

SOUTH DAKOTA

S.D. CODIFIED LAWS

Title 7. Counties

7-18A-36. Firearms regulation ordinances prohibited No county may pass any ordinance that restricts possession, transportation, sale, transfer, ownership, manufacture or repair of firearms or ammunition or their components. Any ordinances prohibited by this section are null and void.

Title 8. Townships

8-5-13 Firearms regulation ordinances prohibited No township may pass any ordinance that restricts possession, transportation, sale, transfer, ownership, manufacture or repair of firearms or ammunition or their components. Any ordinances prohibited by this section are null and void.

Title 9. Municipal Government

9-19-20. Firearm restrictions prohibited No municipality may pass any ordinance that restricts possession, transportation, sale, transfer, ownership, manufacture or repair of firearms or ammunition or their components. Any ordinances prohibited by this section are null and void.

Title 22. Crimes

Chapter 1. Definitions and General Provisions

22-1-1. Common-law rule of construction The rule of the common law that penal statutes are to be strictly construed has no application to this title. All its criminal and penal provisions and all penal statutes shall be construed according to the fair import of their terms, with a view to effect their objects and promote justice.

22-1-2. Definition of terms Terms used in this title mean:

(2) "Actor," the person who takes the active part in a transaction;

(4) "Antique firearm," any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured before 1899, and any replica of any firearm described in this section if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or if it uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade;

(6) "Concealed," any firearm that is totally hidden from view. If any part of the firearm is capable of being seen, it is not concealed;

(8) "Controlled weapon" includes a firearm silencer, machine gun, or short shotgun, as those terms are defined in subdivisions (17), (23), and (46) of this section;

(9) "Crime of violence," any of the following crimes or an attempt to commit, or a conspiracy to commit, any of the following crimes: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first or second degree, arson, kidnapping, felony sexual contact as defined in §§ 22-22-7 and 22-22-19.1, felony child abuse as defined in § 26-10-1, or any other felony in the commission of which the

perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device;

(10) "Dangerous weapon" or "deadly weapon," any firearm, knife, stun gun, knife, or device, instrument, material or substance, whether animate or inanimate, which is calculated or designed to inflict death or serious bodily harm, or by the manner in which it is used is likely to inflict death or serious bodily harm; ...

(13) "Destructive device,"

(a) Any bomb, grenade, explosive missile, or similar device or any launching device therefor; or

(b) Any breakable container which contains a flammable liquid with a flashpoint of one hundred and fifty degrees Fahrenheit or less and has a wick or similar device capable of being ignited;

(c) The term does not include "permissible fireworks," defined by § 34-37-5; any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a signaling, pyrotechnic, line throwing, safety or similar device; surplus ordnance sold, loaned or given by the secretary of the army pursuant to the provisions of 10 U.S.C. §§ 4684(2), 4685, or 4686; or any other device which is an antique or is a rifle which the owner intends to use solely for sporting purposes;

(14) "Explosive," any substance, or combination of substances, that is used for the purpose of detonation and which, upon exposure to any external or internal force or condition, is capable of a relatively instantaneous release of gas and heat. The term does not include "permissible fireworks," as defined by § 34-37-5;

(16) "Firearm," any weapon from which a projectile or projectiles may be discharged by gunpowder. As used in this subdivision, the word "gunpowder" includes any propellant that upon oxidization emits heat and light and is commonly used in firearms cartridges;

(17) "Firearm silencer," any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol, or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any such weapon; (23) "Machine gun," any firearm, whatever its size and usual designation, that automatically discharges two or more cartridges by a single function of the firing device;

(32) "Pistol," any firearm with a barrel less than sixteen inches in length, designed to expel a projectile or projectiles by the action of an explosive;

(44) "Seller," any person or employee engaged in the business of selling pistols at retail;

(45) "Short rifle," any rifle having a barrel less than sixteen inches long, or an overall length of less than twenty-six inches;

(46) "Short shotgun," a shotgun having a barrel less than eighteen inches long or an overall length of less than twenty-six inches;

Chapter 14. Unlawful Use of Weapons

22-14-5 Possession of firearm with altered serial number -- Felony -- Exception Any person who possesses any firearm on which the manufacturer's serial number has been

changed, altered, removed or obliterated is guilty of a Class 6 felony.

