

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

480B0171

SENATE ENGROSSED NO. **SB 56** - 2/6/2019

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Greenfield (Brock), Bolin, and Maher and Representatives Greenfield (Lana), Gosch, Latterell, and McCleerey

1 FOR AN ACT ENTITLED, An Act to revise certain provision regarding the regulation of
2 fireworks and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-37-1 be amended to read:

5 34-37-1. Terms used in this chapter mean:

6 (1) "Consumer fireworks," fireworks designed primarily to produce visible effects by
7 combustion; that ~~must~~ comply with the construction, chemical composition, and
8 labeling regulations promulgated by the U.S. Consumer Product Safety Commission
9 (~~C.F.R. Title 16--Commercial Practices, Part 1507~~) 16 C.F.R. Part 1507, effective
10 January 1, ~~1998~~ 2019, and that are ~~enumerated in~~ classified as 1.4G, UN0336 under
11 the American Pyrotechnics Association ~~Inc.~~, Standard 87-1, ~~April, 1993~~ 2001
12 edition;

13 (2) "Display fireworks," fireworks regulated by the Bureau of Alcohol, Tobacco,
14 Firearms and Explosives that are not intended for consumer use and are normally



1 used at a public event and classified as 1.3G, UN0335 under the American
2 Pyrotechnics Association Standard 87-1, 2001 edition;

3 (3) "Public event," use of fireworks for commerce on public property or sponsored by
4 a public entity;

5 (4) "Retailer;" or "Retailer licensee," includes every any person engaged licensed under
6 this chapter to engage in the business of making sales of fireworks at retail;

7 (3)(5) "Retail sale," the sale of fireworks to any person not licensed to sell fireworks or for
8 any purpose other than for resale;

9 (4)(6) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner or
10 by any means whatsoever, for a consideration;

11 (5)(7) "Wholesaler;" or "Wholesaler licensee," any person engaged licensed under this
12 chapter to engage in the business of making sales of fireworks to retailers for resale
13 to consumers.

14 Section 2. That § 34-37-2 be amended to read:

15 34-37-2. ~~No~~ A person may sell, hold for sale, or offer is guilty of a Class 2 misdemeanor if
16 the person sells, holds for sale, or offers for sale, as wholesaler or retailer, any fireworks in this
17 state unless such person has first obtained without a license as a wholesaler or retailer issued
18 under this chapter.

19 Application for a license as wholesaler or retailer shall be made to the Department of Public
20 Safety on forms to be prescribed by it. ~~Each~~ the department. ~~An~~ application shall be
21 accompanied by ~~the required~~ an application fee, ~~which shall be of~~ of five hundred dollars for a
22 wholesaler's license, and twenty-five dollars for a retailer's license. ~~A separate twenty-five dollar~~
23 ~~retailer's~~

24 In addition to a license as a retailer issued under this section, a retailer shall obtain a retailer

1 ~~sales license is required~~ for a fee of twenty-five dollars, for each sales period, as specified in
 2 § 34-37-10, during which a retailer may sell fireworks. ~~Each~~ An application for a ~~twenty-five~~
 3 ~~dollar retailer's~~ the retailer sales license in any year ~~must~~ shall be received by the department no
 4 later than fifteen days before the beginning of the sales period. Any application for a ~~twenty-five~~
 5 ~~dollar retailer's~~ retailer sales license received after that date shall be denied by the department
 6 and returned to the applicant, together with any application fee submitted. The ~~twenty-five~~
 7 ~~dollar retailer's~~ retailer sales license expires sixty days after the end of the sales period and is
 8 renewable annually until the application deadline for the corresponding sales period. The retailer
 9 licensee shall at all times display the retailer sales license ~~shall at all times be displayed at the~~
 10 retailer's place of business ~~of the holder of the license.~~

11 ~~The~~ Any funds received by the department under ~~the provisions of~~ this section shall be
 12 deposited in the state general fund.

