

SOUTH DAKOTA

34-37-1. Definition of terms.

Terms used in this chapter mean:

(1) "Consumer fireworks" fireworks designed primarily to produce visible effects by combustion, that must comply with the construction, chemical composition, and labeling regulations promulgated by the U.S. Consumer Product Safety Commission (CFR Title 16--Commercial Practices, Part 1507), effective January 1, 1998 and that are enumerated in the American Pyrotechnics Association Inc., Standard 87-1, April, 1993 edition;

(2) "Retailer" includes every person engaged in the business of making sales of fireworks at retail;

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

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

(5) "Wholesaler" any person engaged in the business of making sales of fireworks to retailers for resale to consumers.

34-37-2. License required for sale of fireworks-Application-Fee-Duration-Display.

No person may sell, hold for sale, or offer for sale, as wholesaler or retailer any fireworks in this state unless such person has first obtained a license as a wholesaler or retailer. Application for a license as wholesaler or retailer shall be made to the Department of Public Safety on forms to be prescribed by it. Each application shall be accompanied by the required fee, which shall be five hundred dollars for a wholesaler's license, and twenty-five dollars for a retailer's license. Each application for a license as a retailer in any year must be received by the department no later than the fifteenth day of June of that year. Any application received after that date shall be denied by the department and returned to the applicant together with any application fee submitted. The license expires on the fourteenth day of June annually and is renewable annually. The license shall at all times be displayed at the place of business of the holder thereof. The funds received under the provisions of this section shall be deposited in the general fund.

34-37-2.1. Minimum age for sale or dispensing of fireworks.

No person under the age of eighteen years shall be licensed under this chapter and no licensee shall employ or permit any individual under the age of eighteen to sell, dispense, or offer for sale, within the State of South Dakota any permissible fireworks enumerated in this chapter.

34-37-2.2. Sixty-six day and fifty-seven day special retail licenses-Copy of law and map provided with sale.

In addition to licenses available in § 34-37-2, two special retail licenses may be obtained for sales to out-of-state residents. The first is a sixty-six day license from the first day of May through the fifth day of July with a required fee of one thousand dollars. The second option is a fifty-seven day license from the sixth day of July through the thirty-first day of August with a required fee of one thousand dollars. The fifty-seven day special retail license also allows the retail sale of fireworks to residents and nonresidents during the period beginning December twenty-eighth and extending through January first, as provided in § 34-37-10. A copy of the South Dakota law which prohibits the discharge of fireworks and a map of the Black Hills Forest Fire Protection District shall be provided with every sale of fireworks under a license granted pursuant to this section, except for sales occurring from the twenty-seventh day of June through the fifth day of July.

34-37-3. Prohibited firecrackers-Manufacture or use as misdemeanor.

Any person who manufactures, uses, or disposes to another, with or without consideration, so as to endanger the safety of others, any consumer fireworks made wholly or in part of dynamite, nitroglycerin, or giant powder, is guilty of a Class 1 misdemeanor.

34-37-4. Possession, sale, or use of unauthorized fireworks unlawful.

Except as provided in § 34-37-12, no person shall possess, sell, offer for sale, bring into this state, or discharge any pyrotechnics commonly known as fireworks, other than permissible fireworks.

34-37-5. Permissible fireworks enumerated and described.

Permissible fireworks are consumer fireworks as enumerated in Chapter 3 of the American Pyrotechnics Association Inc., Standard 87-1, 1993 edition and that comply with labeling regulations promulgated by the U.S. Consumer Product Safety Commission (CFR Title 16--Commercial Practices Part 1507), effective January 1, 1998.

34-37-6. Examination of fireworks by department.

Before any additional permissible fireworks not enumerated in § 34-37-5 may be sold, held for sale, or offered for sale in this state, they shall be submitted to the Department of Public Safety for examination to determine their compliance with CFR Title 16, Commercial Practices, Part 1507, effective January 1, 1998, and the American Pyrotechnics Association Inc., Standard 87-1, 1993.

34-37-7. Exemptions from chapter.

Nothing in this chapter shall be construed as applying to toy paper caps containing not more than twenty-five hundredths of a grain of explosive composition per cap, and to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, nor applying to the military or navy forces of the United States or of this state, or to peace officers, nor as prohibiting the sale or use of blank cartridges for ceremonial, or theatrical, or athletic events.

34-37-8. Importation by unlicensed persons prohibited-Retailer to purchase from licensed wholesaler.

No person who is not licensed as a wholesaler or retailer shall bring any fireworks into this state. No retailer shall sell any fireworks which have not been purchased from a wholesaler licensed under the provisions of this chapter.

34-37-9. Purchase invoices held by licensee-Inspection by department.

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.

34-37-10. Period and times during which retail sales permitted.

No person, firm, or corporation may offer fireworks for sale to individuals at retail except during the period beginning June twenty-seventh and extending through July fifth and during the period beginning December twenty-eighth and extending through January first. Any person obtaining the special sixty-six day or the special fifty-seven day retail licenses may sell fireworks to out-of-state residents for the periods of time designated in § 34-37-2.2. Retail sales to residents and nonresidents during the December twenty-eighth through January first period may only be made by holders of a special fifty-seven day retail license established pursuant to § 34-37-2.2. Retail sales are not permitted after twelve a.m. or prior to seven a.m. from the twenty-seventh day of June through the fifth day of July and from the twenty-eighth day of December through the first day of January.

