

Bill as Introduced

HB 104 - AS INTRODUCED

2013 SESSION

13-0009

08/04

HOUSE BILL **104**

AN ACT amending certain requirements to obtain a local vendor license.

SPONSORS: Rep. Parison, Hills 25

COMMITTEE: Municipal and County Government

ANALYSIS

This bill removes the required federal criminal records check from the requirements to obtain a local vendor license.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT amending certain requirements to obtain a local vendor license.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Background Checks for Certain Vendors. Amend RSA 31:102-b, I-III to read as follows:

2 I. Any municipality may require persons who go from door to door, place to place within a
3 town, or town to town, who sell, offer to sell, or take orders for merchandise or offer to perform
4 personal services for household repairs or improvements, to submit to a ~~[state records check only, or~~
5 ~~both a federal and]~~ state records check. Municipalities that require a criminal history records check
6 shall have such person submit to the municipality a notarized criminal history records release form,
7 as provided by the division of state police, which authorizes the release of the person's criminal
8 records, if any. ~~[To obtain a federal records check, such person shall also submit to the municipality,~~
9 ~~with the release form, a complete set of fingerprints.]~~

10 II. ~~[For a state and federal criminal records check, the municipality shall request that such~~
11 ~~person submit with the release form a complete set of fingerprints taken by a qualified law~~
12 ~~enforcement agency or an authorized employee of the department of safety. The municipality shall~~
13 ~~submit the criminal history records release form and inked fingerprint card to the division of state~~
14 ~~police which shall conduct a criminal records check through its records and through the Federal~~
15 ~~Bureau of Investigation. Fingerprints taken digitally by Live Scan or similar device shall be~~
16 ~~transmitted directly to the New Hampshire division of state police. In the event that the first set of~~
17 ~~fingerprints is invalid due to insufficient pattern, the municipality may, in lieu of the criminal~~
18 ~~history records check, accept police clearances from every city, town, or county where the person has~~
19 ~~lived during the past 10 years. Upon completion of the records check, the division of state police~~
20 ~~shall release copies of the criminal history records to the local law enforcement agency of the~~
21 ~~municipality which shall maintain the confidentiality of all criminal history records information~~
22 ~~received pursuant to this section. The municipality may charge a fee to recover the costs of such~~
23 ~~investigation.~~

24 III.] To obtain a state records check ~~[only]~~, the municipality shall submit a state criminal
25 history records release form, completed by such person, to the division of state police.

26 2 Effective Date. This act shall take effect 60 days after its passage.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

PUBLIC HEARING ON 104

BILL TITLE: amending certain requirements to obtain a local vendor license.

DATE:

LOB ROOM: 301 **Time Public Hearing Called to Order:** 10:00 am

Time Adjourned: 10:40 am

(please circle if present)

Committee Members: Reps. Porter, Tatro, Hooper, Roberts, Malloy, Carson, Lavender,
Enman, S. White, Verschueren, Vail, Stroud, Shackett, Danielson, Coffey, J. Belanger,
Lockwood, Bickford, Copeland and Bishop.

Bill Sponsors: Rep. Parison, Hills 25

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

***Rep Parison**, (Hills Dist. 25) in Favor, Bill Sponsor. Feels the current law is too stringent and the penalty is too severe for the crime. Background check is treating insignificant activity (like lemonade stands, etc) equally as more serious vendor activity. Per agricultural committee reps, farmers are exempt from this but the language of the current law does not exempt them. Current law does not support free enterprise. The current lax enforcement of this law begs for a change so the statute is closer to what the actual practice is. Vendor has to pay for each background check from each town.

Rep Dan McGuire; supports the bill. What is going on here is too harsh on commerce. What may be criminal activity in one town might not be in the next; depending on enforcement. Supports both this HB 104 and HB 103 which is to be heard next. This statute treats violations as criminal law by making not following the statute a misdemeanor when that should actually be a violation.

Mr Joe O'Brien, Litchfield Police Chief, Opposes the bill. Experience from three years ago supports this bill as it catches criminals going door to door with less than honorable intentions. Local communities have the option of exempting some groups and activities. Licensing and checks are normally done within 72 hours and should not be an impediment to vendor activity. Getting record checks keeps criminals from going door to door in the town. Chief does not approve of vendor license, the selectmen do. He accepts record checks from other towns as being valid in his town. Does not consider the checks done prior to license approval a violation of privacy for the applicant. Experience has shown that, without this law, burglaries were more evident with someone at the front door while another was breaking in at the back door.

Respectfully submitted,

Rep. Jim Belanger, Clerk



HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

PUBLIC HEARING ON 104

BILL TITLE: amending certain requirements to obtain a local vendor license.

DATE:

LOB ROOM: 301 Time Public Hearing Called to Order: 10:14 AM

Time Adjourned:

(please circle if present)

Committee Members: Reps. Porter, Patro, Hooper, Roberts, Malloy, Carson, Lavender, Enman, S. White, Verschueren, Vail, Stroud, Shackett, Danielson, Coffey, J. Belanger, Lockwood, Bickford, Copeland and Bishop.

Bill Sponsors: Rep. Parison, Hills 25 ✓

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

- 10 AM REP PARISON - SPONSOR HILLS DIST 25
PENALTY TOO SEVERE FOR THE CRIME. BACKGROUND CHECK GOES OVER BOARD FOR INSIGNIFICANT ACTIVITY. QUESTIONS BY COPELAND, VERSCHUEREN, ROBERTS, COFFEY, LAVENDER, WHITE,
- 10:25 REP DAN MCGUIRE - SUPPORTS -
CURRENT LAW TOO HARSH ON COMMERCIAL. WHAT IS CRIMINAL IN 1 TOWN MAY NOT BE IN NEXT.
- 10:40 JOE O'BRIEN, LITCHFIELD POLICE CHIEF. THIS LAW PREVENTS CRIMINAL FROM GOING DOOR TO DOOR. SELECTMEN APPROVE, NOT P.D. CHIEF. ACCEPTS RECORD CHECKS FROM OTHER TOWNS.

