

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

480B0171

SENATE COMMERCE AND ENERGY ENGROSSED NO. **SB 56** - 1/24/2019

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.

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), effective January 1, ~~1998~~ 2019,
10 and that are ~~enumerated in~~ classified as 1.4G, UN0336 pursuant to the American
11 Pyrotechnics Association Inc., Standard 87-1, April, 1993 2001 edition;
- 12 (2) "Display fireworks," any fireworks that are normally used at a public event and
13 classified as 1.3G, UN0335 pursuant to the American Pyrotechnics Association Inc.,
14 Standard 87-1, 2001 edition. These fireworks are those regulated by the Bureau of



1 Alcohol, Tobacco, Firearms and Explosives and not intended for consumer use;

2 (3) "Public event," the use of any fireworks for commerce. The term includes the use of
3 any fireworks that takes place on public property or is sponsored by a public entity;

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

6 (3)(5) "Retail sale," the sale of fireworks to any person not licensed to sell fireworks or for
7 any purpose other than for resale;

8 (4)(6) "Sale," any transfer, exchange, or barter, conditional or otherwise, in any manner or
9 by any means whatsoever, for a consideration;

10 (5)(7) "Wholesaler," any person engaged in the business of making sales of fireworks to
11 retailers for resale to consumers and licensed pursuant to this chapter.

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

13 34-37-2. No person may sell, hold for sale, or offer for sale, as wholesaler or retailer any
14 fireworks in this state unless ~~such~~ the person ~~has first obtained a license~~ is licensed as a
15 wholesaler or retailer. Application for a license as wholesaler or retailer shall be made to the
16 Department of Public Safety on forms to be prescribed by it the department. Each application
17 shall be accompanied by the required fee, ~~which shall be~~. The fee is five hundred dollars for a
18 wholesaler's license; and twenty-five dollars for a retailer's license. A separate twenty-five dollar
19 retailer's license is required for each sales period, as specified in § 34-37-10, during which a
20 retailer may sell fireworks. Each application for a twenty-five dollar retailer's license in any year
21 ~~must~~ shall be received by the department no later than fifteen days before the beginning of the
22 sales period. Any application for a twenty-five dollar retailer's license received after that date
23 shall be denied by the department and returned to the applicant together with any application
24 fee submitted. The twenty-five dollar retailer's license expires sixty days after the end of the

1 sales period and is renewable annually until the application deadline for the corresponding sales
 2 period. The license shall at all times be displayed at the place of business of the holder of the
 3 license. The funds received under the provisions of this ~~section~~ chapter shall be deposited in the
 4 general fund.

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

6 34-37-2.1. No person under the age of eighteen years ~~shall~~ may be licensed under this
 7 chapter ~~and no licensee shall.~~ No licensee may employ or permit any individual person under
 8 the age of eighteen to sell, dispense, or offer for sale, ~~within the State of South Dakota~~ any
 9 permissible fireworks enumerated in this chapter.

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

11 34-37-2.2. In addition to ~~licenses~~ any license available in § 34-37-2, two special retail
 12 licenses may be obtained for sales of fireworks to out-of-state residents. ~~The first is a sixty-six~~
 13 day as follows:

14 (1) Early season license that operates from the first day of May through the fifth day of
 15 July ~~May first to June twenty-sixth, inclusive,~~ with a required fee of one thousand
 16 dollars. ~~The second option is a fifty-seven day; or~~

17 (2) Late season license that operates from the sixth day of July through the thirty-first
 18 day of August ~~July sixth to August thirty-first, inclusive,~~ with a required fee of one
 19 thousand dollars. ~~The fifty-seven day special retail~~ late season license also allows the
 20 ~~retail sale of the retailer to sell~~ fireworks to residents and nonresidents ~~during the~~
 21 ~~period beginning~~ from December twenty-eighth and extending through to January
 22 first, inclusive, as provided in § 34-37-10.

23 ~~A~~ Any special retail licensee located west of the Missouri River shall provide the purchaser
 24 a copy of the South Dakota law which that prohibits the discharge use of fireworks and a map

1 of the Black Hills Forest Fire Protection District ~~shall be provided with every~~ with each sale of
2 fireworks under a license granted pursuant to this section, except for ~~sales occurring from the~~
3 ~~twenty-seventh day of June through the fifth day of July~~ any sale of fireworks that occurs from
4 June twenty-seventh to July fifth, inclusive.

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

6 34-37-4. Except as provided in § 34-37-12, no person ~~shall~~ may possess, sell, offer for sale,
7 bring into this state, or ~~discharge~~ use any pyrotechnics commonly known as fireworks, other
8 than ~~permissible~~ consumer fireworks.

