

## South Dakota Codified Laws

Current through all legislation from the 2016 Regular Session of the 91st Legislative Assembly and Supreme Court Rule 16-67.

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**7-18A-36. Ordinances restricting firearms, ammunition, or their component prohibited and void.** 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 Township**  
**Chapter 8-5 Board of Supervisors**

**8-5-13. Ordinances regarding firearms and ammunition prohibited – Ordinances null and void.** 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**  
**Chapter 9-19 Ordinances and Resolutions**

**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 22-1 Definitions and General Provisions**

**22-1-2. Definitions.** Terms used in this title mean:

- (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 any firearm silencer, machine gun, or short shotgun, as those terms are defined in subdivisions (17), (23), and (46) of this section;
- (10) "Dangerous weapon" or "deadly weapon,"** any firearm, 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 150 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 weapon, which is redesigned 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 term, 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 2 or more cartridges by a single function of the firing device;
- (32) "Pistol,"** any firearm with a barrel less than 16 inches in length, designed to expel a projectile or projectiles by the action of an explosive;
- (45) "Short rifle,"** any rifle having a barrel less than 16 inches long, or an overall length of less than 26 inches;
- (46) "Short shotgun,"** any shotgun having a barrel less than 18 inches long or an overall length of less than 26 inches;

**Chapter 22-14 Unlawful Use of Weapons**

**22-14-5. Possession of firearm with altered serial number – Penalty – 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.

**22-14-6. Possession of controlled weapon – Penalty – Applicability.** Any person who knowingly possesses a controlled weapon is guilty of a Class 6 felony. However, the provisions of this section do not apply to any person who:

- (1)** Is a law enforcement officer or member of the armed forces of the United States or South Dakota National Guard

acting in the lawful discharge of duties;

(2) Has a valid state or federal license issued pursuant to law for such weapon or has registered such weapon with the proper state or federal authority pursuant to law;

(3) Possesses a controlled weapon briefly after having found it or taken it from an offender; or

(4) Possesses a controlled weapon, except a machine gun or short shotgun, under circumstances which negate any purpose or likelihood that the weapon would be used unlawfully.

**22-14-7. Reckless discharge – Setting of tripwire – Possession of loaded firearm while intoxicated – Penalties.**

Any person who:

(1) Recklessly discharges a firearm or recklessly shoots a bow and arrow;

(2) Sets a device designed to activate a weapon upon being tripped or approached, and leaves the device unmarked or unattended by a competent person; or

(3) Has in personal possession a loaded firearm while intoxicated; is guilty of a Class 1 misdemeanor.

**22-14-8. Possession of concealed weapon with intent to commit felony – Penalty.** Any person who conceals on or about his or her person a controlled or dangerous weapon with intent to commit a felony is guilty of a Class 5 felony.

**22-14-9. Carrying pistol or revolver without a permit – Misdemeanor.** Any person, other than a law enforcement officer as defined in § 22-1-2 acting under color of authority, who:

(1) Carries a pistol or revolver, loaded or unloaded, concealed on or about his or her person without a permit as provided in chapter 23-7; or

(2) Carries a pistol or revolver, loaded or unloaded, concealed in any vehicle while operating the vehicle, without a permit as provided in chapter 23-7; is guilty of a Class 1 misdemeanor.

**22-14-9.1. Possession of concealed weapon without possession of permit – Penalty.** No person may possess a concealed pistol in accordance with chapter 23-7 or this chapter unless that person also has in his or her physical possession a valid South Dakota permit to carry a concealed pistol or a permit effective pursuant to § 23-7-7.3. Any violation of this section is a petty offense. However, if within 24 hours of being charged with a violation of this section, the person produces a permit to carry a concealed pistol which was valid at the time of the alleged offense in the office of the officer making the demand, the charge shall be dismissed.

**22-14-9.2. Permission to carry concealed weapon in another state – Failure to comply with laws of South Dakota – Penalty.** Any person who is permitted to carry a concealed pistol in a state with which the secretary of state has entered into a reciprocity agreement pursuant to §§ 23-7-7.3, 22-14-9.1, 22-14-9.2, 23-7-7, 23-7-7.1, and 23-7-8 may carry a concealed pistol in this state if the permit holder carries the pistol in compliance with the laws of this state. Any violation of this section is a Class 1 misdemeanor.