Municipal & County Government (2013-2014)
Marjorie Porter, Chair

Date: 15 January 2013

Time Hearing Opened: 10 AM

Presiding: Rep Porter

Members Present: X (Present) L (Late arrival)

Porter, Marjorie	X	Tatro, Bruce	X	Bélanger, Jim	X
Bickford, David	X	Bishop, Franklin		Carson, Clyde	X
Coffey, James	X	Copeland, Timothy	X	Danielson, David	X
Enman, Larry		Hooper, Dorothy	X	Lavender, Tom	X
Lockwood, Priscilla	X	Malloy, Dennis	X	Roberts, Kris	X
Shackett, Jeff	X	Stroud, Kathleen	X	Vail, Suzanne	
Verschueren, James	X	White, Syndi	X		

HB 104

Amending certain requirements to obtain a local vendor license.

Speakers / Presenters:

1. 10 AM: Rep Parison, (Hills Dist. 25) in Favor, Bill Sponsor. Feels the current law is too stringent and the penalty is too severe for the crime. Background check is treating insignificant activity (like lemonade stands, etc) equally as more serious vendor activity. Per agricultural committee reps, farmers are exempt from this but the language of the current law does not exempt them. Current law does not support free enterprise.
The current lax enforcement of this law begs for a change so the statute is closer to what the actual practice is. Vendor has to pay for each background check from each town.
2. 10:25 AM: Rep Dan McGuire; supports the bill. What is going on here is too harsh on commerce. What may be criminal activity in one town might not be in the next; depending on enforcement. Supports both this HB 104 and HB 103 which is to be heard next. This statute treats violations as criminal law by making not following the statute a misdemeanor when that should actually be a violation.
3. 10:40 AM: Mr Joe O'Brien, Litchfield Police Chief, Opposes the bill.
Experience from three years ago supports this bill as it catches criminals going

door to door with less than honorable intentions. Local communities have the option of exempting some groups and activities. Licensing and checks are normally done within 72 hours and should not be an impediment to vendor activity. Getting record checks keeps criminals from going door to door in the town. Chief does not approve of vendor license, the selectmen do. He accepts record checks from other towns as being valid in his town.

Does not consider the checks done prior to license approval a violation of privacy for the applicant. Experience has shown that, without this law, burglaries were more evident with someone at the front door while another was breaking in at the back door.

Hearing adjourned 10:40 AM

Testimony

Dear Committee Members,

HB104 removes the paragraph in RSA 31:102b allowing municipalities to require fingerprinting and 10 year background checks for vendors. This law currently applies to anyone with a temporary or transient business selling or taking orders, for example: the Avon lady, girl scouts and farmers. In practice the background check is a condition of obtaining a permit as required in RSA 31:102a. As amended the law will still allow towns to do background checks, to require permits and to charge reasonable fees.

Why eliminate the fingerprinting and federal background check requirements?

1) Privacy: Prying into a person's history for the past ten years so they can sell tomatoes is an unreasonable invasion of privacy. It is not necessary to treat ordinary small business people as though they had committed a crime. For some occupations involving the public trust; sole care of children, etc. it may be prudent to have this information. Selling cookies does not rise to that level of responsibility.

2) Equal protection under the law: These requirements were added to current law recently at the behest of a police chief in Hudson, a town with a history of random and discriminatory treatment of vendors. I'll cite one example. The Big Bow-Wow hot dog stand was denied a permit for two reasons: the vendor paying a \$100 fee was not paying property tax and, the vendor would compete with local businesses. It turns out local restaurants were never consulted about this potential competitor and later told a reporter they had no problem with the Big Bow-Wow. According to testimony in 2012 at the MC&G committee the police chief explained that they do not enforce the ordinance strictly and make exceptions for local vendors and charities. That is, the ordinance is selectively enforced to keep out vendors or classes of people they don't like.

3) Free enterprise: These requirements are extremely tedious and can be prohibitively expensive because the background checks can go on for months and the cost is born by the vendor. And, every town is different. The same police chief stated with some pride that there had not been any salespeople in Hudson since they passed this law. In our land of opportunity where we once celebrated the entrepreneur this is an unfortunate outcome.

4) Criminal record: If someone mistakenly assumes they are on the chief's list of exempted special friends the penalty could be a criminal record and even probation. Anyone who fails to get this license can be guilty of a misdemeanor.

Common Misconceptions:


1) "There are exceptions in the law for girl scouts and farmers." Not so. This is a frequently cited misunderstanding of the language. There are exceptions in RSA 320, the law that requires a **state** permit. While one is specifically required to comply with both, the exceptions in the **state** license (RSA 320) do not apply to the **local** permit (RSA 31).

2) "This tough requirement for local licenses makes us safer." The sponsor of the current law cites a case where the driver of an ice cream truck in California had molested a child several years ago. Another argument made was that itinerant vendors are really casing homes so they can later rob them. By gathering fingerprints of all business people we can screen out bad actors. There has been no evidence presented that shows this law is effective in reducing home invasions or crimes against children.

