CHAPTER 41

Peddlers and Hawkers, Horse Traders, and Fortunetellers

ARTICLE 1

Peddlers and Hawkers

**SECTION 40‑41‑10.** License required of peddlers and hawkers.

 No person shall as a hawker or peddler expose for sale or sell any goods, wares and merchandise in any county in this State unless he has received and is ready to produce and exhibit a license from the clerk of the court of common pleas of such county so to sell or expose for sale goods, wares and merchandise in such county.

HISTORY: 1962 Code Section 56‑1201; 1952 Code Section 56‑1201; 1942 Code Section 7120; 1932 Code Section 7120; Civ. C. ‘22 Section 3927; Civ. C. ‘12 Section 2618; Civ. C. ‘02 Section 1742; G. S. 1338; R. S. 1451; 1876 (16) 64; 1893 (21) 407.

CROSS REFERENCES

Licensing of pawnbrokers, see Section 40‑39‑10 et seq.

Library References

Hawkers and Peddlers 4.

Licenses 15(2).

Westlaw Topic Nos. 198, 238.

C.J.S. Hawkers and Peddlers Sections 19 to 24.

C.J.S. Licenses Section 55.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Peddlers, Solicitors, and Transient Dealers Section 1 , Introductory Comments.

NOTES OF DECISIONS

In general 1

1. In general

The statute declaring that no person shall, as hawker or peddler, expose for sale or sell any goods, wares and merchandise without having first obtained a license is not intended to give any new definition of the words “hawkers” and “peddlers” but sole purpose is to regulate granting of licenses to persons falling within well recognized definition of those words, and hence in order to render one amenable to penal provisions of the statute, it must be shown not only that he has sold prohibited articles, but also that such sale was made by him as a hawker or peddler. Code 1942, Section 7120. State v. Meredith (S.C. 1941) 197 S.C. 351, 15 S.E.2d 678.

Books are within statute declaring that no person shall as hawker or peddler, expose for sale or sell any “goods, wares and merchandise” in any county without having first obtained a license. Code 1942, Section 7120. State v. Meredith (S.C. 1941) 197 S.C. 351, 15 S.E.2d 678.

A minister who, as a member of the religious society called Jehovah’s Witnesses, was engaged in going from house to house through the rural districts in order to preach and teach principles drawn from the bible, in accordance with his faith, and who as incidental to his work of evangelism, sold religious books and pamphlets for a consideration which was devoted to publication of other religious literature was not guilty of violating the statute declaring that no person shall as “hawker” or “peddler” expose for sale or sell any goods, wares and merchandise without having first obtained a license. Code 1942, Section 7120. State v. Meredith (S.C. 1941) 197 S.C. 351, 15 S.E.2d 678.

A hawker and pedlar is one who travels from town to town, or from plantation to plantation, carrying to sell, or exposing to sale, goods, wares, and merchandize; but a single shipment of goods, regularly consigned to Polock, Solomon & Co., by the defendant, and sold by himself or them, for his use and benefit, is not hawking and pedling within the meaning of the Act. State v. Belcher (S.C.App.Law 1840) 1 McMul. 40, 26 S.C.L. 40, 1840 WL 2062.

The defendant a non‑resident of this State, did sell goods, wares, and merchandize in a house in the town of Columbia, and is therefore, when properly indicted and convicted, liable to the penalties of the Act of Assembly of 1835‑page 6. Per O’Neall, J. State v. Belcher (S.C.App.Law 1840) 1 McMul. 40, 26 S.C.L. 40, 1840 WL 2062.

Books were sent up from Charleston to Columbia, and consigned to Polock, Solomon & Co., merchants and auctioneers in Columbia, by whom the freight from Charleston was paid, and sold by them, and the defendant, at auction and at private sale, for the use and benefit of the defendant: Held, not to come within the purview of the Act of Assembly for hawking and peddling. State v. Belcher (S.C.App.Law 1840) 1 McMul. 40, 26 S.C.L. 40, 1840 WL 2062.

**SECTION 40‑41‑20.** Issuance and term of license.

 Such clerk shall issue licenses to hawkers and peddlers, to be good in his county until the last day of December next after the date of their issue, upon receiving from the applicant such fee therefor as the governing body of the county shall establish as the license fee for hawkers and peddlers in such county. Each license shall specify the sum paid therefor and the privileges granted thereby.

