulations pursuant thereto as
61 required by the commissioner of revenue.

62 SECTION 5. A vendor operating under an agreement with a licensed promoter, as
63 defined in section 1 of chapter 101 of the General Laws, inserted by section 3, shall not be
64 required to apply and pay a fee for a license authorizing the sale of goods, wares and
65 merchandise within a municipality as required by section 5 of said chapter 101 unless, on the
66 effective date of this act, the municipality requires a transient vendor to apply and pay a fee for
67 such a license. For the purposes of this section, ‘transient vendor’ shall mean a person, either
68 principal or agent, who engages in a temporary or transient business in the commonwealth
69 selling goods, wares or merchandise, either in 1 locality or in traveling from place to place.”.