9 Section 6. That § 34-37-5 be amended to read:

10 34-37-5. ~~Permissible~~ Consumer fireworks are ~~consumer~~ any fireworks as enumerated in
11 ~~Chapter~~ chapter 3 of the American Pyrotechnics Association Inc., Standard 87-1, ~~1993~~ 2001
12 edition and that comply with ~~labeling~~ regulations promulgated by the U.S. Consumer Product
13 Safety Commission (C.F.R. Title 16--Commercial Practices Part 1507), effective January 1,
14 ~~1998~~ 2019.

15 Section 7. That § 34-37-6 be amended to read:

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

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

23 34-37-8. No person who is not licensed as a wholesaler or retailer ~~shall~~ may bring any
24 fireworks into this state for resale. No retailer ~~shall~~ may sell any fireworks ~~which~~ that have not

1 been purchased from a wholesaler licensed under the provisions of this chapter.

2 Section 9. That § 34-37-10 be amended to read:

3 34-37-10. No person, ~~firm, or corporation~~ may offer fireworks for sale to individuals at retail
4 except during the period ~~beginning from~~ June twenty-seventh ~~and extending through to~~ July
5 fifth, inclusive, and during the period ~~beginning from~~ December twenty-eighth ~~and extending~~
6 ~~through to~~ January first, inclusive. Any person obtaining the ~~special sixty-six day or the special~~
7 ~~fifty-seven day retail licenses~~ early season or late season license may sell fireworks to out-of-
8 state residents for the periods of time designated in § 34-37-2.2. Retail sales to residents and
9 nonresidents ~~during the~~ from December twenty-eighth ~~through to~~ January first period, inclusive,
10 may only be made by ~~holders~~ a holder of a ~~special fifty-seven day retail~~ late season license
11 established pursuant to § 34-37-2.2 ~~and or by holders~~ a holder of a retailer's license as provided
12 in § 34-37-2. Retail sales of fireworks are not permitted ~~after~~ between twelve a.m. ~~or prior to~~
13 and seven a.m. ~~from the twenty-seventh day of June through the fifth day of July and from the~~
14 ~~twenty-eighth day of December through the first day of January.~~

15 Section 10. That § 34-37-10.1 be amended to read:

16 34-37-10.1. No retailer ~~shall~~ may sell fireworks from any motor vehicle.

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

18 34-37-10.3. ~~Signs must be prominently posted on all displays of fireworks offered for sale~~
19 ~~at retail, which shall read~~ At any location where consumer fireworks are being offered for sale
20 the licensee shall prominently post a sign in red letters not less than three inches in height that
21 reads, "NO SMOKING WITHIN ~~TWENTY-FIVE~~ FIFTY FEET." Any person smoking within
22 fifty feet of the premises is guilty of a Class 2 misdemeanor."

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

24 34-37-10.4. ~~In all buildings or structures wherein~~ At any location where consumer fireworks

1 are being offered for sale the licensee shall ~~have a sign prominently posted~~ prominently post a
2 sign stating that no fireworks ~~can~~ may be ignited or ~~discharged~~ used within ~~one hundred fifty~~
3 three hundred feet of the licensee's premises. Any person igniting or using fireworks within
4 three hundred feet of the premises is guilty of a Class 2 misdemeanor.

5 Section 13. That § 34-37-11 be amended to read:

6 34-37-11. No person may sell or cause to be sold, ~~discharge use~~, or cause to be ~~discharged~~
7 used, any pyrotechnics of any description or any consumer fireworks within the exterior
8 boundaries of the Black Hills Forest Fire Protection District, ~~and no~~. No person may discharge
9 use or cause to be ~~discharged~~ used any pyrotechnics or consumer fireworks within a zone that
10 extends three hundred feet beyond the exterior boundaries of the Black Hills Forest Fire
11 Protection District in this state. No person may sell or cause to be sold, ~~discharge use~~, or cause
12 to be ~~discharged~~ used, any pyrotechnics of any description or any consumer fireworks within
13 any national forest, national park, state forest, or any land owned or leased by the Department
14 of Game, Fish and Parks. However, the Department of Game, Fish and Parks may, by written
15 authorization, permit the ~~discharge use~~ of pyrotechnics or consumer fireworks, pyrotechnic
16 displays, sales, or exhibits on land owned or leased by the department unless otherwise
17 prohibited by statute. Any violation of this section which occurs on any land owned or leased
18 by the Department of Game, Fish and Parks is a Class 2 misdemeanor. Any subsequent violation
19 of this Section is a Class 1 misdemeanor.