In summary, because this fingerprinting and background check requirement applies to nearly everyone, is an unnecessary invasion of privacy and an unreasonable regulation of free enterprise, it must be selectively enforced. Selective enforcement is a violation of equal protection under the law. I think Thomas Jefferson would be surprised at all the things he once said. Here is another saying attributed to him, "The fastest way to get rid of a bad law is to enforce it".

We must repeal these unreasonable requirements and set a consistent standard or the problems with enforcement will continue to grow. With a law so befuddling for lawmakers, imagine the confusion this can cause for ordinary citizens who are just trying to play by the rules and make a living. I urge you to support HB104 and return NH law to something we can understand and enforce equally among all our citizens.

Respectfully Submitted,



Jim Parison – NH State Representative
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james.parison@leg.state.nh.us

Prime Sponsor : Representative Jim Parison, New Ipswich

NH House Municipal and County Government Committee

Dear Committee Members,

HB 103 would reduce the penalty for selling without a local vendor license in RSA 31:102a from a misdemeanor to a violation. Current law applies to anyone with a temporary or transient business selling or taking orders: the Avon lady, girl scouts, farmers. Only political campaigns are exempted.

These are a few reasons why this part of NH law should be fixed:

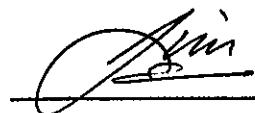
1) The current criminal penalty is unreasonably severe: We consider lapses in memory and clerical errors to be mistakes that are typically corrected by citing the offender with a violation. This is true for inspection stickers and the like. As a violation, towns may still impose a fine of up to \$1000, more appropriate for such infractions and severe enough to motivate compliance without saddling a person with a criminal record.

2) No one knows who is exempt: There is systematic confusion surrounding the vendor licensing issue and very few people agree on who is or is not exempt from this requirement. I have been told that a farmer may sell at his/her farm, but not out of the back of a pickup truck, except perhaps in the town where the farm is. So, farmers don't bother to get a local peddlers permits. The letter of the law says they can be placed on probation and earn a criminal record, simply because they followed bad advice.

3) Database dilution: The penalty was recently raised from violation to a crime ostensibly to help law enforcement identify bad actors. By creating more "criminals" out of ordinary people we only make it harder to sort out the real bad guys from those who make clerical errors or forget things. We should be screening out those who are known to have done something bad, not the legitimate business people who get the paperwork wrong. The rare events that motivated this law change were already crimes and the bad people involved have a criminal record already.

Ordinary citizens who are just trying to play by the rules and make a living should not join the criminal ranks because they ran afoul of a confusing law. I urge you to support HB103 and keep minor infractions out of the criminal code.

Respectfully Submitted,



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TITLE LXII CRIMINAL CODE

CHAPTER 625 PRELIMINARY

Section 625:9

625:9 Classification of Crimes. –

I. The provisions of this section govern the classification of every offense, whether defined within this code or by any other statute.

→ II. Every offense is either a felony, misdemeanor or violation.

→ (a) Felonies and misdemeanors are crimes.

→ (b) A violation does not constitute a crime and conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

III. A felony is murder or a crime so designated by statute within or outside this code or a crime defined by statute outside of this code where the maximum penalty provided is imprisonment in excess of one year; provided, however, that a crime defined by statute outside of this code is a felony when committed by a corporation or an unincorporated association if the maximum fine therein provided is more than \$200.

(a) Felonies other than murder are either class A felonies or class B felonies when committed by an individual. Felonies committed by a corporation or an unincorporated association are unclassified.

(1) Class A felonies are crimes so designated by statute within or outside this code and any crime defined by statute outside of this code for which the maximum penalty, exclusive of fine, is imprisonment in excess of 7 years.

(2) Class B felonies are crimes so designated by statute within or outside this code and any crime defined outside of this code for which the maximum penalty, exclusive of fine, is imprisonment in excess of one year but not in excess of 7 years.

IV. Misdemeanors are either class A misdemeanors or class B misdemeanors when committed by an individual. Misdemeanors committed by a corporation or an unincorporated association are unclassified.

(a) A class A misdemeanor is any crime so designated by statute within or outside this code and any crime defined outside of this code for which the maximum penalty, exclusive of fine, is imprisonment not in excess of one year.

(b) A class B misdemeanor is any crime so designated by statute within or outside this code and any crime defined outside of this code for which the maximum penalty does not include any term of imprisonment or any fine in excess of the maximum provided for a class B misdemeanor in RSA 651:2, IV(a).

(c) Any crime designated within or outside this code as a misdemeanor without specification of the classification shall be presumed to be a class B misdemeanor unless:

(1) An element of the offense involves an "act of violence" or "threat of violence" as defined in paragraph VII; or

(2) The state files a notice of intent to seek class A misdemeanor penalties on or before the date of arraignment. Such notice shall be on a form approved in accordance with RSA 490:26-d.

(d) Nothing in this paragraph shall prohibit the state from reducing any offense originally charged as a class A misdemeanor to a class B misdemeanor at any time with the agreement of the person charged.

→ V. A violation is an offense so designated by statute within or outside this code and, except as provided in this paragraph, any offense defined outside of this code for which there is no other penalty

provided other than a fine or fine and forfeiture or other civil penalty. In the case of a corporation or an unincorporated association, offenses defined outside of this code are violations if the amount of any such fine provided does not exceed \$50.

V-a. The violation of any requirement created by statute or by municipal regulation enacted pursuant to an enabling statute, where the statute neither specifies the penalty or offense classification, shall be deemed a violation, and the penalties to be imposed by the court shall be those provided for a violation under RSA 651:2.