The provisions of this section do not apply to persons who have applied for a new serial number pursuant to § 23-7-43.

22-14-15. Possession of firearm by one with prior violent crime conviction or certain drug-related conviction -- Felony -- Fifteen-year period No person who has been convicted in this state or elsewhere of a crime of violence or a felony pursuant to § 22-42-2, 22-42-3, 22-42-4, 22-42-7, 22-42-8, 22-42-9, 22-42-10 or 22-42-19, may possess or have control of a firearm. A violation of this section is a Class 6 felony. This section does not apply to any person who was last discharged from prison, jail, probation, or parole more than fifteen years prior to the commission of the principal offense.

22-14-15.1 Possession of firearm by one with prior drug conviction -- Felony -- Exception No person who has been convicted of a felony under chapter 22-42 or of a felony for a crime with the same elements in another state may possess or have control of a firearm. A violation of this section is a Class 6 felony. This section does not apply to any person who was last discharged from prison, jail, probation, or parole, for a felony under chapter 22-42 more than five years prior to the commission of the principal offense and is not subject to the restrictions in § 22-14-15.

22-14-15.2 Possession of firearm by one convicted of crime involving domestic violence -- Misdemeanor -- Civil rights restored -- Repeal of section -- Order restoring rights No person who has been convicted of any misdemeanor crime involving an act of domestic violence may possess or have control of a firearm for a period of one year from the date of conviction. Any violation of this section is a Class 1 misdemeanor. At the end of the one year period, any civil rights lost as a result of this provision shall be restored. Any person who has lost their right to possess or have control of a firearm as a result of a misdemeanor conviction involving an act of domestic violence, prior to the date of the effectiveness of this Act, shall be restored to those civil rights one year after the effective date of this Act. This section shall be repealed on the date when any federal law restricting the right to possess firearms for misdemeanor domestic violence convictions is repealed.

Once eligible under the statute, a person convicted under this section may petition the convicting court for an order reflecting the restoration of any firearm rights lost, if the person has not been convicted within the prior year of a crime for which firearm rights have been lost. A petition filed under this section shall be verified by the petitioner and served upon the states attorney in the county where the conviction occurred. Thirty days after service upon the states attorney, the court shall enter the order, if the court finds that the petitioner is eligible for relief under this section.

22-14-16. Providing firearm to person with known prior violent crime conviction -- Felony Any person who knows that another person is prohibited by § 22-14-15 or 22-14-15.1 from possessing a firearm, and who knowingly gives, loans, or sells a firearm to that person is guilty of a Class 6 felony.

22-14-17 Firearms incapable of discharge exempt

The provisions of this chapter do not apply to any firearm which has been permanently altered so it is incapable of being discharged.

Chapter 14A. Explosives and Destructive Devices

22-14A-4 Sale, transportation, or possession of destructive device – Felony Any person who knowingly sells, offers for sale, transports or possesses any destructive device is guilty of a Class 4 felony. If such person has been previously convicted of a crime of violence in this state or elsewhere, the offense is a Class 3 felony.

22-14A-6. Possession of explosive or device with intent to injure, intimidate, or destroy property -- Felony

Any person who has in his or her possession any explosive or destructive device under circumstances not described in § 22-14A-5, with intent to injure, intimidate, or terrify any person, or with intent to wrongfully injure or destroy any property, is guilty of a Class 3 felony.

22-14A-11. Intentional use of device or explosive to cause serious bodily injury -- Felony

Any person who explodes or ignites any destructive device or explosive with intent to cause serious bodily injury and which results in serious bodily injury is guilty of a Class 2 felony.

22-14A-13 –Unauthorized possession of substances with intent to make destructive device as felony Any person who possesses any substance, material, or any combination of substances or materials, with the intent to make a destructive device without first obtaining a permit from the department of public safety to make such device, is guilty of a Class 5 felony.