**22-14-10. Possession of concealed weapon without permit – Unloaded weapons.** The provisions of § 22-14-9 do not apply to any person carrying any unloaded pistol or revolver for the purpose of, or in connection with, any lawful use, if the unloaded pistol or revolver is carried:

(1) In the trunk or other closed compartment of a vehicle; or

(2) In a closed container which is too large to be effectively concealed on the person or within the person's clothing.

The container may be carried in a vehicle or in any other manner.

No person who complies with this section may be required to obtain a permit for the lawful uses described in this section.

**22-14-11. Possession of concealed weapon without permit – Own dwelling or land.** The provisions of § 22-14-9 do not apply to any person who possesses a pistol or revolver in his or her own dwelling house or place of business or on land owned or rented by himself or herself or by a member of his or her household.

**22-14-12. Commission of felony when armed with firearm – Penalty – Consecutive sentence.** Any person who commits or attempts to commit any felony while armed with a firearm, including a machine gun or short shotgun, is guilty of a Class 2 felony for the first conviction. A second or subsequent conviction is a Class 1 felony. The sentence imposed for a first conviction under this section shall carry a minimum sentence of imprisonment in the state penitentiary of 5 years. In case of a second or subsequent conviction under this section such person shall be sentenced to a minimum imprisonment of 10 years in the penitentiary.

Any sentence imposed under this section shall be consecutive to any other sentences imposed for a violation of the principal felony. The court may not place on probation, suspend the execution of the sentence, or suspend the imposition of the sentence of any person convicted of a violation of this section.

**22-14-14. Commission of felony while armed with firearm – Charged as separate count.** A violation of § 22-14-12 shall be charged in the indictment or information as a separate count in addition to the principal felony or attempted felony alleged to have been committed. No offense may be charged under those sections if the use of a dangerous weapon is a necessary element of the principal felony alleged to have been committed or attempted.

**22-14-15. Possession of firearm by person with violent crime conviction or certain drug related conviction – Penalty – 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. The provisions of this section do not apply to any person who was last discharged from prison, jail, probation, or parole more than 15 years prior to the commission of the principal offense.

**22-14-15.1. Possession of firearm by person convicted of possession of controlled substance – Penalty – Time limit.** 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. The provisions of this section do not apply to any person who was last discharged from prison, jail, probation, or parole, for a felony under chapter 22-42 more than 5 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 after conviction of crime involving domestic violence – Misdemeanor – Loss of right to possess firearm – Restoration of 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 1 year from the date of conviction. Any violation of this section is a Class 1 misdemeanor. At the end of the 1 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 July 1, 2005, shall be restored to those civil rights 1 year after July 1, 2005. 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.

**22-14-15.3. Definition of firearm.** For purposes of §§ 22-14-15 and 22-14-15.1, the term, firearm, includes any antique firearm as defined in subdivision 22-1-2(4) and any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, including muzzle loading weapons that are designed to use black powder or a black powder substitute and cannot use fixed ammunition.

**22-14-16. Giving of firearm to person convicted of violent crime or felony – Penalty.** 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. Applicability of chapter to firearm incapable of discharge.** The provisions of this chapter do not apply to any firearm which has been permanently altered so it is incapable of being discharged.

**22-14-20. Discharge of firearm at occupied structure or vehicle – With bodily injury – Penalties.** Any person who willfully, knowingly, and illegally discharges a firearm at an occupied structure or motor vehicle is guilty of a Class 3 felony.

**22-14-21. Discharge of firearm from moving vehicle – With bodily injury – Penalties.** Any person who willfully, knowingly, and illegally discharges a firearm from a moving motor vehicle within the incorporated limits of a municipality under circumstances not constituting a violation of § 22-14-20 is guilty of a Class 6 felony.

**22-14-27. Concealed weapons permit not a defense.** It is not a defense to a prosecution under § 22-14-23 that the defendant was the holder of a concealed weapons permit issued pursuant to §§ 23-7-7 and 23-7-7.1.

## **Chapter 22-14A Explosives and Destructive Devices**

**22-14A-4. Sale or possession of destructive device – Penalty.** 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-5. Carrying or placing explosive or device on vehicle or in baggage–Felony.** Any person who, with intent to injure or to threaten to injure any person or property:

- (1) Carries any explosive or destructive device on any vessel, aircraft, motor vehicle, or other vehicle that transports passengers for hire;
- (2) Places or carries any explosive or destructive device, while on board any such vessel, aircraft, motor vehicle, or other vehicle, in any hand baggage, roll, or other container with intent to conceal the explosive or destructive device;
- (3) Places any explosive or destructive device in any baggage which is later checked with any common carrier; is guilty of a Class 2 felony.