VI. Prior to or at the time of arraignment, the state may, in its discretion, charge any offense designated a misdemeanor, as defined by paragraph IV, as a violation. At such time, the prosecutor shall make an affirmative statement to the court as to whether he intends to proceed under this paragraph. In such cases the penalties to be imposed by the court shall be those provided for a violation under RSA 651:2. This paragraph shall not apply to any offense for which a statute prescribes an enhanced penalty for a subsequent conviction of the same offense.

VII. The state may change any offense designated or defined as a class A misdemeanor as defined by paragraph IV to a class B misdemeanor, so long as no element of the offense involves an act of violence or threat of violence. The term "act of violence" means attempting to cause or purposely or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon; and the term "threat of violence" means placing or attempting to place another in fear of imminent bodily injury either by physical menace or by threats to commit a crime against the person of the other. The state may change an offense pursuant to this paragraph if such change is in the interest of public safety and welfare and is not inconsistent with the societal goals of deterrence and prevention of recidivism, as follows:

- (a) In its own discretion prior to or at the time of arraignment in the district court;
- (b) In its own discretion following an entry of appeal in the superior court or within 20 days thereafter;
- (c) With the agreement of the person charged at any other time; or
- (d) In its own discretion, following entry of a complaint at a regional jury trial court or within 21 days thereafter.

VIII. If a person convicted of a class A misdemeanor has been sentenced and such sentence does not include any period of actual incarceration or a suspended or deferred jail sentence or any fine in excess of the maximum provided for a class B misdemeanor in RSA 651:2, IV(a), the court shall record such conviction and sentence as a class B misdemeanor.

Source. 1971, 518:1. 1973, 370:26-28. 1983, 382:7. 1988, 225:2. 1992, 269:1, 2. 1995, 277:21. 1996, 93:1. 2001, 274:5, eff. Jan. 1, 2002. 2006, 64:3, eff. Jan. 1, 2007. 2009, 142:1, 2, eff. Oct. 1, 2009.

Section 651:2**651:2 Sentences and Limitations. –**

I. A person convicted of a felony or a Class A misdemeanor may be sentenced to imprisonment, probation, conditional or unconditional discharge, or a fine.

II. If a sentence of imprisonment is imposed, the court shall fix the maximum thereof which is not to exceed:

(a) Fifteen years for a class A felony,

(b) Seven years for a class B felony,

(c) One year for a class A misdemeanor,

(d) Life imprisonment for murder in the second degree, and, in the case of a felony only, a minimum which is not to exceed 1/2 of the maximum, or if the maximum is life imprisonment, such minimum term as the court may order.

II-a. A person convicted of murder in the first degree shall be sentenced as provided in RSA 630:1-a.

II-b. A person convicted of a second or subsequent offense for the felonious use of a firearm, as provided in RSA 650-A:1, shall, in addition to any punishment provided for the underlying felony, be given a minimum mandatory sentence of 3 years imprisonment. Neither the whole nor any part of the additional sentence of imprisonment hereby provided shall be served concurrently with any other term nor shall the whole or any part of such additional term of imprisonment be suspended. No action brought to enforce sentencing under this section shall be continued for sentencing, nor shall the provisions of RSA 651-A relative to parole apply to any sentence of imprisonment imposed.

II-c. [Repealed.]

II-d. A person convicted of manslaughter shall be sentenced as provided in RSA 630:2, II.

II-e. To the minimum sentence of every person who is sentenced to imprisonment for a maximum of more than one year shall be added a disciplinary period equal to 150 days for each year of the minimum term of the sentence, to be prorated for any part of the year. The presiding justice shall certify, at the time of sentencing, the minimum term of the sentence and the additional disciplinary period required under this paragraph. This additional disciplinary period may be reduced for good conduct as provided in RSA 651-A:22. There shall be no addition to the sentence under this section for the period of pre-trial confinement for which credit against the sentence is awarded pursuant to RSA 651-A:23.

II-f. A person convicted of violating RSA 159:3-a, I shall be sentenced as provided in RSA 159:3-a, II and III.

II-g. If a person is convicted of a felony, an element of which is the possession, use or attempted use of a deadly weapon, and the deadly weapon is a firearm, such person may be sentenced to a maximum term of 20 years' imprisonment in lieu of any other sentence prescribed for the crime.

III. A person convicted of a class B misdemeanor may be sentenced to conditional or unconditional discharge, a fine, or other sanctions, which shall not include incarceration or probation but may include monitoring by the department of corrections if deemed necessary and appropriate.

III-a. A person convicted of a violation may be sentenced to conditional or unconditional discharge, or a fine.

IV. A fine may be imposed in addition to any sentence of imprisonment, probation, or conditional discharge. The limitations on amounts of fines authorized in subparagraphs (a) and (b) shall not include the amount of any civil penalty, the imposition of which is authorized by statute or by a properly adopted local ordinance, code, or regulation. The amount of any fine imposed on:

(a) Any individual may not exceed \$4,000 for a felony, \$2,000 for a class A misdemeanor, \$1,200 for a class B misdemeanor, and \$1,000 for a violation.

(b) A corporation or unincorporated association may not exceed \$100,000 for a felony, \$20,000 for a misdemeanor and \$1,000 for a violation. A writ of execution may be issued by the court against the corporation or unincorporated association to compel payment of the fine, together with costs and interest.

(c) If a defendant has gained property through the commission of any felony, then in lieu of the

amounts authorized in paragraphs (a) and (b), the fine may be an amount not to exceed double the amount of that gain.

V. (a) A person may be placed on probation if the court finds that such person is in need of the supervision and guidance that the probation service can provide under such conditions as the court may impose. The period of probation shall be for a period to be fixed by the court not to exceed 5 years for a felony and 2 years for a class A misdemeanor. Upon petition of the probation officer or the probationer, the period may be terminated sooner by the court if the conduct of the probationer warrants it.