34-37-10.1. Sale from vehicle prohibited.

No retailer shall sell fireworks from any motor vehicle.

34-37-10.2. Exits from structures where fireworks sold.

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 a structure that displays or sells fireworks, one or more approved exits shall be provided.

34-37-10.3. "No smoking" signs where fireworks sold.

Signs must be prominently posted on all displays of fireworks offered for sale at retail, which shall read in red letters not less than three inches in height, "NO SMOKING WITHIN TWENTY-FIVE FEET."

34-37-10.4. Minimum distance for igniting of fireworks.

In all buildings or structures wherein fireworks are being offered for sale the licensee shall have a sign prominently posted stating that no fireworks can be ignited or discharged within one hundred fifty feet of the licensee's premises.

34-37-10.5. Open flame prohibited where fireworks sold-Fire extinguisher required.

No licensee may have on the premises any device, apparatus, receptacle, or burner from which an open flame is emitted. Each licensee shall in the conduct of the business of selling fireworks keep and maintain upon the premises a fire extinguisher bearing a rated capacity of at least 2-A.

34-37-10.6. Approved exit.

For the purposes of this chapter, 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 openable from the inside without the use of a key or any special knowledge or effort.

34-37-11. Sale or use prohibited in forests, parks and other specified areas-Exception-Violation as misdemeanor.

No person may sell or cause to be sold, discharge, or cause to be discharged, any pyrotechnics of any description or any consumer fireworks within the exterior boundaries of the Black Hills Forest Fire Protection District, and no person may discharge or cause to be discharged 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, discharge, or cause to be discharged, 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. However, the Department of Game, Fish and Parks may, by written authorization, permit the discharge of pyrotechnics or consumer fireworks, pyrotechnic displays, sales, or exhibits on land owned or leased by the department unless otherwise prohibited by statute. Any violation of this section which occurs on any land owned or leased by the Department of Game, Fish and Parks is a Class 2 misdemeanor. Any subsequent violation of this Section is a Class 1 misdemeanor.

34-37-12. Exportation of fireworks from state.

Nothing in this chapter shall prohibit licensed wholesalers or manufacturers from storing, selling, shipping, or otherwise transporting, permissible fireworks to any person or entity outside of the State of South Dakota if the sale and transportation are consistent with 18 U.S.C. § 836, effective on January 1, 1983. The delivery of such fireworks shall only be made by a properly certified motor carrier as specified in chapter 49-28 or by licensed fireworks wholesalers or manufacturers or fireworks permit holders in vehicles owned or leased by them.

34-37-12.1. Evidence of delivery outside of state.

Written evidence of the delivery of permissible fireworks to any person or entity outside of the State of South Dakota shall be retained by the wholesaler. Acceptable evidence includes the fireworks license or permit number and address, a bill of lading, or delivery receipt for delivery by a properly certified motor carrier if purchaser is unlicensed.

34-37-14. Violation of chapter as misdemeanor.

Except where a punishment is specifically provided, a violation of the provisions of this chapter is a Class 1 misdemeanor.

34-37-15. Subsequent conviction as ground for revocation or suspension of license.

If a person is found guilty of violating any of the provisions of this chapter a subsequent time, such violation may constitute cause for revocation or suspension of the license held by that person and for refusal to renew license upon expiration thereof.

34-37-16. Possession of unauthorized fireworks unlawful-Seizure and destruction.

No person shall possess any fireworks, other than those enumerated in § 34-37-5. If any person shall have in his possession any fireworks in violation of said section, a warrant may be issued for the seizure of such fireworks, and such fireworks shall be safely kept to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the fireworks shall be returned to the person in whose possession they were found, provided, however, that nothing in this chapter shall apply to the transportation of fireworks by regulated carriers.

34-37-16.1. Period during which discharge of fireworks permitted-Violation as misdemeanor.

Except as otherwise provided in this chapter, it is unlawful for a person to discharge fireworks in this state except during the period beginning June twenty-seventh and extending through July fifth and during the period beginning December twenty-eighth and extending through January first. A violation of this section is a Class 2 misdemeanor

34-37-17. Enforcement by department and law enforcement officers.

The Department of Public Safety, together with all law enforcement officers of the state and its political subdivisions, shall be charged with the enforcement of the provisions of this chapter.

34-37-18. Record forms prescribed by secretary.

Records required under provisions of this chapter shall be kept on forms prescribed by the secretary of public safety.

34-37-19. County regulation of fireworks-Use of South Dakota grassland fire danger index.

Any county may, by resolution, regulate or prohibit the use of fireworks outside the boundaries of any municipality in those areas where the fire danger, as determined by use of the South Dakota grassland fire danger index published by the National Weather Service, has reached the extreme category in that county during the period from June twentieth to July second, inclusive, and during the period from December twenty-eighth to January first, inclusive. During any such period, the county's action is suspended if the grassland fire danger index falls below the very high category and again becomes effective if the grassland fire danger index reaches the extreme category.