**22-14A-6. Possession of explosive or destructive device with intent to injure – Penalty.** 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. Explosion or ignition of destructive device – Penalty.** 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. Possession of materials to make destructive device – Penalty.** 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-18. Destruction of property with explosive or destructive device – Penalty – Exception.** Any person who intentionally destroys or attempts to destroy by the use of any explosive or destructive device, any property real or personal, not the property of such person, although done under such circumstances as not to endanger the life or safety of any human being, is guilty of a Class 4 felony. This section does not apply to any property destroyed under the direction of any firefighter or any law enforcement officer of any municipality to prevent the spread of a fire.

**22-14A-20. Attempted destruction of property with intent to injure – Penalty.** Any person who takes into, upon, under, against, or near to any occupied or unoccupied structure, motor vehicle, street, highway, railway, bridge, dam, dike, or other structure, any explosive or destructive device, with intent to destroy or injure such structure, under circumstances that if such intent were accomplished, human life or safety would be endangered thereby, is guilty of a Class 4 felony. It is no defense to a prosecution under this section that no damage is done.

**22-14A-25. Possession or use of hoax substance or destructive device – Penalty.** Any person who intentionally possesses, transports, uses, or places any hoax substance or hoax destructive device with the intent of causing anxiety, unrest, fear, or personal discomfort is guilty of a Class 6 felony. A hoax substance is any substance that would cause a person to reasonably believe that it is a dangerous chemical or biological agent, a poison, a harmful radioactive substance, or a similar substance. A hoax destructive device is any device that would cause a person to reasonably believe that it is a dangerous explosive or incendiary device or a similar destructive device.

## **TITLE 23 Law Enforcement Chapter 23-7 Firearms Control**

**23-7-1. Definitions.** 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. Exception for antique or nondischargeable firearms.** 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 – Criminal history check.** 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 – Appeal of denial.** A temporary permit to carry a concealed pistol shall be issued within 5 days of application to a person if the applicant:

- (1) Is 18 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 10 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 30 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 5 years preceding the date of application or is not currently charged under indictment or information for such an offense;
- (8) Is a citizen or legal resident 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.

**23-7-7.2. Liability of issuing authority.** No issuing authority, that has issued the permit in conformity with this chapter, is civilly liable to any injured person or his estate for any injury suffered, including any action for any wrongful death or property damage suffered, because of the issuance of a concealed weapons permit, or temporary permit, to any person.

For purposes of this section, the Division of Criminal Investigation is considered an issuing authority when issuing a certificate of completion pursuant to § 23-7-59.

**23-7-7.3. Reciprocity – 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.

**23-7-7.4. Nonresident concealed pistol permit reciprocity.** Any valid permit to carry a concealed pistol, issued to a nonresident of South Dakota, is valid in South Dakota according to the terms of its issuance in the state of its issue, but only to the extent that the terms of issuance comply with any appropriate South Dakota statute or promulgated rule. However, if the holder of such a nonresident permit to carry a concealed pistol becomes, at any time, a legal resident of South Dakota, the provisions of this section no longer apply.

**23-7-7.5. Active duty military personnel or spouse – Residency requirement for issuance of temporary permit.** Any person who is active duty military, or the spouse of a person who is active duty military, with a home of record in South Dakota is considered to have met the provisions of subdivision 23-7-7.1(6).

**23-7-7.6. Time requirement for INTERPOL check.** Notwithstanding the 5 day requirement provided in § 23-7-7.1, if the background investigation under § 23-7-7 requires an international criminal history check through INTERPOL, the sheriff shall issue a temporary permit to carry a concealed pistol within 3 business days of receiving a response from INTERPOL if the applicant otherwise meets the requirements of § 23-7-7.1.