(b) In cases of persons convicted of felonies or class A misdemeanors, or in cases of persons found to be habitual offenders within the meaning of RSA 259:39 and convicted of an offense under RSA 262:23, the sentence may include, as a condition of probation, confinement to a person's place of residence for not more than one year in case of a class A misdemeanor or more than 5 years in case of a felony. Such home confinement may be monitored by a probation officer and may be supplemented, as determined by the department of corrections or by the county department of corrections, by electronic monitoring to verify compliance.

(c) Upon recommendation by the department of corrections or by the county department of corrections, the court may, as a condition of probation, order an incarceration-bound offender placed in an intensive supervision program as an alternative to incarceration, under requirements and restrictions established by the department of corrections or by the county department of corrections.

(d) Upon recommendation by the department of corrections or by the county department of corrections, the court may sentence an incarceration-bound offender to a special alternative incarceration program involving short term confinement followed by intensive community supervision.

(e) The department of corrections and the various county departments of corrections shall adopt rules governing eligibility for home confinement, intensive supervision and special alternative incarceration programs.

(f) Any offender placed in a home confinement, intensive supervision or special alternative incarceration program who violates the conditions or restrictions of probation shall be subject to immediate arrest by a probation officer or any authorized law enforcement officer and brought before the court for an expeditious hearing pending further disposition.

(g) The court may include, as a condition of probation, restitution to the victim as provided in RSA 651:62-67 or performance of uncompensated public service as provided in RSA 651:68-70.

[Paragraph V(h) effective until January 1, 2013; see also paragraph V(h) set out below.]

(h) In cases of a person convicted of a felony or class A misdemeanor, a court may sentence such person to 7 consecutive 24-hour periods to be served at the 7-day multiple DWI offender intervention program established under RSA 265-A:40, if the evidence demonstrates that alcohol was a contributing factor in the commission of the offense and provided that space is available in the program and such person pays the fees for the program in full prior to admission.

[Paragraph V(h) effective January 1, 2013; see also paragraph V(h) set out above.]

(h) In cases of a person convicted of a felony or class A misdemeanor, a court may require such person to be screened and/or evaluated for risk of substance use disorders at an impaired driver care management program (IDCMP) approved by the department of health and human services, and to comply with the treatment plan developed by the IDCMP as established under RSA 265-A:40, if the evidence demonstrates that substances were a contributing factor in the commission of the offense and if such person has the ability to pay the fees for the program in full.

(i) The court may include, as a condition of probation for a felony offense, a jail sentence of one to 5 days that a probation/parole officer may impose in response to a violation of a condition of probation,

in lieu of a violation of probation hearing. Such jail sanction shall be served at the county jail facility closest to or in reasonable proximity to where the probationer is under supervision.

VI. (a) A person may be sentenced to a period of conditional discharge if such person is not imprisoned and the court is of the opinion that probationary supervision is unnecessary, but that the defendant's conduct should be according to conditions determined by the court. Such conditions may include:

(1) Restrictions on the defendant's travel, association, place of abode, such as will protect the victim of the crime or insure the public peace;

(2) An order requiring the defendant to attend counselling or any other mode of treatment the court deems appropriate;

(3) Restitution to the victim; and

(4) Performance of uncompensated public service as provided in RSA 651:68-70.

(b) The period of a conditional discharge shall be 3 years for a felony and one year for a misdemeanor or violation. However, if the court has required as a condition that the defendant make restitution or reparation to the victim of the defendant's offense or that the defendant perform uncompensated public service and that condition has not been satisfied, the court may, at any time prior to the termination of the above periods, extend the period for a felony by no more than 2 years and for a misdemeanor or violation by no more than one year in order to allow the defendant to satisfy the condition. During any period of conditional discharge the court may, upon its own motion or on petition of the defendant, discharge the defendant unconditionally if the conduct of the defendant warrants it. The court is not required to revoke a conditional discharge if the defendant commits an additional offense or violates a condition.

VI-a. [Repealed.]

VI-b. A person sentenced to conditional discharge under paragraph VI may apply for annulment of the criminal record under RSA 651:5.

VII. When a probation or a conditional discharge is revoked, the defendant may be fined, as authorized by paragraph IV, if a fine was not imposed in addition to the probation or conditional discharge. Otherwise the defendant shall be sentenced to imprisonment as authorized by paragraph II.

VIII. A person may be granted an unconditional discharge if the court is of the opinion that no proper purpose would be served by imposing any condition or supervision upon the defendant's release. A sentence of unconditional discharge is for all purposes a final judgment of conviction.

Source. 1971, 518:1. 1973, 370:2. 1974, 34:13, 14. 1977, 397:1; 403:2. 1979, 126:6; 377:8. 1981, 397:1. 1982, 36:2. 1983, 382:8. 1986, 156:4. 1988, 19:4. 1989, 295:2. 1990, 95:1. 1991, 355:102. 1992, 19:1; 269:8-10; 284:85, 86, XIII. 1994, 192:1, 2. 1995, 237:4. 1996, 93:2-9. 1998, 366:3. 1999, 158:4. 2006, 163:1, eff. Jan. 1, 2007; 260:33, eff. Jan. 1, 2007. 2010, 247:12, eff. July 1, 2010; Sp. Sess., 1:24, eff. June 10, 2010. 2011, 268:2, eff. Nov. 13, 2011. 2012, 228:10, eff. Jan. 1, 2013

