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Attorney General Office Transient Merchant Licensing

Transient Merchant License and/or Resident Agent for ND Attorney General Office.

701-328-2329 Main contact is Missy Tesky or Christine (2nd contact).

With the limited staff and resources available to the Licensing Section at the capitol building, applicants walking in to this office will be told that their application will take 5-10 business days to process.

Our service fee to be the Resident Agent for the North Dakota Attorney General Transient Merchant License is \$40 and we do charge \$60 @ hour for assistance or to file an application or determination letter or to obtain Transient Merchant License with a minimum of 1 hour if everything goes normal.

North Dakota Attorney General web site: <http://www.ag.nd.gov/Licensing/Transient/TransientMerchant.htm>

Individual Application Form: <http://www.ag.nd.gov/Licensing/Transient/sfn6820.pdf>

Corporation & LLC Application Form: <http://www.ag.nd.gov/Licensing/Transient/sfn52899.pdf>

Bond Form for Corporation Only: <http://www.ag.nd.gov/Licensing/Transient/bondform.pdf>

Bond Form for LLC – call us or ND Attorney General as last page needs to be for a LLC and not on web yet.

CHAPTER 51-04 TRANSIENT MERCHANTS

51-04-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

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

51-04-08. Certain excepted sales. The provisions of this chapter do not apply to the following:

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

51-04-08.1. Exceptions to requirement of a transient merchant's license. A transient merchant selling merchandise only in flea markets, craft fairs, fairs, carnivals, circuses, or similar activities regulated by city or county governments, fair associations, convention bureaus, other political subdivisions, or local trade organizations is exempt from the requirements of sections 51-04-02 and 51-04-03.

Penalty. Any person violating any of the provisions of this chapter, for which another penalty is not specifically provided, is guilty of a class B misdemeanor.

12.1-32-01. Classification of offenses - Penalties. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand dollars, or both, may be imposed. In addition to being guilty of a Class B misdemeanor, a company found to be operating without a transient merchant license when they are required to do so, may be assessed civil penalties from the Attorney General's office.

51-04-09. Regulation by city or other municipality. Nothing in this chapter may be construed as prohibiting, or in any way limiting or interfering with, the right of any city or other municipal corporation or governmental subdivision of the state to regulate or license the carrying on within such municipality the business of a transient merchant if authority has been, or shall hereafter be, conferred upon it so to do, but the requirements of this chapter are in addition thereto. The governing body of a city or other municipal corporation or governmental subdivision, by resolution, ordinance, or order, may require transient merchants licensed under this chapter and making or intending to make sales within the city limits to comply with any reasonable regulations, in addition to this chapter, as that body may deem necessary for their local control and may require the payment by every such merchant of a per diem license fee not exceeding twenty-five dollars. Every such merchant making sales or offering to do so without complying with the regulations applicable to transient merchants is subject to the penalty provided as if no state license had been issued by the attorney general.

10-10-01-05. Sales tax permit required. In addition to the application requirements of North Dakota Century Code section 51-04-02, **any transient merchant required to be licensed shall obtain the required North Dakota sales tax permit**, a copy of which shall be filed with the attorney general as part of the application for license.

To obtain a Letter of Exemption that a Transient Merchant License is not required, please provide Missy Tesky, Licensing Administrator or Christine, filing clerk, (701-328-2329 or mtesky@nd.gov with the North Dakota Attorney General Office the necessary information as it relates to North Dakota Century Code Section 51-04-08.

Explain on company letterhead providing complete details of company name, address, and contact person for Missy or Christine to call if she needs more info.

Please provide telephone #, fax #, or email address so if Missy or Christine needs more info, they can call directly to company for additional clarification.

You must include with request for Letter of Exemption a copy of the following 1-3: **(Must have employees to be considered for exemption and must have completed all ND State agency requirements including reporting and/or paying unemployment premiums to North Dakota Job Service & filing an Application for Insurance at Workforce Safety or see below).**

1. Must have a Sales & Use Tax Permit and provide copy of sales or use tax permit or the stamped copy that your company applied for a Sales & Use Tax Permit.
2. Must provide a copy of documentation that company has applied or does pay contributions to job service North Dakota for unemployment compensation. Must have an account # with the documentation or acknowledgement of the filed Report to Determine Liability from Job Service & home state Unemployment Payroll Account # and last home state unemployment payroll filings or reports.
3. Must have a copy of documentation that company has reported to Workforce Safety or Certificate of Good Standing from Workforce Safety and if possible the completion documentation or Certificate of Premium Payment from Workforce Safety with account # if possible.