HISTORY: 1962 Code Section 56‑1202; 1952 Code Section 56‑1202; 1942 Code Section 7121; 1932 Code Section 7121; Civ. C. ‘22 Section 3938; Civ. C. ‘12 Section 2619; Civ. C. ‘02 Section 1743; R. S. 1452; 1893 (21) 408; 1935 (39) 472; 1938 (40) 1655; 1939 (41) 10, 212, 444; 1940 (41) 1704.

Library References

Hawkers and Peddlers 4.

Licenses 23, 36.

Westlaw Topic Nos. 198, 238.

C.J.S. Hawkers and Peddlers Sections 19 to 24.

C.J.S. Licenses Sections 61, 73 to 80.

**SECTION 40‑41‑30.** Amount of fee fixed by governing body of county.

 The governing body of each county shall fix and establish such license fees in its county at their first meeting in January of every year except as otherwise provided herein. Should the governing body of any county fail to fix such license fee at the designated meeting herein provided for, such fee may be fixed at any subsequent, regular or specifically called meeting of such governing body.

HISTORY: 1962 Code Section 56‑1203; 1952 Code Section 56‑1203; 1942 Code Section 7121; 1932 Code Section 7121; Civ. C. ‘22 Section 3938; Civ. C. ‘12 Section 2619; Civ. C. ‘02 Section 1743; R. S. 1452; 1893 (21) 408; 1935 (39) 472; 1938 (40) 1655; 1939 (41) 10, 212, 444; 1940 (41) 1704.

Library References

Hawkers and Peddlers 4.

Licenses 29.

Westlaw Topic Nos. 198, 238.

C.J.S. Hawkers and Peddlers Sections 19 to 24.

C.J.S. Licenses Section 103.

**SECTION 40‑41‑40.** Sale of medicines and the like from place to place without license unlawful.

 It shall be unlawful for any person to travel as a hawker or peddler from place to place in this State and to sell or offer for sale any medicine, drug or compound to be used as a curative without first paying to the clerk of court in each county in which such person seeks to sell such medicine, drug or compound a fee of one hundred dollars for the use of such county and procuring from him a license permitting such person to sell such medicine, drug or compound within such county. Such license shall be good for twelve months from the date thereof. The license fee herein provided for shall be payable fifty dollars at the time of issuance of such license and fifty dollars six months from the date of such license. Upon the payment of the initial fifty dollars such licensee shall be permitted to sell the articles mentioned for a period of six months.

HISTORY: 1962 Code Section 56‑1207; 1952 Code Section 56‑1207; 1942 Code Section 7125; 1932 Code Section 7125; Civ. C. ‘22 Section 3942; Civ. C. ‘12 Section 2623; Civ. C. ‘02 Section 1747; 1897 (22) 532; 1902 (23) 1101; 1929 (36) 134; 1930 (36) 1206; 1934 (38) 1272.

Library References

Hawkers and Peddlers 4.

Licenses 15(2), 16(0.1).

Westlaw Topic Nos. 198, 238.

C.J.S. Hawkers and Peddlers Sections 19 to 24.

C.J.S. Licenses Section 55.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

A person is not a hawker and peddler of medicines within Act Feb. 26, 1902, Laws 1902, pp. 1101, 1102, forbidding traveling vendors from peddling and hawking medicines, who solicits orders for medicines, taking notes for the price, the medicines to be shipped from another state and delivered by one other than the person soliciting the order. State v. Ivey (S.C. 1906) 73 S.C. 282, 53 S.E. 428.

2. Review

Where defendant convicted of hawking and peddling appeals from the magistrate to the circuit court, a finding in such court that he is not guilty is an acquittal from which the state cannot appeal. State v. Ivey (S.C. 1906) 73 S.C. 282, 53 S.E. 428.

**SECTION 40‑41‑50.** Formulas of medicines and the like to be placed on packages or bottles.

 Every package or bottle of any such medicine, drug or compound shall have plainly written or printed on it, in the English language, the formula of the contents thereof. Such formula shall be approved in writing by a regularly licensed practicing physician of this State and a copy of such approval shall be lithographed or printed on each package or bottle of such medicine, drug or compound.

HISTORY: 1962 Code Section 56‑1210; 1952 Code Section 56‑1210; 1942 Code Section 7125; 1932 Code Section 7125; Civ. C. ‘22 Section 3942; Civ. C. ‘12 Section 2623; Civ. C. ‘02 Section 1747; 1897 (22) 532; 1902 (23) 1101; 1929 (36) 134; 1930 (36) 1206; 1934 (38) 1272.

Library References

Hawkers and Peddlers 4.

Licenses 15(2), 16(0.1).

Westlaw Topic Nos. 198, 238.

C.J.S. Hawkers and Peddlers Sections 19 to 24.