New Hampshire General Court - Bill Status System

Docket of HB252

Docket Abbreviations

Bill Title: repealing provisions regarding applications for hawkers' and peddlers' licenses.*Official Docket of HB252:*

Date	Body	Description
1/20/2011	H	Introduced 1/6/2011 and Referred to Executive Departments and Administration; HJ 11 , PG. 179
1/25/2011	H	Public Hearing: 2/3/2011 10:30 AM LOB 306
2/3/2011	H	Subcommittee Work Session: 2/8/2011 3:00 PM LOB 306
2/14/2011	H	Executive Session: 2/16/2011 LOB 306 1:30 PM or 45 minutes after House session
2/17/2011	H	Committee Report: Inexpedient to Legislate for Feb 23 (Vote 16-0; CC); HC 15 , PG.268
2/23/2011	H	Inexpedient to Legislate: MA VV; HJ 21 , PG.459

NH House

NH Senate

HB 252-L, repealing provisions regarding applications for hawkers' and peddlers' licenses. **INEXPEDIENT TO LEGISLATE.**

Rep. Spec Bowers for Executive Departments and Administration: This bill perfectly illustrates that good intentions can produce bad unintended consequences. It would amend RSA 31:102-a regarding hawkers, peddlers, and itinerant vendors so as to reduce the fees for a local license and would repeal the requirement for a criminal background check. The testimony was overwhelmingly against the bill. Laconia Bike Week uses high fees to pay the town's costs for running this event. Parents and police demand the ability to do background checks of vendors who are in close contact with young children. **Vote 16-0.**

HB 252-LOCAL – AS INTRODUCED

2011 SESSION

11-0887

08/10

HOUSE BILL 252-LOCAL

AN ACT repealing provisions regarding applications for hawkers' and peddlers' licenses.

SPONSORS: Rep. Mirski, Graf 10; Rep. Parison, Hills 3; Rep. McClarren, Hills 21;
Rep. LeBrun, Hills 26; Rep. Lambert, Hills 27; Rep. Avard, Hills 20; Rep. Cohn, Merr 6

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill repeals certain provisions regarding applications for hawkers' and peddlers' licenses.

Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

11-0887

08/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT repealing provisions regarding applications for hawkers' and peddlers' licenses.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Hawkers and Peddlers Licenses; Penalties. Amend RSA 31:102-a to read as follows:

31:102-a Hawkers, Peddlers and Vendors. The governing board of a city, town or village district may adopt, by ordinance or regulation, provisions for the licensure and regulation of itinerant vendors, hawkers, peddlers, traders, farmers, merchants, or other persons who

sell, offer to sell, or take orders for merchandise from temporary or transient sales locations within a town or who go from town to town or place to place within a town for such purposes. Any person who violates any provision of such ordinance or regulation shall be guilty of a ~~[class B misdemeanor]~~ **violation**, and each continuing day of violation after notice shall constitute a separate offense. A city, town, or village district shall be specifically prohibited, however, from licensing or regulating a candidate for public office in the process of obtaining signatures on nomination papers, who seeks to have the candidate's name placed on the ballot for the state general election by submitting nomination papers under RSA 655:40. Provisions adopted under this section shall be in addition to any requirements imposed by the state under either RSA 320 or RSA 321 and may include, but shall not be limited to:

I. Classification of licensees consistent with constitutional requirements of equal protection. ***Application for such licensure shall include the presentation of a drivers license or identification card issued by the director of motor vehicles under the provisions of RSA 260:21. Such licensure shall be renewed annually with the payment of the an annual fee not to exceed \$10;***

II. Imposition of reasonable requirements, including fees, ***which shall not exceed \$10***, for the issuance of a license; ***and***

III. ~~[Restrictions as to the areas of the municipality open to licensees and the hours and days of their operation, and~~

IV. ~~Other reasonable conditions and terms deemed necessary for public convenience and safety as the governing board determines]~~ ***Procedures for revoking such license should the licensee become a public nuisance.***

2 Repeal. RSA 31:102-b, relative to background checks for hawkers, peddlers, and vendors, is repealed.

3 Effective Date. This act shall take effect 60 days after its passage.

New Hampshire General Court - Bill Status System

Docket of HB1522

Docket Abbreviations

Bill Title: reducing the penalty for violating a local vendor ordinance.*Official Docket of HB1522:*

Date	Body	Description
12/12/2011	H	Introduced 1/4/2012 and Referred to Criminal Justice and Public Safety; HJ 7 , PG. 358
1/18/2012	H	===CANCELLED=== Public Hearing: 2/7/2012 11:00 AM LOB 204
1/18/2012	H	Vacated from Criminal Justice and Public Safety and Referred to Municipal and County Government; HJ 10 , PG.591
1/25/2012	H	Public Hearing: 1/31/2012 4:00 PM LOB 301 ==RECESSED==
1/31/2012	H	Continued Public Hearing: 2/7/2012 10:30 AM LOB 301
2/8/2012	H	Executive Session: 2/14/2012 11:00 AM LOB 301
2/21/2012	H	Majority Committee Report: Inexpedient to Legislate for Mar 7 (Vote 14-3; RC); HC 19 , PG.1136-1138
2/21/2012	H	Minority Committee Report: Ought to Pass; HC 19 , PG.1136-1138
3/15/2012	H	Lay On The Table (Rep Gandia): MA DIV 172-119; HJ 26 , PG.1605
6/27/2012	H	Died on the Table