13 Section 3. That § 34-37-2.1 be amended to read:

14 34-37-2.1. ~~No~~ A person under the age of eighteen years ~~shall~~ may not be licensed under this
 15 chapter ~~and no licensee shall~~. A wholesaler or retailer may not employ or permit any individual
 16 person under the age of eighteen to sell, dispense, or offer for sale, ~~within the State of South~~
 17 ~~Dakota~~ any permissible fireworks enumerated in this chapter.

18 Section 4. That § 34-37-2.2 be amended to read:

19 34-37-2.2. In addition to ~~licenses available in~~ any license required under § 34-37-2, ~~two~~
 20 ~~special retail licenses may be obtained for~~ any sales to out-of-state residents. ~~The first is a sixty-~~
 21 ~~six day,~~ a retailer licensee may obtain:

- 22 (1) An early season license to operate from ~~the first day of May through the fifth day of~~
 23 July first to June twenty-sixth, with a required fee of one thousand dollars. ~~The~~
 24 ~~second option is a fifty-seven day; or~~

1 (2) ~~A late season license to operate from the sixth day of July through the thirty-first day~~
 2 ~~of sixth to August thirty-first, and from December twenty-eighth to January first, with~~
 3 ~~a required fee of one thousand dollars. The fifty-seven day special retail license also~~
 4 ~~allows the retail sale of fireworks to residents and nonresidents during the period~~
 5 ~~beginning December twenty-eighth and extending through January first, as provided~~
 6 ~~in § 34-37-10. A~~

7 A retailer licensee with a license issued under this section that is located west of the
 8 Missouri River shall provide any consumer with a copy of the South Dakota any law which that
 9 prohibits the ~~discharge~~ use of fireworks and a map of the Black Hills Forest Fire Protection
 10 District ~~shall be provided with every~~ with any sale of fireworks ~~under a license granted pursuant~~
 11 ~~to this section, except for sales, other than any sale~~ occurring from ~~the twenty-seventh day of~~
 12 June ~~through the fifth day of twenty-seventh to July fifth.~~

13 Section 5. That § 34-37-4 be amended to read:

14 34-37-4. Except as provided in § 34-37-12, ~~no a person shall possess, sell, offer for sale,~~
 15 ~~bring into this state, or discharge~~ is guilty of a Class 2 misdemeanor if the person possesses,
 16 sells, offers for sale, brings into this state, or uses any pyrotechnics commonly known as
 17 fireworks, other than ~~permissible~~ consumer fireworks.

18 Section 6. That § 34-37-6 be amended to read:

19 34-37-6. Before any ~~additional permissible~~ fireworks not enumerated in under § 34-37-5
 20 may be sold, held for sale, or offered for sale in this state, ~~they~~ the licensee shall ~~be submitted~~
 21 submit the fireworks to the Department of Public Safety for examination ~~to determine their~~
 22 compliance. For any fireworks submitted under this section that comply with 16 C.F.R. Title
 23 ~~16, Commercial Practices; Part 1507, effective January 1, 1998~~ 2019, and the American
 24 Pyrotechnics Association ~~Inc.~~, Standard 87-1, 1993 2001 edition, the department shall authorize

1 the fireworks for sale in this state.

2 Section 7. That § 34-37-8 be amended to read:

3 34-37-8. ~~No~~ A person who is guilty of a Class 2 misdemeanor if the person is not licensed
4 as a wholesaler or retailer ~~shall bring and transports~~ any fireworks into this state. ~~No for sale.~~
5 A retailer shall may not sell any fireworks ~~which that~~ have not been purchased from a
6 wholesaler licensed under ~~the provisions of~~ this chapter.

