

# State of South Dakota

SEVENTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 1997

400A0307

## SENATE BILL NO. 78

Introduced by: The Committee on Health and Human Services at the request of the Department  
of Commerce and Regulation

1 FOR AN ACT ENTITLED, An Act to revise license requirements for the sale of nonprescription  
2 drugs and repeal licensure requirements for the sale of household remedies.

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

4 Section 1. That § 36-11-2 be amended by adding thereto NEW SUBDIVISIONS to read as  
5 follows:

6 "Nonprescription drugs," drugs which are labeled for use by the general public in accordance  
7 with § 502 of the Federal Food, Drug and Cosmetic Act as amended through January 1, 1997,  
8 and may be sold without a prescription drug order in accordance with § 503 of the Federal Food,  
9 Drug and Cosmetic Act as amended through January 1, 1997. The term does not include drugs  
10 which are required by federal law to bear the statement, "Caution: federal law prohibits  
11 dispensing without prescription," drugs intended for human use by hypodermic injection, or  
12 animal remedies regulated by chapter 39-18.

13 "Retail place of business," any place where merchandise is sold at retail and from which  
14 original packages of nonprescription drugs are sold or taken to be sold at retail.

15 Section 2. That subdivision (8) of § 36-11-11 be amended to read as follows:

1 (8) Pertaining to the sale of ~~animal medicines which are patent and proprietary medicines,~~  
2 ~~provided that such regulation shall be subject to the approval of the animal industry~~  
3 ~~board~~ nonprescription drugs;

4 Section 3. That § 36-11-51 be amended to read as follows:

5 36-11-51. ~~The board shall issue licenses authorizing the sale of patent or proprietary~~  
6 ~~medicines in the original packages by persons other than pharmacists. Licenses shall be issued~~  
7 ~~to persons of good moral character, over eighteen years of age, and~~ Any retail place of business  
8 other than a licensed pharmacy shall obtain a license from the board to sell nonprescription  
9 drugs. Any person who have has a retail place of business shall apply for a license on a form  
10 prescribed by the board. The person shall be at least eighteen years of age and of good moral  
11 character to qualify for a license. The license shall be issued upon application and payment of a  
12 fee of ~~six~~ twenty dollars annually. ~~Persons~~ Any person who ~~keep~~ keeps for sale or ~~sell~~ patent and  
13 proprietary medicines sells nonprescription drugs without a license ~~are~~ is guilty of a Class 2  
14 misdemeanor. ~~In this section, "retail place of business," means a place where merchandise is sold~~  
15 ~~at retail.~~ The license shall be in effect for one year commencing July first and ending on June  
16 thirtieth following the date of the application and shall apply to the location for which it is issued  
17 and shall be posted in a conspicuous place at such location. ~~In this section, "patent or proprietary~~  
18 ~~medicines," means any medicine or drug which is prepared or compounded in proprietary form~~  
19 ~~and sold at retail in the original packages and where the sale thereof is unregulated under the~~  
20 ~~laws of this state.~~

21 Section 4. That § 36-11-52 be amended to read as follows:

22 36-11-52. Nothing in this chapter ~~shall~~ may be construed to prevent the sale, at retail, of  
23 ~~household remedies by licensed dealers in household remedies as provided in §§ 36-11-53 to~~  
24 ~~36-11-60, inclusive~~ nonprescription drugs by a pharmacy nor to prevent the sale of a  
25 nonprescription drug in the original package by any retail place of business licensed by the board

1 to sell nonprescription drugs.