NH House

NH Senate

HB 1522-FN, reducing the penalty for violating a local vendor ordinance. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Timothy D Copeland for the **Majority** of Municipal and County Government: This proposed bill reduces the penalty phase from a class B misdemeanor to a violation offence. The original intent of the existing law was to allow local towns to help protect their residents from nefarious vendors who use door-to-door sales as a ploy to commit crimes. The protection lies in the ability of towns to develop a local ordinance for vendors that requires a criminal record check. Presently, a vendor who has class B misdemeanor conviction would be found out through this licensing process. If this same illegitimate vendor then attempted to ply his trade in another community and that community conducted a record check as part of the licensing process, that community would learn of his criminality and deny the license. By changing this law as proposed in this bill, violation level convictions would not be tracked and therefore, communities would not be able to learn of a criminal history by a vendor applicant. Further, this proposed change is contrary to the most recent change for RSA 31:102-a, which was adopted on Sept 11, 2010, that now allows local communities to work with the State to conduct more stringent criminal record checks on vendors protecting its citizens from preying criminals. Shouldn't that take precedence here, why would we want criminals to have the upper hand on our citizens? To some there was confusion about enforcement of the local hawkers and peddler ordinances and whether the current exemptions in RSA 320:3 applied to the ordinances adopted by cities and towns. There should be no confusion as the last sentence in RSA 31:102-a states that "provisions adopted under this section shall be in addition to any requirements imposed by the state under RSA 320 or 321." **Vote 14-3.**

Rep. John A Burt for the **Minority** of Municipal and County Government: This bill would partially repeal an act of the previous legislature by returning the penalty for violating local Hawkers & Peddlers ordinances from a misdemeanor to a violation. Supporters of harsh penalties included some local police who said they are a deterrent to swindlers, crooks, and other riff-raff that compete with local business and pay no property taxes. The committee heard testimony that these local ordinances were selectively enforced and therefore not a problem for legitimate local business. Evident in the discussion and pervasive at every level was confusion about exceptions to the state license in Chapter 320. To further muddy debate, claims were made by committee members that exceptions for charities and farm stands in Chapter 320 apply to this chapter (Chapter 31:102a) because RSA 320:8 mentions both. Not true. "Itinerant vendors, hawkers, peddlers, traders, farmers, merchants, or other people who sell, offer to sell, or take orders for merchandise from temporary or transient sales locations within a town or who go from town to town or place to place" can become a criminal if they forget to purchase or renew their local Peddlers license. The problem with this severe penalty is that it creates as many ways to criminalize vendor activity across New Hampshire as there are towns and cities in New Hampshire. The definition of what is or is not a criminal act ought to be uniform across New Hampshire and never subject to the whim of boards of selectmen, town councils or aldermen. For this reason if for no other, the penalty for violating any hawker's and peddlers license under the present statute should never be anything greater than a violation.

HB 1522-FN – AS INTRODUCED

2012 SESSION

12-2571

08/01

HOUSE BILL *1522-FN*

AN ACT reducing the penalty for violating a local vendor ordinance.

SPONSORS: Rep. Parison, Hills 3

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill reduces the penalty for violating a local vendor ordinance.

Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

12-2571

08/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT reducing the penalty for violating a local vendor ordinance.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Hawkers and Peddlers Licenses; Penalties. Amend the introductory paragraph of RSA 31:102-a to read as follows:

31:102-a Hawkers, Peddlers and Vendors. The governing board of a city, town or village district may adopt, by ordinance or regulation, provisions for the licensure and regulation of itinerant vendors, hawkers, peddlers, traders, farmers, merchants, or other persons who sell, offer to sell, or take orders for merchandise from temporary or transient sales

locations within a town or who go from town to town or place to place within a town for such purposes. Any person who violates any provision of such ordinance or regulation shall be guilty of a [~~class B misdemeanor~~] *violation*, and each continuing day of violation after notice shall constitute a separate offense. A city, town, or village district shall be specifically prohibited, however, from licensing or regulating a candidate for public office in the process of obtaining signatures on nomination papers, who seeks to have the candidate's name placed on the ballot for the state general election by submitting nomination papers under RSA 655:40. Provisions adopted under this section shall be in addition to any requirements imposed by the state under either RSA 320 or RSA 321 and may include, but shall not be limited to:

2 Effective Date. This act shall take effect January 1, 2013.

LBAO

12-2571

12/06/11

HB 1522-FN - FISCAL NOTE

AN ACT reducing the penalty for violating a local vendor ordinance.

FISCAL IMPACT:

The Legislative Budget Assistant has determined that this legislation has a total fiscal impact of less than \$10,000 in each of the fiscal years 2012 through 2016.

Voting Sheets

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

EXECUTIVE SESSION on HB104

BILL TITLE: amending certain requirements to obtain a local vendor license.

DATE: January 22, 2013

LOB ROOM: 301

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL Retained (Please circle one.)

Moved by Rep. Copeland

Seconded by Rep. Stroud

Vote: 15-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: Yes No (please circle one)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. James Belanger, Clerk

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

EXECUTIVE SESSION on HB104

BILL TITLE: amending certain requirements to obtain a local vendor license.