**23-7-8. Application for permit to carry a concealed pistol, enhanced permit to carry a concealed pistol, or gold card permit to carry a concealed pistol – Form – Requirements – Retention of records. [Effective January 1, 2017]** The application for a permit to carry a concealed pistol, enhanced permit to carry a concealed pistol, or a gold card permit to carry a concealed pistol shall be filed either electronically or in triplicate on a form prescribed by the secretary of state. The application shall require the applicant's complete name, address, occupation, place and date of birth, country of citizenship, physical description, a statement that the applicant has never pled guilty to, nolo contendere to, or been convicted of a crime of violence, a sworn statement that the information on the application is true and correct, and the applicant's signature. If the applicant is not a United States citizen, the application shall require any alien or admission number issued by the United States Bureau of Immigration and Customs Enforcement. If filed in triplicate, the original shall be delivered to the applicant as the temporary permit, the duplicate shall within 7 days be sent by first class mail to the secretary of state who shall issue the official permit, and the triplicate shall be preserved for 5 years by the authority issuing the permit. If the application is filed electronically, 2 copies shall be made and each shall be signed by the applicant. One copy shall be delivered to the applicant as the temporary permit, and the other copy shall be preserved for 5 years by the authority issuing the permit.

**23-7-8.1. Form and contents of permit. [Effective January 1, 2017]** The secretary of state shall prescribe the form of the permit to carry a concealed pistol, the form of the enhanced permit to carry a concealed pistol, and the form of the gold card permit to carry a concealed pistol pursuant to § 23-7-8. Each permit shall list the applicant's name, address, the expiration date, and the issuance date of the permit. The enhanced permit to carry a concealed pistol must clearly designate that the permit is enhanced and the gold card permit must clearly designate that it is a gold card permit to carry a concealed pistol. The holder of a permit may carry a concealed pistol anywhere in South Dakota except in any licensed on-sale malt beverage or alcoholic beverage establishment that derives over 1/2 of its total income from the sale of malt or alcoholic beverages. Nothing in this section prevents law enforcement officers, Department of Corrections employees, parole agents, security guards employed on the premises, and other public officials with the written permission of the sheriff from carrying concealed weapons in the performance of their duties or prevents home or business owners from carrying concealed weapons on their property pursuant to § 22-14-11.

**23-7-8.2. Concealed pistol permit – Duration – Fee – Deposit.** The permit to carry a concealed pistol is valid for a period of 5 years from the date of issuance. The fee for issuing the permit is \$10. The local authority shall collect the fee.

**23-7-8.3. Permit not transferable.** A permit to carry a concealed pistol shall be issued to a specific person only and may not be transferred from one person to another.

**23-7-8.4. Permit revocation – Court order.** A prosecuting attorney, upon application of a law enforcement officer, may apply to the circuit court for an order to show cause why a person's permit to carry a concealed pistol should not be revoked. Upon order of the court, after hearing, the permit shall be revoked and the holder of the permit shall immediately surrender the permit to the sheriff of the county in which he resides.

**23-7-8.6. Keeping records of privately owned firearms prohibited.** No state agency, political subdivision, official, agent, or employee of any state agency or political subdivision may knowingly keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms, or any list, record, or registry of holders of permits to carry a concealed pistol.

**23-7-8.7. Application of firearm confidentiality provisions.** The provisions of § 23-7-8.6 do not apply to:

- (1) Records of firearms that have been used in committing any crime;
- (2) Permits to carry a concealed pistol records relating to any person who has been convicted of a felony;
- (3) Records of the serial numbers of firearms that have been reported stolen that are retained for a period not in excess of 10 days after such firearms are recovered and returned to the lawful owner. However, official documentation recording the theft of a recovered weapon may be maintained no longer than the balance of the year entered and 2 additional years;
- (4) Firearm records that must be retained by firearm dealers under federal law, including copies of such records transmitted to law enforcement agencies;
- (5) Any on duty law enforcement officer while conducting routine verification of the validity of a permit to carry a concealed pistol;
- (6) The secretary of state for the issuance of concealed pistol permits pursuant to chapter 23-7 and any access reasonably necessary to verify information with regard to specific permits individually; and
- (7) The preservation of the triplicate copy of the application for a permit to carry a concealed pistol by the authority issuing the permit as required by § 23-7-8.

**23-7-9. Pistol to be 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 otherwise 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–Misdemeanor.** 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.

**23-7-43. New serial number required where original serial has been changed, altered, removed or obliterated.** 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 pistol by minor prohibited – Penalty.** No person under the age of 18 years may knowingly possess a pistol. A violation of this section is a Class 1 misdemeanor.