7 Section 8. That § 34-37-10 be amended to read:

8 34-37-10. ~~No~~ A person, firm, or corporation may offer fireworks for sale to individuals is
9 guilty of a Class 2 misdemeanor if the person offers any fireworks for sale to any other person
10 at retail except other than during the period beginning between June twenty-seventh and
11 extending through July fifth ~~and or~~ during the period beginning between December twenty-
12 eighth and extending through January first. ~~Any person obtaining the special sixty-six day or the~~
13 ~~special fifty-seven day retail licenses~~

14 A person who is issued a license under § 34-37-2.2 may sell fireworks to out-of-state
15 residents for the periods of time designated in § 34-37-2.2. ~~Retail sales~~ A person who is issued
16 a late season license under § 34-37-2.2 or a retailer license under § 34-37-2 may sell any
17 fireworks to residents and nonresidents during the period from December twenty-eighth ~~through~~
18 to January first ~~period may only be made by holders of a special fifty-seven day retail license~~
19 ~~established pursuant to § 34-37-2.2 and by holders of a retailer's license as provided in § 34-37-~~
20 ~~2. Retail sales are not permitted after.~~

21 A retail licensee may not make any sale of fireworks between the hours of twelve a.m. or
22 prior to and seven a.m. ~~from the twenty-seventh day of June through the fifth day of July and~~
23 ~~from the twenty-eighth day of December through the first day of January.~~

24 Section 9. That § 34-37-10.1 be amended to read:

1 34-37-10.1. ~~No retailer shall sell~~ A person is guilty of a Class 2 misdemeanor if the person
2 sells any fireworks from any a motor vehicle.

3 Section 10. That § 34-37-10.2 be amended to read:

4 34-37-10.2. If the general public occupies a structure where fireworks are being displayed
5 or sold, two or more approved exits shall be provided. If the general public does not occupy a
6 the structure that displays or sells fireworks, one or more approved exits shall be provided. A
7 violation of this section is a Class 2 misdemeanor.

8 For the purposes of this section, an approved exit is a continuous and unobstructed means
9 of egress to a public way. Exit doors shall be of the pivoted or side-hinged swinging type and
10 shall swing in the direction of exit travel. Exit doors shall be able to be opened from the inside
11 without the use of a key or any special knowledge or effort.

12 Section 11. That § 34-37-10.3 be amended to read:

13 34-37-10.3. ~~Signs must be prominently posted on all displays of fireworks offered for sale~~
14 ~~at retail, which shall read~~ At any location where consumer fireworks are being offered for sale,
15 the licensee shall prominently post a sign in red letters not less than three inches in height that
16 reads, "NO SMOKING WITHIN TWENTY-FIVE FIFTY FEET." A person is guilty of a Class
17 2 misdemeanor if the person smokes within fifty feet of a location under this section.

18 Section 12. That § 34-37-10.4 be amended to read:

19 34-37-10.4. ~~In all buildings or structures wherein~~ At any location where consumer fireworks
20 are being offered for sale the licensee shall have a sign prominently posted stating prominently
21 post a sign that states no fireworks can may be ignited or discharged used within one hundred
22 fifty three hundred feet of the licensee's premises. A person is guilty of a Class 2 misdemeanor
23 if the person ignites or uses any fireworks within three hundred feet of a location under this
24 section.

1 Section 13. That § 34-37-10.5 be amended to read:

2 34-37-10.5. ~~No licensee may have on the premises~~ A person is guilty of a Class 2
3 misdemeanor if the person has any device, apparatus, receptacle, or burner from which an open
4 flame is emitted. ~~Each~~ on the premises of a retail licensee. A retailer licensee shall ~~in the~~
5 ~~conduct of the business of selling fireworks~~ keep and maintain upon the retailer's premises a fire
6 extinguisher bearing a rated capacity of at least 2-A.

7 Section 14. That § 34-37-11 be amended to read:

8 34-37-11. No person may sell or cause to be sold, ~~discharge use~~, or cause to be ~~discharged~~
9 used, any pyrotechnics of any description or any consumer fireworks within the exterior
10 boundaries of the Black Hills Forest Fire Protection District, ~~and no~~.

11 No person may discharge use or cause to be ~~discharged used~~, any pyrotechnics or consumer
12 fireworks within a zone that extends three hundred feet beyond the exterior boundaries of the
13 Black Hills Forest Fire Protection District in this state.