2 Section 5. That § 36-11-53 be repealed.

3 ~~—36-11-53. For the purpose of §§ 36-11-52 to 36-11-60, inclusive:~~

4 ~~—(1)—"Community" means a trading center where a grocery or general merchandise store~~  
5 ~~is located.~~

6 ~~—(2)—"Dealer in household remedies" means a person licensed by the state board of~~  
7 ~~pharmacy to sell household remedies.~~

8 ~~—(3)—"Household remedies" means only those United States Pharmacopoeia and National~~  
9 ~~Formulary drugs and medicines or combinations thereof in common use which have~~  
10 ~~been designated by the state board of pharmacy as such.~~

11 ~~—It is a Class 2 misdemeanor for any person not a licensed dealer in household remedies and~~  
12 ~~not otherwise qualified by law to sell, offer for sale, vend or distribute any household remedy~~  
13 ~~within this state.~~

14 Section 6. That § 36-11-54 be repealed.

15 ~~—36-11-54. Any person, not a registered pharmacist, conducting a retail place of business in~~  
16 ~~a municipality or community in this state, being a citizen of the United States, of good moral~~  
17 ~~character and temperate habits, not less than eighteen years of age, who shall, with his~~  
18 ~~application, submit evidence satisfactory to the state board of pharmacy that a licensed~~  
19 ~~pharmacist is not available, or that the business of such applicant will not warrant the~~  
20 ~~employment of a licensed pharmacist, and that a licensed dealer in household remedies is needed~~  
21 ~~for the convenience and health of residents in his trade territory, and who shall pass a satisfactory~~  
22 ~~examination prescribed by the state board of pharmacy on the retailing and use of such household~~  
23 ~~remedies as the applicant may select, shall be entitled to a license as a dealer in such selected~~  
24 ~~household remedies.~~

25 Section 7. That § 36-11-55 be repealed.

1 ~~— 36-11-55. Every person who applies for registration as a licensed dealer in household~~  
2 ~~remedies shall appear in person before the state board of pharmacy or designated representative~~  
3 ~~of the said board, for examination.~~

4 Section 8. That § 36-11-56 be repealed.

5 ~~— 36-11-56. Upon a form prescribed by the state board of pharmacy and the payment of a fee~~  
6 ~~of ten dollars, the state board of pharmacy shall issue to dealers in household remedies a license~~  
7 ~~to sell such selected household remedies within a municipality or community in this state. Such~~  
8 ~~license shall authorize the dealer in household remedies named therein to sell in such locality, but~~  
9 ~~not elsewhere, and under such regulations and restrictions as the state board of pharmacy may~~  
10 ~~from time to time adopt, such selected household remedies in such manner and form as may be~~  
11 ~~hereafter authorized by said board.~~

12 Section 9. That § 36-11-57 be repealed.

13 ~~— 36-11-57. Each license as a dealer in household remedies shall expire on the last day of June~~  
14 ~~following the date of issue and may be renewed upon the payment of the annual fee. Each license~~  
15 ~~or the renewal thereof shall be conspicuously displayed in the place of business to which it~~  
16 ~~applies.~~

17 Section 10. That § 36-11-58 be repealed.

18 ~~— 36-11-58. Each license as a dealer in household remedies may be transferred to another~~  
19 ~~licensed dealer in the same selected household remedies, without payment of an additional fee,~~  
20 ~~provided an application for the transfer of said license is made upon a form prescribed by the~~  
21 ~~state board of pharmacy and filed with the secretary thereof not less than ten days before the~~  
22 ~~transfer of management of the business is made.~~

23 Section 11. That § 36-11-59 be repealed.

24 ~~— 36-11-59. Whenever the business of any licensed dealer in household remedies warrants the~~  
25 ~~employment of a licensed pharmacist, such licensed dealer if he or his predecessor in interest has~~

1 ~~theretofore been registered as a pharmacy shall, and if conducting a general merchandise business~~  
2 ~~may, employ a licensed pharmacist and establish a registered pharmacy as provided in this~~  
3 ~~chapter.~~

4 Section 12. That § 36-11-60 be amended to read as follows:

5 36-11-60. The state board of pharmacy may, in compliance with chapter 1-26, deny, suspend,  
6 or revoke any license as a ~~dealer in household remedies~~ to sell nonprescription drugs obtained  
7 by false representations made in the application therefor, or for violation of law or rules and  
8 regulations adopted by ~~said~~ the board.