20 Section 14. That § 34-37-12 be amended to read:

21 34-37-12. Nothing in this chapter ~~shall prohibit licensed wholesalers or manufacturers~~
22 prohibits a licensed wholesaler or manufacturer from storing, selling, shipping, or otherwise
23 transporting, ~~permissible~~ fireworks to any person ~~or entity~~ outside of the ~~State of South Dakota~~
24 state if the sale and transportation ~~are~~ is consistent with 18 U.S.C. § 836, effective on January

1 1, ~~1983~~ 2019. The delivery of ~~such~~ fireworks ~~shall~~ may only be made by a ~~properly~~ certified
 2 motor carrier as specified in chapter 49-28 or in a vehicle owned or leased by a licensed
 3 fireworks ~~wholesalers or manufacturers~~ wholesaler or manufacturer or fireworks permit ~~holders~~
 4 ~~in vehicles owned or leased by them~~ holder.

5 Section 15. That § 34-37-12.1 be amended to read:

6 34-37-12.1. Written evidence of the delivery of ~~permissible~~ fireworks to any person ~~or entity~~
 7 outside of the ~~State of South Dakota~~ state shall be retained by the wholesaler. Acceptable
 8 evidence includes the fireworks license or permit number and address, a bill of lading, or
 9 delivery receipt for delivery by a properly certified motor carrier if the purchaser is unlicensed.

10 Section 16. That § 34-37-13 be amended to read:

11 34-37-13. Nothing in this chapter prohibits the use of ~~public display of~~ display fireworks at
 12 a public or private event. However, any person, ~~association, organization, municipality, county,~~
 13 ~~firm, partnership, or corporation, before making such public display of~~ using display fireworks
 14 at a public or private event shall secure a written permit from the governing board of the
 15 municipality, township, or county where the ~~public display is to be fired, and shall have~~
 16 ~~purchased fireworks for the display from a licensed wholesaler under this chapter. Any public~~
 17 ~~display~~ display fireworks are to be used. The display fireworks shall have been purchased from
 18 a licensed wholesaler. Any use of display fireworks at a public or private event shall comply
 19 with the National Fire Protection Association Standard 1123, ~~1995~~ 2018 edition.

20 Section 17. That chapter 34-37 be amended by adding a NEW SECTION to read:

21 Nothing in this chapter prohibits the use of consumer fireworks at a public or private event.
 22 However, any person using consumer fireworks at a public or private event outside the periods
 23 permitted by § 34-37-16.1 shall secure a written permit from the governing board of the
 24 municipality, township, or county where the consumer fireworks are to be used. The consumer

1 fireworks shall have been purchased from a licensed retailer or wholesaler. Any use of consumer
2 fireworks at a public or private event shall comply with the National Fire Protection Association
3 Standard 1124, 2006 edition.

4 Section 18. That § 34-37-15 be amended to read:

5 34-37-15. If a person is found guilty of violating any ~~of the provisions~~ provision of this
6 chapter a subsequent time, ~~such~~ the violation may constitute cause for revocation or suspension
7 of the license held by that person and for refusal to renew license upon expiration ~~thereof~~.

8 Section 19. That § 34-37-16 be amended to read:

9 34-37-16. No person ~~shall~~ may possess any fireworks, other than ~~those~~ the fireworks
10 enumerated in § 34-37-5. If any person ~~shall have in his possession~~ possesses any fireworks in
11 violation of ~~said section~~ § 34-37-5, a warrant may be issued for the seizure of ~~such~~ the
12 fireworks, ~~and such~~. The seized fireworks shall be safely kept to be used as evidence. Upon
13 conviction of the offender, the fireworks shall be destroyed, ~~but if~~. If the offender is ~~discharged~~
14 not convicted, the fireworks shall be returned to the person ~~in whose possession they were~~
15 ~~found, provided, however, that~~. However, nothing in this chapter ~~shall apply~~ applies to the
16 transportation of fireworks by regulated carriers.

17 Section 20. That § 34-37-16.1 be amended to read:

18 34-37-16.1. Except as otherwise provided in this chapter, it is ~~unlawful for a~~ no person to
19 ~~discharge~~ may use consumer fireworks in this state except during the period beginning from
20 June twenty-seventh ~~and extending through the end of~~ to the first Sunday after July fourth,
21 inclusive, and during the period beginning from December twenty-eighth ~~and extending through~~
22 to January first, inclusive. A violation of this section is a Class 2 misdemeanor.

23 Section 21. That § 34-37-16.2 be amended to read:

24 34-37-16.2. The provisions of ~~§ §§~~ §§ 34-37-2 and 34-37-16.1 do not apply to ~~snakes and~~

1 ~~smoke;~~

2 (1) Smoke effects if ~~they do~~ the smoke effect does not fly, travel, or explode, ~~or to~~

3 ~~single-shot;~~

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

5 (3) Any fireworks classified as a novelty pursuant to section 3.2 of the American

6 Pyrotechnics Association Inc., Standard 87-1, 2001 edition.

7 Section 22. That § 34-37-17 be amended to read:

8 34-37-17. The Department of Public Safety, together with ~~all~~ any law enforcement ~~officers~~

9 officer of the state and its political subdivisions, ~~shall be~~ is charged with the enforcement of the

10 provisions of this chapter.