C.J.S. Licenses Section 55.

**SECTION 40‑41‑60.** License required for erection of lightning rods.

 It shall be unlawful for any person to erect or place upon any building within the State any lightning rod without first procuring from the clerk of the court of each county wherein business is proposed to be done a license so to do, for which shall be paid the sum of fifty dollars per annum for each such county. But in cities and towns collecting licenses for this class of work, persons who are residents of such cities or towns and pay such city or town license shall be exempt from payment of such county license when such work is done in the city or town in which such person resides. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars or imprisonment for not more than one year, in the discretion of the presiding judge.

HISTORY: 1962 Code Section 56‑1211; 1952 Code Section 56‑1211; 1942 Code Sections 7126, 7127; 1932 Code Sections 7126, 7127; Civ. C. ‘22 Sections 3943, 3944; Cr. C. ‘22 Section 294; 1920 (31) 1022; 1921 (32) 154.

Library References

Hawkers and Peddlers 4.

Licenses 11(1).

Westlaw Topic Nos. 198, 238.

C.J.S. Hawkers and Peddlers Sections 19 to 24.

C.J.S. Licenses Sections 51, 53, 55.

**SECTION 40‑41‑70.** Sales prohibited within one‑half mile of religious meeting.

 It shall be unlawful for any itinerant trader or tradesman, other than an established dealer of the community, to offer for sale any goods, wares or merchandise within one half of a mile of any camp ground or other place of religious meeting, while meetings are in progress, outside any incorporated town or city, except with the permission of the trustees or other board of management of such meeting. But this section shall not apply to vendors of fresh fruit or vegetables or any farm product. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined in a sum not exceeding fifty dollars or be imprisoned not exceeding twenty days.

HISTORY: 1962 Code Section 56‑1213; 1952 Code Section 56‑1213; 1942 Code Section 1342; 1932 Code Section 1342; Cr. C. ‘22 Section 231; Cr. C. ‘12 Section 525; Cr. C. ‘02 Section 372; 1901 (23) 750.

Library References

Hawkers and Peddlers 4, 7.

Licenses 25.

Westlaw Topic Nos. 198, 238.

C.J.S. Hawkers and Peddlers Sections 19 to 24, 27 to 30.

C.J.S. Licenses Sections 64, 77.

**SECTION 40‑41‑80.** Inspection of licenses; arrest and trial.

 Every magistrate and constable and the sheriff and all of his regular deputies shall, and every citizen may, demand and inspect the license of any hawker or peddler in his county who shall come under the notice of any of such persons, and any such officer shall, or such citizen may, arrest or cause to be arrested any hawker or peddler found without a good and valid license and bring such hawker or peddler before the nearest magistrate to be dealt with according to law.

HISTORY: 1962 Code Section 56‑1216; 1952 Code Section 56‑1216; 1942 Code Section 7122; 1932 Code Section 7122; Civ. C. ‘22 Section 3939; Civ. C. ‘12 Section 2620; Civ. C. ‘02 Section 1744; R. S. 1453.

Library References

Hawkers and Peddlers 4, 7.

Licenses 40 to 42.

Westlaw Topic Nos. 198, 238.

C.J.S. Hawkers and Peddlers Sections 19 to 24, 27 to 30.

C.J.S. Licenses Sections 121 to 132.

**SECTION 40‑41‑90.** Exempt vendors and sales.

 The provisions of this article, other than Sections 40‑41‑70 and 40‑41‑100 thereof, shall not extend to vendors of newspapers, magazines, vegetables, tobacco, provisions of any kind or agricultural products or to sales by sample by persons traveling for established commercial houses, but shall extend and apply to vendors of every other class and kind of goods, wares and merchandise and to sales by sample or otherwise by such hawkers and peddlers of stoves, ranges, clocks, lightning rods, sewing machines, pianos or organs.

HISTORY: 1962 Code Section 56‑1217; 1952 Code Section 56‑1217; 1942 Code Section 7123; 1932 Code Section 7123; Civ. C. ‘22 Section 3940; Civ. C. ‘12 Section 2621; Civ. C. ‘02 Section 1745; R. S. 1454; 1935 (39) 392.

Library References

Hawkers and Peddlers 4.

Licenses 15(2), 19(3).

Westlaw Topic Nos. 198, 238.

C.J.S. Hawkers and Peddlers Sections 19 to 24.

C.J.S. Licenses Section 55.