**23-7-45. Possession of pistol by minor prohibited – Exceptions.** 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. Transfer of firearm or ammunition to minor – Penalty.** No person may sell, transfer, give, loan, furnish, or deliver a firearm or firearm ammunition to any person under the age of 18 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.

**23-7-47. Report of prosecuting attorney to attorney general of certain names for reporting to National Instant Criminal Background Check System.** The prosecuting attorney shall report to the attorney general for reporting to the National Instant Criminal Background Check System the name and other identifying information of any person who is acquitted of a crime by reason of insanity pursuant to § 23A-26-5 or who is determined to be incompetent to stand trial pursuant to § 23A-10A-4. The prosecuting attorney shall submit the report to the attorney general, in the manner and form prescribed by the attorney general, within 7 working days after the date of the verdict acquitting for insanity or the adjudication of incompetency. The report may not include information relating to the person's diagnosis or treatment.

**23-7-48. Transmission of certain names to the National Instant Criminal Background Check System by attorney general.** The attorney general shall transmit to the National Instant Criminal Background Check System administered by the Federal Bureau of Investigation the name and other identifying information of any person who is prohibited from possessing a firearm under 18 U.S.C. 922(g)(4) because the person was acquitted of a crime by reason of insanity pursuant to § 23A-26-5, the person was determined to be incompetent to stand trial pursuant to § 23A-10A-4, or the



person was involuntarily committed pursuant to chapter 27A-10 based on a finding that the person is a danger to self as defined in subdivision 27A-1-1(7)(a) or a danger to others as defined in subdivision 27A-1-1(6).

**23-7-49. Petition for restoration of right to possess firearm.** A person who is prohibited from possessing a firearm pursuant to the provisions of 18 U.S.C. 922(g)(4) because of a commitment or adjudication that occurred in this state may petition the court of the county in which the person resides for the restoration of the right to possess or receive a firearm. The petitioner shall serve a copy of the petition for restoration on the state's attorney of the county in which the petition is filed. The state's attorney shall represent the state at the hearing on the petition.

**23-7-50. Hearing for restoration of right to possess firearm.** Within 60 days after the date of filing the petition for restoration, the court shall conduct a hearing to determine whether the petitioner's right to possess a firearm should be restored. The record of the hearing is confidential and may only be disclosed to the parties and the Supreme Court in the event of an appeal. If the court finds, based on the preponderance of the evidence presented at the hearing, that the petitioner is not a danger to self as defined in subdivision 27A-1-1(7)(a) or a danger to others as defined in subdivision 27A-1-1(6), the court shall enter an order restoring the petitioner's right to possess a firearm and directing the attorney general to report to the National Instant Criminal Background Check System that the petitioner is no longer prohibited from possessing a firearm under 18 U.S.C. 922(g)(4).

**23-7-51. Report to background check system of restored right to possess firearm.** If the court enters an order restoring the petitioner's right to possess a firearm, the state's attorney shall submit a copy of the order to the attorney general within 7 working days after the order becomes final. The attorney general shall, within 7 working days after receiving the order, report to the National Instant Criminal Background Check System that the petitioner is no longer prohibited from possessing a firearm under 18 U.S.C. 922(g)(4).

**23-7-53. Optional enhanced permit to carry concealed pistol – Application.** An applicant may submit an application to the sheriff of the county in which the applicant resides for an optional enhanced permit to carry a concealed pistol. The application shall include:

- (1) The application for the optional enhanced permit to carry a concealed pistol;
  - (2) A copy of the applicant's fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information, for a state, national, and international criminal history background check;
  - (3) An authorization to run a fingerprint background check;
  - (4) A separate payment for the cost of processing the fingerprint background check;
  - (5) A separate application fee of \$100 for the optional permit to carry a concealed pistol which shall be distributed 50% to the sheriff and 50% to the secretary of state to be used by the secretary of state to administer the concealed carry program; and
  - (6) Proof that the applicant has successfully completed a qualifying handgun course as defined in § 23-7-58 within the preceding 12 months or proof that the applicant is a current or former South Dakota law enforcement officer.
- The sheriff shall forward the copy of the applicant's fingerprints, the applicant's authorization for processing a fingerprint background check, and the payment for the fingerprint background check to the Division of Criminal Investigation for processing.