14 No person may sell or cause to be sold, ~~discharge~~, use or cause to be ~~discharged~~ used, any
15 pyrotechnics of any description or any consumer fireworks within any national forest, national
16 park, state forest, or any land owned or leased by the Department of Game, Fish and Parks:
17 ~~However, the Department of Game, Fish and Parks may, by~~ without written authorization;
18 ~~permit by the department permitting the~~ discharge use of pyrotechnics or consumer fireworks,
19 pyrotechnic displays, sales, or exhibits on land owned or leased by the department, unless the
20 department is otherwise prohibited by statute law from providing the written authorization.

21 ~~Any~~ A violation of this section ~~which occurs on any land owned or leased by the Department~~
22 ~~of Game, Fish and Parks~~ is a Class 2 misdemeanor. ~~Any~~ A second or subsequent violation of
23 this ~~Section~~ section is a Class 1 misdemeanor.

24 Section 15. That § 34-37-12 be amended to read:

1 34-37-12. Nothing in this chapter ~~shall prohibit licensed wholesalers or manufacturers~~
2 prohibits a wholesaler licensee or manufacturer from storing, selling, shipping, or otherwise
3 transporting, ~~permissible~~ fireworks to any person ~~or entity~~ outside of the State of South Dakota
4 ~~if the sale and transportation are this state,~~ consistent with 18 U.S.C. § 836, effective on January
5 1, 1983. ~~The 2019.~~ Any delivery of ~~such~~ fireworks ~~shall only~~ may be made by a properly
6 certified motor carrier as specified in chapter 49-28 or ~~by licensed fireworks wholesalers or~~
7 manufacturers in a vehicle owned or leased by a wholesaler licensee, manufacturer, or fireworks
8 ~~permit holders in vehicles owned or leased by them~~ holder.

9 Section 16. That § 34-37-12.1 be amended to read:

10 34-37-12.1. ~~Written~~ A wholesaler licensee shall retain written evidence of the delivery of
11 ~~permissible~~ fireworks to any person ~~or entity~~ outside of the State of South Dakota ~~shall be~~
12 ~~retained by the wholesaler. Acceptable evidence includes this state. Evidence under this section~~
13 may include the fireworks license or permit number and address, a bill of lading, or delivery
14 receipt for delivery by a properly certified motor carrier if the purchaser is unlicensed.

15 Section 17. That § 34-37-13 be amended to read:

16 34-37-13. Nothing in this chapter prohibits the use of ~~public display of~~ display fireworks ~~at~~
17 a public or private event. ~~However, any person, association, organization, municipality, county,~~
18 ~~firm, partnership, or corporation, before making such public display of~~ A person using display
19 fireworks at a public or private event shall secure obtain a written permit from the governing
20 ~~board~~ body of the municipality, township, or county where the ~~public display is to be fired, and~~
21 ~~shall have purchased fireworks for the display from a licensed wholesaler under this chapter.~~
22 ~~Any public display fireworks are to be used. Display fireworks may only be purchased from a~~
23 wholesaler licensee. Use of display fireworks at a public or private event shall comply with the
24 National Fire Protection Association Standard 1123, 1995 2018 edition.

1 Section 18. That chapter 34-37 be amended by adding a NEW SECTION to read:

2 Nothing in this chapter prohibits the use of consumer fireworks at a public or private event.

3 A person using consumer fireworks at a public or private event outside the periods permitted
4 by § 34-37-16.1 shall obtain a permit from the governing body of the municipality, township,
5 or county where the consumer fireworks are to be used. Consumer fireworks may only be
6 purchased from a retailer licensee or wholesaler licensee. Use of consumer fireworks at a public
7 or private event shall comply with the National Fire Protection Association Standard 1124, 2006
8 edition.