NOTES OF DECISIONS

In general 1

1. In general

An agent, in delivering portraits which his principal manufactured under contracts requiring their delivery in frames, sold the frames to the portrait buyers, the option to purchase being given them by the contracts. He did not sell them to others than portrait buyers, or go anywhere to sell them except where he had to delivery portraits. Held, that he was not within Act 1893, 21 St. at Large, p. 407, requiring hawkers and peddlers of goods to pay a license fee. State v. Coop (S.C. 1898) 52 S.C. 508, 30 S.E. 609.

Act 1893, 21 St. at Large, p. 407, requiring hawkers and peddlers of goods to pay a license fee, does not apply to local merchants who carry a stock, and at their store take orders for sewing machines, and deliver them in the country, though their agent, while in the country filling orders, occasionally sells from the delivery wagon a new machine or an old one taken in trade. Alexander v. Greenville Co. (S.C. 1897) 49 S.C. 527, 27 S.E. 469.

A person who solicits orders, by sample, for sewing machines and their parts and attachments, for a foreign sewing‑machine company which has a store and stock of goods in the state, from which such orders are filled, is not a hawker or peddler, though he occasionally sells a sample machine out of his wagon. State v. Morehead (S.C. 1894) 1 McMul. 26 L.R.A. 585, 42 S.C. 211, 20 S.E. 544, 46 Am.St.Rep. 719.

Act 1893, 21 St. at Large, p. 407, provides that no person, “as hawker or peddler,” shall sell any goods without a license; that the act shall not apply to vendors of newspapers, vegetables, etc., or to sales by sample by persons traveling for commercial houses, but shall apply to vendors of every other class of goods, “and to sales, by samples or otherwise, by such hawkers and peddlers of \* \* \* sewing machines, pianos, or organs.” Held that, in order to make the sale of any of the prohibited articles without a license a violation of the statute, the seller must be a hawker or peddler. State v. Morehead (S.C. 1894) 1 McMul. 26 L.R.A. 585, 42 S.C. 211, 20 S.E. 544, 46 Am.St.Rep. 719.

**SECTION 40‑41‑100.** Penalties.

 If any hawker or peddler sell or expose for sale any goods, wares or merchandise in any county in this State without having obtained a license for that purpose from the clerk of the court of common pleas of the county within which he is exposing for sale or selling such goods, wares and merchandise, as required by law, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than fifty dollars or imprisoned in the county jail not more than thirty days.

HISTORY: 1962 Code Section 56‑1219; 1952 Code Section 56‑1219; 1942 Code Section 1325; 1932 Code Section 1325; Cr. C. ‘22 Section 215; Cr. C. ‘12 Section 511; Cr. C. ‘02 Section 364; G. S. 1341; R. S. 294; 1876 (16) 64; 1893 (21) 408.

Library References

Hawkers and Peddlers 6, 7.

Licenses 40 to 42.

Westlaw Topic Nos. 198, 238.

C.J.S. Hawkers and Peddlers Sections 26 to 30.

C.J.S. Licenses Sections 121 to 132.

ARTICLE 3

Horse Trading

**SECTION 40‑41‑210.** Itinerant horse trading without license unlawful.

 It shall be unlawful for any person to follow the business of horse trading in any of the counties of this State by traveling from place to place without first obtaining from the clerk of the court of the county in which they wish to follow their trade a license permitting them to do so. Such a license shall be issued by the clerks of the court of the counties of this State to any person applying for one upon payment by the applicant of the sum of one hundred dollars. The license shall specify the name of the applicant, his former residence and shall be for a period of one year from the issuance thereof. But this section shall not be effective in any county until the governing body of such county authorize, by resolution, the collection of such tax, nor shall it apply to livery or sales stable owners who have a permanent residence within the State.

 Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one hundred dollars or imprisonment for not more than thirty days for each and every offense.

HISTORY: 1962 Code Section 56‑1271; 1952 Code Section 56‑1271; 1942 Code Section 1327; 1932 Code Section 1327; Cr. C. ‘22 Section 217; 1916 (29) 703; 1952 (47) 2162.

Library References

Licenses 15(2), 16(0.1).

Westlaw Topic No. 238.

C.J.S. Licenses Section 55.

**SECTION 40‑41‑220.** Encamping and trading in animals or commodities by nomadic individuals without license unlawful.

 It is unlawful for any nomadic individual, or bands of nomads, to encamp or to trade horses, mules, or other animals or commodities within any county of this State, without first obtaining a license from the clerk of the court. The license fee is three hundred dollars.

 A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than one year, or both.

HISTORY: 1962 Code Section 56‑1272; 1952 Code Section 56‑1272; 1942 Code Section 1328; 1932 Code Section 1328; Cr. C. ‘22 Section 218; 1918 (30) 801; 1993 Act No. 184 Section 229.