22-14A-16. Armed forces, National Guard, law enforcement agencies, and licensed sellers or users of explosives and destructive devices exempt The provisions of this chapter do not apply to the armed forces of the United States, the National Guard, any law enforcement agency or any officer, agent, employee or member thereof acting in a lawful capacity and any person possessing a valid seller's permit or user's permit from the United States federal government for explosive and destructive devices.

22-14A-21 Possession of registered or licensed destructive devices permitted Any person may possess destructive devices that are registered with, or licensed by, the state or federal government pursuant to law.

Title 23. Law Enforcement

Chapter 7. Firearms Control

23-7-1. Definitions applicable to chapter Terms used in this chapter, unless the context otherwise requires, mean:

(1) "Antique firearm," a firearm as defined in subdivision 22-1-2(4);

(2) "Concealed," a firearm as defined in subdivision 22-1-2(6);

(3) "Crime of violence," an action as defined in subdivision 22-1-2(9);

(4) "Pistol," a firearm as defined in subdivision 22-1-2(32);

(5) "Seller," a person as defined in subdivision 22-1-2(44).

23-7-1.1. Antique or nondischargeable firearms accepted This chapter shall not apply

to antique firearms or to firearms which have been permanently altered so they are incapable of being discharged.

23-7-7 Permit to carry concealed pistol -- Valid statewide validity -- Background investigation A permit to carry a concealed pistol shall be issued to any person by the sheriff of the county in which the applicant resides. The permit shall be valid throughout the state and shall be issued pursuant to § 23-7-7.1. Prior to issuing the permit, the sheriff shall execute a background investigation, including a criminal history check, of every applicant for the purposes of verifying the qualifications of the applicant pursuant to the requirements of § 23-7-7.1. For the purposes of this section, a background investigation is defined as a computer check of available on-line records.

23-7-7.1 –Requirements for issuance of temporary permit -- Time requirement -- Appeal of denial

A temporary permit to carry a concealed pistol shall be issued within five days of application to a person if the applicant:

(1) Is eighteen years of age or older;

(2) Has never pled guilty to, nolo contendere to, or been convicted of a felony or a crime of violence;

(3) Is not habitually in an intoxicated or drugged condition;

(4) Has no history of violence;

(5) Has not been found in the previous ten years to be a "danger to others" or a "danger to self" as defined in § 27A-1-1 or is not currently adjudged mentally incompetent;

(6) Has physically resided in and is a resident of the county where the application is being made for at least thirty days immediately preceding the date of the application;

(7) Has had no violations of chapter 23-7, 22-14, or 22-42 constituting a felony or misdemeanor in the five years preceding the date of application or is not currently charged under indictment or information for such an offense;

(8) Is a citizen of the United States; and

(9) Is not a fugitive from justice.

A person denied a permit may appeal to the circuit court pursuant to chapter 1-26.

23-7-7.3. Reciprocity with other states -- Conditions The attorney general shall compare South Dakota permit issuance statutes with the permit issuance statutes in states with which reciprocity is sought or requested in order to determine whether the laws of the other state meet or exceed the requirements of this chapter for the issuance of a permit. The secretary of state may enter into reciprocity agreements with other states after the attorney general has notified the secretary of state that the other states' laws meet or exceed the provisions of this chapter.

23-7-9. Pistol to be delivered wrapped and unloaded--Violation as misdemeanor When a pistol is delivered, the pistol shall be securely wrapped and shall be unloaded. A pistol that is securely wrapped and delivered to a purchaser pursuant to this section is not a concealed weapon under § 22-14-9. A violation of this section is a Class 1 misdemeanor.

23-7-11. --Regulation does not apply to sale of pistols at wholesale Sections 23-7-7 to 23-7-12, inclusive, do not apply to sales at wholesale.

23-7-12. False information or false evidence of identity to secure pistol or permit as felony. No person, in purchasing or other-wise securing delivery of a pistol or in

applying for a permit to carry a concealed pistol, may give false information or offer false evidence of his identity. A violation of this section is a Class 6 felony.