9 Section 19. That § 34-37-15 be amended to read:

10 34-37-15. ~~If a person~~ For any licensee who is found guilty of violating any of the provisions
11 ~~of a second or subsequent violation under this chapter a subsequent time, such violation may~~
12 ~~constitute cause for revocation or suspension of the license held by that person and for refusal,~~
13 the department may revoke or suspend the license and refuse to renew the license upon its
14 expiration thereof.

15 Section 20. That § 34-37-16 be amended to read:

16 34-37-16. ~~No~~ A person shall possess is guilty of a Class 2 misdemeanor if the person
17 possesses any fireworks, other than those enumerated in § 34-37-5. If any person ~~shall have in~~
18 ~~his possession~~ possesses any fireworks in violation of ~~said section~~ § 34-37-5, a warrant may be
19 issued for the seizure of ~~such~~ the fireworks, ~~and such~~. Any fireworks seized under this section
20 shall be safely kept stored to be used as evidence.

21 Upon conviction of ~~the offender, the~~ any person charged under this section, any seized
22 fireworks shall be destroyed, but if the offender is discharged, the. If a person charged under this
23 section is found not guilty, any seized fireworks shall be returned to the person in whose
24 possession they were found, provided, however, that nothing in this.

1 ~~This chapter shall~~ does not apply to the transportation of fireworks by regulated carriers.

2 Section 21. That § 34-37-16.1 be amended to read:

3 34-37-16.1. Except as otherwise provided in this chapter, ~~it is unlawful for a person to~~
4 ~~discharge fireworks in this state~~ a person is guilty of a Class 2 misdemeanor if the person uses
5 consumer fireworks except during the period ~~beginning from~~ beginning from June twenty-seventh ~~and extending~~
6 ~~through the end of~~ to the first Sunday after July fourth, and during the period beginning
7 December twenty-eighth ~~and extending through~~ to January first. ~~A violation of this section is~~
8 ~~a Class 2 misdemeanor.~~

9 Section 22. That § 34-37-16.2 be amended to read:

10 34-37-16.2. The provisions of ~~§ 34-37-16.1~~ §§ 34-37-2 and 34-37-16.1 do not apply to
11 ~~snakes and smoke;~~

12 (1) ~~Smoke effects if they~~ the smoke effects do not fly, travel, or explode, ~~or to single-~~
13 ~~shot;~~

14 (2) ~~Single-shot~~ parachute pieces without a flare; ~~or~~

15 (3) Any fireworks classified as a novelty under section 3.2 of the American Pyrotechnics
16 Association Standard 87-1, 2001 edition.

17 Section 23. That § 34-37-17 be amended to read:

18 34-37-17. The Department of Public Safety, together with ~~all~~ any law enforcement officers
19 agency of the state ~~and its~~ or any political subdivisions, ~~shall be charged with the enforcement~~
20 ~~of the provisions of~~ subdivision of the state, shall enforce this chapter.

21 Section 24. That § 34-37-5 be repealed.

22 ~~— 34-37-5. Permissible fireworks are consumer fireworks as enumerated in Chapter 3 of the~~
23 ~~American Pyrotechnics Association Inc., Standard 87-1, 1993 edition and that comply with~~
24 ~~labeling regulations promulgated by the U.S. Consumer Product Safety Commission (C.F.R.~~

1 ~~Title 16--Commercial Practices Part 1507), effective January 1, 1998.~~

2 Section 25. That § 34-37-10.6 be repealed.

3 ~~—34-37-10.6. For the purposes of this chapter, an approved exit is a continuous and~~
4 ~~unobstructed means of egress to a public way. Exit doors shall be of the pivoted or side-hinged~~
5 ~~swinging type and shall swing in the direction of exit travel. Exit doors shall be openable from~~
6 ~~the inside without the use of a key or any special knowledge or effort.~~

7 Section 26. That § 34-37-14 be repealed.

8 ~~—34-37-14. Except where a punishment is specifically provided, a violation of the provisions~~
9 ~~of this chapter is a Class 1 misdemeanor.~~

10 Section 27. Whereas, this Act is necessary for the immediate preservation of the public
11 peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full
12 force and effect from and after its passage and approval.