

AN ACT

ENTITLED, An Act to revise certain provision regarding the regulation of fireworks and to declare an emergency.

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

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

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

- (1) "Consumer fireworks," fireworks designed primarily to produce visible effects by combustion; that comply with the construction, chemical composition, and labeling regulations promulgated by the U.S. Consumer Product Safety Commission 16 C.F.R. Part 1507, effective January 1, 2019, and that are classified as 1.4G, UN0336 under the American Pyrotechnics Association Standard 87-1, 2001 edition;
- (2) "Display fireworks," fireworks regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives that are not intended for consumer use and are normally used at a public event and classified as 1.3G, UN0335 under the American Pyrotechnics Association Standard 87-1, 2001 edition;
- (3) "Public event," use of fireworks for commerce on public property or sponsored by a public entity;
- (4) "Retailer" or "Retailer licensee," includes any person licensed under this chapter to engage in the business of making sales of fireworks at retail;
- (5) "Retail sale," the sale of fireworks to any person not licensed to sell fireworks or for any purpose other than for resale;
- (6) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means, for consideration;
- (7) "Wholesaler" or "Wholesaler licensee," any person licensed under this chapter to engage

in the business of making sales of fireworks to retailers for resale to consumers.

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

34-37-2. A person is guilty of a Class 1 misdemeanor if the person sells, holds for sale, or offers for sale, as wholesaler or retailer, any fireworks in this state without a license as a wholesaler or retailer issued under this chapter.

Application for a license as wholesaler or retailer shall be made to the Department of Public Safety on forms to be prescribed by the department. An application shall be accompanied by an application fee of five hundred dollars for a wholesaler's license, and twenty-five dollars for a retailer's license.

In addition to a license as a retailer issued under this section, a retailer shall obtain a retailer sales license for a fee of twenty-five dollars, for each sales period specified in § 34-37-10, during which a retailer may sell fireworks. An application for the retailer sales license in any year shall be received by the department no later than fifteen days before the beginning of the sales period. Any application for a retailer sales license received after that date shall be denied by the department and returned to the applicant, together with any application fee submitted. The retailer sales license expires sixty days after the end of the sales period and is renewable annually until the application deadline for the corresponding sales period. The retailer licensee shall at all times display the retailer sales license at the retailer's place of business.

Any funds received by the department under this section shall be deposited in the state general fund.

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

34-37-2.1. A person under the age of eighteen years may not be licensed under this chapter. A wholesaler or retailer may not employ or permit any person under the age of eighteen to sell, dispense, or offer for sale any fireworks enumerated in this chapter. A violation of this section is a

Class 1 misdemeanor.

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

34-37-2.2. In addition to any license required under § 34-37-2, for any sales to out-of-state residents, a retailer licensee may obtain:

- (1) An early season license to operate from May first to June twenty-sixth, with a required fee of one thousand dollars; or
- (2) A late season license to operate from July sixth to August thirty-first, and from December twenty-eighth to January first, with a required fee of one thousand dollars.

A retailer licensee with a license issued under this section that is located west of the Missouri River shall provide any consumer with a copy of any law that prohibits the use of fireworks and a map of the Black Hills Forest Fire Protection District with any sale of fireworks, other than any sale occurring from June twenty-seventh to July fifth. A violation of this section is a Class 1 misdemeanor.

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

34-37-4. Except as provided in § 34-37-12, a person is guilty of a Class 1 misdemeanor if the person possesses, sells, offers for sale, brings into this state, or uses any pyrotechnics commonly known as fireworks, other than consumer fireworks.

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

34-37-6. Before any fireworks not enumerated under § 34-37-5 may be sold, held for sale, or offered for sale in this state, the licensee shall submit the fireworks to the Department of Public Safety for examination. For any fireworks submitted under this section that comply with 16 C.F.R. Part 1507, effective January 1, 2019, and the American Pyrotechnics Association Standard 87-1, 2001 edition, the department shall authorize the fireworks for sale in this state. A violation of this section is a Class 1 misdemeanor.

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

34-37-8. A person is guilty of a Class 1 misdemeanor if the person is not licensed as a wholesaler or retailer and transports any fireworks into this state for sale. A retailer may not sell any fireworks that have not been purchased from a wholesaler licensed under this chapter.

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

34-37-10. A person is guilty of a Class 1 misdemeanor if the person offers any fireworks for sale to any other person at retail other than during the period between June twenty-seventh and July fifth or during the period between December twenty-eighth and January first.

A person who is issued a license under § 34-37-2.2 may sell fireworks to out-of-state residents for the periods designated in § 34-37-2.2. A person who is issued a late season license under § 34-37-2.2 or a retailer license under § 34-37-2 may sell any fireworks to residents and nonresidents during the period from December twenty-eighth to January first.

A retail licensee may not make any sale of fireworks between the hours of twelve a.m. and seven a.m.

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

34-37-10.1. A person is guilty of a Class 1 misdemeanor if the person sells any fireworks from a motor vehicle.

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

34-37-10.2. If the general public occupies a structure where fireworks are being displayed or sold, two or more approved exits shall be provided. If the general public does not occupy the structure that displays or sells fireworks, one or more approved exits shall be provided. A violation of this section is a Class 1 misdemeanor.

For the purposes of this section, an approved exit is a continuous and unobstructed means of egress to a public way. Exit doors shall be of the pivoted or side-hinged swinging type and shall

swing in the direction of exit travel. Exit doors shall be able to be opened from the inside without the use of a key or any special knowledge or effort.