DATE: 22 Jan 2013

LOB ROOM: 301

Amendments:

Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. *COPELAND* ITL 15-0

Seconded by Rep. *STROUD*

Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

*BLURB
COPELAND*

CONSENT CALENDAR VOTE. Yes No (please circle one)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. James Belanger, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/7/2013 3:58:12 PM
Roll Call Committee Registers
Report

2013 SESSION

MUNICIPAL AND COUNTY GOVERNMENT

Bill #: HB 104 Title: AMENDING CERTAIN REQUIREMENTS TO OBTAIN LOCAL VENDOR LIC
PH Date: 15 JAN 2013 Exec Session Date: 22 JAN 2013
Motion: ITL COPELAND Amendment #: _____

MEMBER	YEAS	NAYS
Porter, Marjorie A, Chairman	✓	
Tatro, Bruce L, V Chairman	✓	
Roberts, Kris E	X	
Hooper, Dorothea D	✓	
Carson, Clyde J	✓	
Enman, Larry S	X	
Lavender, Tom	✓	
Malloy, Dennis J	✓	
Vail, Suzanne M	✓	
Verschueren, James	X	
White, Syndi G	✓	
Stroud, Kathleen M	✓	
Lockwood, Priscilla P	✓	
Belanger, James P, Clerk	✓	
Coffey, James E	X	
Copeland, Timothy D	✓	
Shackett, Jeffrey S	✓	
Bishop, Franklin C	X	
Bickford, David A	✓	
Danielson, David J	✓	
TOTAL VOTE:		

15 0

Committee Report

CONSENT CALENDAR

January 23, 2013

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on MUNICIPAL AND COUNTY
GOVERNMENT to which was referred HB104,**

**AN ACT amending certain requirements to obtain a
local vendor license. Having considered the same,
report the same with the following Resolution:**

RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Timothy D Copeland

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	MUNICIPAL AND COUNTY GOVERNMENT
Bill Number:	HB104
Title:	amending certain requirements to obtain a local vendor license.
Date:	January 23, 2013
Consent Calendar:	YES
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill was resurrected from the last session and voted down on the floor. Federal criminal record checks, also known as NCIC checks (National Crime Information Center) are critical in ascertaining the true identity of a person. Employment fingerprint checks are a regular way of doing business in today's society whether you are applying for a government or military position, child care, teacher, etc... A state name check is limited in accurately determining someone's criminal history, if any, and may be very misleading. Here's why: If I'm arrested in another state or jurisdiction under an assumed name like John Jones and I give that name when I'm fingerprinted, then later a state name check is performed on me (without fingerprints) in New Hampshire under my true birth/legal name Timothy Copeland, my alias of John Jones will not surface. The NH entity performing that name check will never uncover my criminal history under that different name because fingerprints are unique to people not names. This legislation eliminates the federal fingerprint check which currently is an accurate vetting process, putting the general public in possible danger by not knowing the true criminal record of a person arrested under an assumed name. I submit to you, why would we want criminals to have the upper hand on our citizens? This is bad legislation and is a big step backwards not only for our state but for the safety of our citizens who have an expectation that we have thoroughly vetted the individual to the best of our ability with the current available tools at hand. Please vote this bill inexpedient to legislate.

Vote 15-0.

Original: House Clerk
Cc: Committee Bill File

Rep. Timothy D Copeland
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

MUNICIPAL AND COUNTY GOVERNMENT

HB104, amending certain requirements to obtain a local vendor license. INEXPEDIENT TO LEGISLATE.

Rep. Timothy D Copeland for MUNICIPAL AND COUNTY GOVERNMENT. This bill was resurrected from the last session and voted down on the floor. Federal criminal record checks, also known as NCIC checks (National Crime Information Center) are critical in ascertaining the true identity of a person. Employment fingerprint checks are a regular way of doing business in today's society whether you are applying for a government or military position, child care, teacher, etc... A state name check is limited in accurately determining someone's criminal history, if any, and may be very misleading. Here's why: If I'm arrested in another state or jurisdiction under an assumed name like John Jones and I give that name when I'm fingerprinted, then later a state name check is performed on me (without fingerprints) in New Hampshire under my true birth/legal name Timothy Copeland, my alias of John Jones will not surface. The NH entity performing that name check will never uncover my criminal history under that different name because fingerprints are unique to people not names. This legislation eliminates the federal fingerprint check which currently is an accurate vetting process, putting the general public in possible danger by not knowing the true criminal record of a person arrested under an assumed name. I submit to you, why would we want criminals to have the upper hand on our citizens? This is bad legislation and is a big step backwards not only for our state but for the safety of our citizens who have an expectation that we have thoroughly vetted the individual to the best of our ability with the current available tools at hand. Please vote this bill inexpedient to legislate.

Vote 15-0.

Original: House Clerk
Cc: Committee Bill File

Rafeal, Linda

From: Tim Copeland [Tim@CopelandforStratham.com]

Sent: Monday, January 21, 2013 5:51 PM

To: Rafeal, Linda

Subject: Blurn for HB103 & 104

HB-104 2013 Session

ITL

Timothy D. Copeland for the majority of the Municipal & County Government committee: This bill was resurrected from the last session and voted down on the floor. Federal criminal record checks, also known as NCIC checks (National Crime Information Center) are critical in ascertaining the true identity of a person. Employment fingerprint checks are a regular way of doing business in today's society whether you are applying for a government or military position, child care, teacher, etc... A state name check is limited in accurately determining someone's criminal history, if any, and may be very misleading. Here's why: If I'm arrested in another state or jurisdiction under an assumed name like John Jones and I give that name when I'm fingerprinted, then later a state name check is performed on me (without fingerprints) in New Hampshire under my true birth/legal name Timothy Copeland, my alias of John Jones will not surface. The NH entity performing that name check will never uncover my criminal history under that different name because fingerprints are unique to people not names. This legislation eliminates the federal fingerprint check which currently is an accurate vetting process, putting the general public in possible danger by not knowing the true criminal record of a person arrested under an assumed name. I submit to you, why would we want criminals to have the upper hand on our citizens? This is bad legislation and is a big step backwards not only for our state but for the safety of our citizens who have an expectation that we have thoroughly vetted the individual to the best of our ability with the current available tools at hand. Please vote this bill inexpedient to legislate.