23-7-18. Sale of pistol by retail dealer -- Restrictions -- Felony No pistol shall be sold in violation of any provisions of this chapter, nor shall a pistol be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of his identity. A violation of this section is a Class 1 misdemeanor.

23-7-40. Permissive firearms sales and delivery -- Contiguous states -- Federal law

The state of South Dakota herewith permits residents of contiguous states and residents of this state, not otherwise precluded by any applicable laws, to purchase, sell, trade, convey, deliver, or transport rifles, shotguns, ammunition, reloading components or firearms accessories in South Dakota and in states contiguous to South Dakota. This authorization is enacted to implement for this state the permissive firearms sales and delivery provisions in section 922 (b), (3) (A) of Public Law 90-618 of the 90th United States Congress, second session.

23-7-41. Repeal of federal restrictions -- No effect upon permissive firearms sales and delivery -- Contiguous states In the event that presently enacted federal restrictions on the purchase, sale, trade, delivery, transportation or conveyance of firearms accessories are repealed by the United States Congress or set aside by courts of competent jurisdiction, § 23-7-40 shall in no way be interpreted to prohibit or restrict the purchase, sale, trade, delivery, transportation or conveyance of shotguns, rifles, ammunition, reloading components, or firearms accessories by residents of this state or of contiguous states, or of any other states who are otherwise competent to purchase, sell, trade, deliver, transport or convey rifles, shotguns, ammunition, reloading components or firearms accessories in this state, in contiguous states or other states.

23-7-43. New serial number engraved or stamped on firearm Upon application by an owner of a firearm, the director of the division of criminal investigation shall engrave or stamp a new serial number on any firearm on which the manufacturer's serial number has been changed, altered, removed, or obliterated.

23-7-44 Possession of pistols by minors prohibited -- Misdemeanor No person under the age of eighteen years may knowingly possess a pistol. A violation of this section is a Class 1 misdemeanor.

23-7-45. Exceptions to prohibition against possession of pistols by minors The provisions of § 23-7-44 or to a criminal prosecution brought after transfer pursuant to chapter 26-11, do not apply to any minor who has the consent of the minor's parent or guardian to possess such pistol, and:

(1) That the minor was in the presence of the minor's parent or guardian;

(2) That the minor was on premises owned or leased by the minor or the minor's parent, guardian, or immediate family member;

(3) That the minor was in the presence of a licensed or accredited gun safety instructor; or

(4) That the pistol was being used for farming, ranching, hunting, trapping, target shooting, or gun safety instruction.

23-7-46. --Prohibited transfer of firearms and ammunition to juveniles -- Felony No person may sell, transfer, give, loan, furnish, or

deliver a firearm or firearm ammunition to any person under the age of eighteen years if such person knows or reasonably believes that the minor recipient of the transfer intended, at the time of transfer, to use the firearm or ammunition in the commission or attempted commission of a crime of violence as defined in subdivision 22-1-2 (9). The affirmative defenses contained in chapter 23-7 do not apply to a prosecution under this section. A violation of this section is a Class 5 felony.

Title 37. Trade Regulation

Chapter 17. Sale Of Serially Numbered Appliances And Equipment

37-17-1. –Sale after removal or alteration of serial number as misdemeanor or felony Any person who knowingly sells or offers for sale any ... firearm ... or any mechanical or electrical device, appliance, contrivance, material, piece of apparatus, or equipment, which is identified by a serial number placed thereon by the manufacturer, the original serial number of which has been destroyed, removed, altered, covered, or defaced, is guilty of a Class 2 misdemeanor if

the value of the property is four hundred dollars or less. If the value of the property is more than four hundred dollars, and less than one thousand dollars, such person is guilty of a Class 1 misdemeanor. If the value of the property is one thousand dollars or greater, such person is guilty of a Class 4 felony.

[Current through all 2010 Legislation passed at the 85th Regular Session including Supreme Court Rule 10-07]