**23-7-54. Filing application with secretary of state by sheriff – Temporary enhanced permit to carry concealed pistol. [Effective January 1, 2017]**

The sheriff shall retain the application and other documents until the sheriff receives the results of the background checks required pursuant to § 23-7-53. Within 7 days following receipt of a confirmation that the applicant passed each criminal background check required pursuant to this section and § 23-7-53, the sheriff shall file the application with the secretary of state pursuant to § 23-7-8.

If the applicant submits an application pursuant to § 23-7-53, meets the requirements of § 23-7-7.1, is not otherwise prohibited by state law, 18 U.S.C. 922(g) as amended to October 26, 2005, or 18 U.S.C. 922(n) as amended to October 26, 2005, from receiving, possessing, or transporting a firearm, passes the required fingerprint background check, and passes a National Instant Criminal Background Check, the sheriff of the county where the applicant submitted the application shall, within 30 days of application, issue the applicant a temporary enhanced permit to carry a concealed pistol. The temporary permit must clearly designate that the permit is enhanced.

**23-7-55. Enhanced permit to carry concealed pistol valid for five years.** An enhanced permit to carry a concealed pistol is valid for 5 years and is only valid if carried with a government issued form of identification that includes a picture of the permit holder.

**23-7-56. Renewal of enhanced permit to carry concealed pistol.** The holder of the permit may renew the permit through the sheriff of the county where the holder resides for a period beginning 90 days before the permit expires and ending 30 days after expiration of the permit, if the holder pays the \$50 renewal fee and passes a National Instant Criminal Background Check. If the holder of the enhanced permit to carry a concealed pistol does not renew the permit within 30 days of expiration of the permit, the holder must reapply for an enhanced permit to carry a concealed pistol pursuant to § 23-7-53.

**23-7-57. Requirements of chapter for permit to carry concealed pistol apply to enhanced permit to carry concealed pistol. [Effective January 1, 2017]** Unless otherwise specified, the references, rights, and responsibilities in this chapter related to a permit to carry a concealed pistol also apply to an enhanced permit to carry a concealed pistol and a gold card permit to carry a concealed pistol.

**23-7-58. Qualifying handgun course.** A qualifying handgun course is any handgun course that is taught by a National Rifle Association certified instructor who also holds a current certificate of completion from the South Dakota Division of Criminal Investigation on the use of force. The qualifying handgun course must include instruction in each of the following:

- (1) South Dakota law relating to firearms and the use of force;
- (2) The basic concepts of the safe and responsible use of handguns;
- (3) Self-defense principles; and
- (4) Live fire training including the firing of at least 98 rounds of ammunition by the student.

**23-7-60. Application for gold card permit to carry concealed pistol – Contents. [Effective January 1, 2017]** An applicant may submit an application to the sheriff of the county in which the applicant resides for a gold card permit to carry a concealed pistol. The application shall include:

- (1) The application for the gold card permit to carry a concealed pistol;
- (2) A copy of the applicant's fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information, for a state, national, and international criminal history background check;
- (3) An authorization to run a fingerprint background check;
- (4) A separate payment for the cost of processing the fingerprint background check; and
- (5) A separate application fee of \$70 for the gold card permit to carry a concealed pistol.

The sheriff shall forward the copy of the applicant's fingerprints, the applicant's authorization for processing a fingerprint background check, and the payment for the fingerprint background check to the Division of Criminal Investigation for processing.

**23-7-61. Application for gold card permit to carry concealed pistol – Filing with secretary of state. [Effective January 1, 2017]** The sheriff shall retain the application and other documents until the sheriff receives the results of the background checks required pursuant to section 7 of this Act. Within 7 days following receipt of a confirmation that the applicant passed each criminal background check required pursuant to this section and section 7 of this Act, the sheriff shall file the application with the secretary of state pursuant to § 23-7-8.

If the applicant submits an application pursuant to section 1 of this Act, meets the requirements of § 23-7-7.1, is not otherwise prohibited by state law, 18 U.S.C. 922(g) as amended to October 26, 2005, or 18 U.S.C. 922(n) as amended to October 26, 2005, from receiving, possessing, or transporting a firearm, passes the required fingerprint background check, and passes a National Instant Criminal Background Check, the sheriff of the county of the application shall, within 30 days of application, issue the applicant a temporary gold card permit to carry a concealed pistol. The temporary permit must clearly designate that the permit is a gold card permit.