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

34-37-10.3. At any location where consumer fireworks are being offered for sale, the licensee shall prominently post a sign in red letters not less than three inches in height that reads, "NO SMOKING WITHIN FIFTY FEET." A person is guilty of a Class 1 misdemeanor if the person smokes within fifty feet of a location under this section.

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

34-37-10.4. At any location where consumer fireworks are being offered for sale the licensee shall prominently post a sign that states no fireworks may be ignited or used within three hundred feet of the licensee's premises. A person is guilty of a Class 1 misdemeanor if the person ignites or uses any fireworks within three hundred feet of a location under this section.

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

34-37-10.5. A person is guilty of a Class 1 misdemeanor if the person has any device, apparatus, receptacle, or burner from which an open flame is emitted on the premises of a retail licensee. A retailer licensee shall keep and maintain upon the retailer's premises a fire extinguisher bearing a rated capacity of at least 2-A.

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

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

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

No person may sell or cause to be sold, use or cause to be used, any pyrotechnics of any description or any consumer fireworks within any national forest, national park, state forest, or any land owned or leased by the Department of Game, Fish and Parks without written authorization by the department permitting the use of pyrotechnics or consumer fireworks, pyrotechnic displays, sales, or exhibits on land owned or leased by the department, unless the department is otherwise prohibited by law from providing the written authorization.

A violation of this section is a Class 2 misdemeanor. A second or subsequent violation of this section is a Class 1 misdemeanor.

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

34-37-12. Nothing in this chapter prohibits a wholesaler licensee or manufacturer from storing, selling, shipping, or otherwise transporting, fireworks to any person outside this state, consistent with 18 U.S.C. § 836, effective on January 1, 2019. Any delivery of fireworks may be made by a certified motor carrier as specified in chapter 49-28 or in a vehicle owned or leased by a wholesaler licensee, manufacturer, or fireworks permit holder. A violation of this section is a Class 1 misdemeanor.

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

34-37-12.1. A wholesaler licensee shall retain written evidence of the delivery of fireworks to any person outside this state. Evidence under this section may include the fireworks license or permit number and address, a bill of lading, or delivery receipt for delivery by a certified motor carrier if the purchaser is unlicensed. A violation of this section is a Class 1 misdemeanor.

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

34-37-13. Nothing in this chapter prohibits the use of display fireworks at a public or private event. A person using display fireworks at a public or private event shall obtain a permit from the governing body of the municipality, township, or county where the display fireworks are to be used. Display fireworks may only be purchased from a wholesaler licensee. Use of display fireworks at

a public or private event shall comply with the National Fire Protection Association Standard 1123, 2018 edition. A violation of this section is a Class 1 misdemeanor.

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

Nothing in this chapter prohibits the use of consumer fireworks at a public or private event. A person using consumer fireworks at a public or private event outside the periods permitted by § 34-37-16.1 shall obtain a permit from the governing body of the municipality, township, or county where the consumer fireworks are to be used. Consumer fireworks may only be purchased from a retailer licensee or wholesaler licensee. Use of consumer fireworks at a public or private event shall comply with the National Fire Protection Association Standard 1124, 2006 edition. A violation of this section is a Class 1 misdemeanor.

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

34-37-15. For any licensee who is found guilty of a second or subsequent violation under this chapter, the department may revoke or suspend the license and refuse to renew the license upon its expiration.

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

34-37-16. A person is guilty of a Class 1 misdemeanor if the person possesses any fireworks, other than those enumerated in § 34-37-5. If any person possesses any fireworks in violation of § 34-37-5, a warrant may be issued for the seizure of the fireworks. Any fireworks seized under this section shall be safely stored to be used as evidence.

Upon conviction of any person charged under this section, any seized fireworks shall be destroyed. If a person charged under this section is found not guilty, any seized fireworks shall be returned to the person.

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

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

34-37-16.1. Except as otherwise provided in this chapter, a person is guilty of a Class 2 misdemeanor if the person uses consumer fireworks except during the period from June twenty-seventh to the first Sunday after July fourth, and during the period beginning December twenty-eighth to January first.

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

34-37-16.2. The provisions of §§ 34-37-2 and 34-37-16.1 do not apply to:

- (1) Smoke effects if the smoke effects do not fly, travel, or explode;
- (2) Single-shot parachute pieces without a flare; or
- (3) Any fireworks classified as a novelty under section 3.2 of the American Pyrotechnics Association Standard 87-1, 2001 edition.

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

34-37-17. The Department of Public Safety, together with any law enforcement agency of the state or any political subdivision of the state, shall enforce this chapter.

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

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

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

Section 27. That § 34-37-5 be amended to read:

34-37-5. Permissible fireworks are consumer fireworks as enumerated in Chapter 3 of the American Pyrotechnics Association Inc., Standard 87-1, 2001 edition and that comply with labeling regulations promulgated by the U.S. Consumer Product Safety Commission 16 C.F.R. 1507 as in effect on January 1, 2019. The use of fireworks that are not permissible, unless authorized in this chapter, is a Class 1 misdemeanor.

Section 28. That § 34-37-9 be amended to read:

34-37-9. Any person licensed under the provisions of this chapter shall comply with the

provisions of § 10-45-45. Each invoice for fireworks purchased is subject to inspection by the Department of Public Safety. The invoice shall show the license number of the wholesaler from which the purchase was made. A violation of this section is a Class 1 misdemeanor.

Section 29. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

An Act to revise certain provision regarding the regulation of fireworks and to declare an emergency.

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I certify that the attached Act originated in the

SENATE as Bill No. 56

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 56
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State