Library References

Licenses 15(2), 16(0.1).

Westlaw Topic No. 238.

C.J.S. Licenses Section 55.

ARTICLE 5

Fortunetellers

**SECTION 40‑41‑310.** Licenses required for itinerant fortunetellers.

 It shall be unlawful for any person to follow the business of fortunetelling in any of the counties of this State, by traveling from place to place, without first obtaining from the clerk of the court of the county in which he wishes to follow his trade, a license permitting him to so do. Such license shall be issued by the clerks of court of the counties of this State to any person applying for it upon payment by the applicant of the sum of one hundred dollars. The license shall specify the name of the applicant and his former residence and shall be for a period of one year from the issuance thereof. But this section shall not be effective in any county until the county board of commissioners of such county authorize, by resolution, the collection of such tax. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one hundred dollars or imprisonment for not more than thirty days for each and every offense.

HISTORY: 1962 Code Section 56‑1281; 1952 Code Section 56‑1271; 1942 Code Section 1327; 1932 Code Section 1327; Cr. C. ‘22 Section 217; 1916 (29) 703; 1952 (47) 2162.

CROSS REFERENCES

Fortunetelling to promote another business being unlawful, see Section 16‑17‑690.

Library References

Licenses 11(1).

Westlaw Topic No. 238.

C.J.S. Licenses Sections 51, 53, 55.

ARTICLE 9

Records of Retailers

**SECTION 40‑41‑710.** Definitions; content of records; use of records to ascertain source of suspected stolen property.

 (A) For purposes of this section, “retailer” means a retailer of a “transient business” or a “temporary business” as defined in Section 12‑36‑510.

 (B) A retailer shall keep a record of the source of new merchandise the retailer offers for sale. The record may be a receipt or an invoice from the person who sold the merchandise to the retailer or any other documentation that establishes the source of the merchandise.

 (1) The record or documentation must include:

 (a) the physical address of the source;

 (b) the date the merchandise was purchased by the retailer;

 (c) the price paid for the merchandise;

 (d) the quantity; and

 (e) the name of source.

 (2) The retailer shall keep the record at the same location as the new merchandise being offered for sale and shall maintain the record for one year after the merchandise is sold.

 (C) Upon the request of a law enforcement officer, after forming a reasonable suspicion that the merchandise possessed by the retailer may have been stolen, the retailer shall produce the record of the source of new merchandise the retailer offers for sale.

 (D) If the retailer fails to produce the requested record the officer may seize the merchandise and hold it in custody as evidence and the retailer may be punished as follows:

 (1) Upon conviction for a first offense, the retailer is guilty of a misdemeanor and must be fined not more than five hundred dollars or imprisoned for not more than thirty days, or both.

 (2) Upon conviction of a second offense, the retailer must be fined not less than one thousand nor more than five thousand dollars or imprisoned for not less than thirty days nor more than sixty days, or both.

 (3) Upon conviction of a third offense, the retailer’s Sales and Use Tax License must be revoked, and the retailer must be fined not less than one thousand nor more than five thousand dollars or imprisoned for not less than thirty days nor more than sixty days, or both.

 (E) Merchandise confiscated pursuant to the provisions of this section may be disposed of in accordance with the provisions of Chapter 21, Title 27.

 (F) The provisions of this section do not apply to a charitable organization offering merchandise for sale.

HISTORY: 1996 Act No. 264, Section 1.

Library References

Hawkers and Peddlers 4.

Licenses 25.

Records 2.

Westlaw Topic Nos. 198, 238, 326.

C.J.S. Hawkers and Peddlers Sections 19 to 24.

C.J.S. Licenses Sections 64, 77.

C.J.S. Records Sections 9 to 10.

NOTES OF DECISIONS

New merchandise 1

1. New merchandise

Transient retailer selling items he had retrieved from grocery store dumpsters, which police officers reasonably suspected were stolen, was required to produce receipts or other documentation of source of items, since items had not previously sold at retail and therefore were “new merchandise” under statute. City of Easley v. Deane (S.C.App. 1998) 333 S.C. 229, 508 S.E.2d 594. Hawkers And Peddlers 2

“New merchandise,” under statute requiring transient retailers to keep records of source of new merchandise, refers to merchandise offered for sale by the merchant and not previously sold at retail, regardless of its physical age. City of Easley v. Deane (S.C.App. 1998) 333 S.C. 229, 508 S.E.2d 594. Hawkers And Peddlers 2