**23-7-62. Renewal of gold card permit to carry concealed pistol. [Effective January 1, 2017]** The holder of the gold card permit to carry a concealed pistol may renew the permit through the sheriff of the county where the holder resides, no earlier than 90 days prior to the expiration of the permit. The holder shall pay a \$70 renewal fee and pass a National Instant Criminal Background Check prior to the renewal of the permit.

**23-7-63. Term of gold card permit to carry concealed pistol. [Effective January 1, 2017]** The gold card permit to carry a concealed pistol is valid for a period of 5 years from the date of issuance.

**23-7-64. Revocation of gold card permit to carry concealed pistol – Grounds – Return of card. [Effective January 1, 2017]** A gold card permit to carry a concealed pistol or an enhanced permit to carry a concealed pistol is automatically revoked upon failure to maintain the requirements under § 23-7-7.1 or if the gold card or enhanced permit holder becomes prohibited by state law, 18 U.S.C. 922(g) as amended to October 26, 2005, or 18 U.S.C. 922(n) as amended to October 26, 2005, from receiving, possessing, or transporting a firearm.

Upon such occurrence, the permit holder shall immediately return the gold card or enhanced concealed pistol permit to the county sheriff of the permit holder's county of residence. If the permit has not been returned, upon learning that a permit holder is ineligible for a gold card or enhanced permit for any violent crime or for a crime punishable by more than 1 year of incarceration, the sheriff of the permit holder's county of residence shall secure the possession and return of the gold card or enhanced permit forthwith. For any other disqualifying offense set forth above the sheriff of the permit holder's county of residence shall secure the possession and return of the gold card or enhanced permit as soon as reasonably possible after being notified of the holders ineligibility. A gold card or enhanced permit holder whose permit has been secured by law enforcement under this section may petition the circuit court for the return of the gold card or enhanced permit if the permit holder believes the gold card or enhanced permit was unlawfully secured. Law enforcement may communicate with federally licensed firearms dealers relative to revoked gold card or enhanced permits.

**23-7-65. Penalty for possession of gold card or enhanced concealed permit by ineligible person. [Effective January 1, 2017]** It is a Class 1 misdemeanor for anyone that is ineligible to possess a gold card or enhanced concealed pistol permit to possess or present a revoked gold card or enhanced concealed pistol permit.

**23-7-66. Surrender of gold card or enhanced concealed pistol permit to sheriff upon conviction of certain crimes. [Effective January 1, 2017]** If any person is convicted of any offense which results in the automatic revocation of a gold card or enhanced permit to carry a concealed pistol under this chapter, the court entering the conviction shall require the surrender to the court of all gold card or enhanced concealed pistol permits held by the person convicted. The court shall forward all gold card and enhanced concealed pistol permits to the sheriff of the defendant's county of residence.

**23-7-67. Failure to surrender gold card or enhanced permit to sheriff – Penalty. [Effective January 1, 2017]** It is a Class 1 misdemeanor for a person to fail or refuse to surrender to the county sheriff of the person's county of residence, upon lawful demand, a gold card or enhanced permit to carry a concealed pistol that has been revoked. If a person fails to return a gold card or enhanced permit to the sheriff of the person's county of residence after lawful demand, the sheriff shall direct a law enforcement officer to secure its possession and return in compliance with section 11 of this Act. The law enforcement officer shall receive \$10.50 plus mileage, at a rate established by the State Board of Finance, to be paid by the violator. Failure to pay the fee and mileage is a Class 2 misdemeanor.

**23-7-68. Periodic background checks of gold card or enhanced concealed permit holders permitted. [Effective January 1, 2017]** Law enforcement may periodically perform a National Instant Criminal Background Check of gold card or enhanced concealed pistol permit holders for the purposes of determining whether the permit holder remains eligible for the permit under § 23-7-7.1, 18 U.S.C. 922(g) as amended to October 26, 2005, and 18 U.S.C. 922(n) as amended to October 26, 2005.

## **TITLE 37 Trade Regulation**

### **Chapter 37-17 Sale of Serially Numbered Appliances and Equipment**

**37-17-1. Sale of goods with serial numbers – Alteration of serial number – Penalty.** Any person who knowingly sells or offers for sale any ... firearm, ... 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 \$400 or less. If the value of the property is more than \$400 and less than \$1,000, such person is guilty of a Class 1 misdemeanor. If the value of the property is \$1,000 or greater, such person is guilty of a Class 4 felony.