



**SOUTH DAKOTA
CODIFIED LAWS
FOR
WILDLAND
FIRE**



August 2009

This booklet is not the official statute, it is to be used as reference only.

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1-41-3.1. Functions of Division of Forestry within Department of Game, Fish and Parks transferred to Department of Agriculture

The functions of forestry pursuant to chapter 41-20 and forest insect and disease control pursuant to chapter 41-21 within the Department of Game, Fish and Parks are hereby transferred under a type 2 transfer, as defined in section 3, chapter 2 of the Session Laws of 1973, to the Department of Agriculture.

Source: SL 1984, ch 276, § 1.

21-10-26. Logging slash defined.

For the purposes of this section and § 21-10-27, the term "logging slash" is logging debris consisting of treetops, limbs, cull logs, and other separate vegetation remaining after harvest which has no commercial value. Logging slash shall be treated by lopping and scattering the vegetation, by removal from the site or by piling and burning. Standards for lopping and scattering, abandonment, removal, or piling and burning, and procedures for the enforcement of those standards, shall be established by rules promulgated by the Division of Forestry pursuant to chapter 1-26.

Source: SL 1989, ch 187, § 1; SL 1990, ch 30, § 21.

21-10-27. Abandonment of logging slash as public nuisance--Penalty.

The abandonment of untreated logging slash in a timber harvesting operation consisting of ten acres or more is a public nuisance. Abandonment of untreated logging slash in a timber harvesting operation of ten acres or more is a Class 1 misdemeanor.

Source: SL 1989, ch 187, § 2.

Chapter 32-31 EMERGENCY VEHICLES

32-31-1	Circumstances under which emergency vehicle may disregard traffic regulations.
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32-31-8	Driving over fire hose prohibited--Violation as misdemeanor.
32-31-9	Repealed.

32-31-1. Circumstances under which emergency vehicle may disregard traffic regulations

The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in § 32-31-2, but subject to the conditions stated in §§ 32-31-3 and 32-31-5.

Source: SDC 1939, § 44.0308 as added by SL 1967, ch 191.

32-31-2. Particular regulations which may be disregarded

The driver of an authorized emergency vehicle may:

- (1) Park or stand, irrespective of the provisions of chapter 32-30;
- (2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
- (3) Disregard regulations governing direction of movement or turning in specified directions.

Source: SDC 1939, § 44.0308 as added by SL 1967, ch 191.

32-31-3. Use of emergency signals required

The exemptions granted in subdivisions 32-31-2(2) and (3) to an authorized emergency vehicle apply only if the vehicle is making use of audible and visual signals meeting the requirements of law. However, the exemption granted in subdivision 32-31-2(1) to an authorized emergency vehicle applies only if the vehicle is making use of visual signals meeting the requirements of law.

Source: SDC 1939, § 44.0308 as added by SL 1967, ch 191; SL 1989, ch 256, § 35; SL 2007, ch 186, § 1.

32-31-4. Speed limits inapplicable under specified conditions.

The speed limit set out in §§ 32-25-1.1 to 32-25-17, inclusive, does not apply to any authorized emergency vehicle responding to an emergency call if the driver sounds an audible siren or air horn or both or displays flashing, oscillating, or rotating beams of red light or combinations of red, blue, or white light visible one hundred eighty degrees to the front of the vehicle. The lights shall be capable of warning the public of the presence of an emergency vehicle under normal atmospheric conditions. The speed limit set out in §§ 32-25-1.1 to 32-25-17, inclusive, does not apply to authorized emergency vehicles operated by law enforcement officers who are measuring the speed of other vehicles by use of the emergency vehicle speedometer. Moreover, the driver of an ambulance who has been certified pursuant to § 34-11-6 may operate the emergency vehicle in excess of the speed limit without audible signals while operating outside the city limits of a municipality.

Source: SDC 1939, § 44.0308; SL 1941, ch 187, § 3; SL 1955, ch 168; SL 1959, ch 251, § 1; SDC Supp 1960, § 44.0303; SL 1963, ch 254; SL 1975, ch 210, § 1; SL 1981, ch 248; SL 1988, ch 266; SL 1993, ch 234, § 2; SL 1994, ch 265; SL 2007, ch 186, § 2.

32-31-5. Duty of operator to use care--Liability for recklessness

The provisions of this chapter shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

Source: SDC 1939, § 44.0320 as added by SL 1959, ch 252, § 1; SL 1963, ch 254; SL 1967, ch 191.

Chapter 34-29B FIRE PREVENTION

- 34-29B-9 Written report to Fire Marshal
 - 34-29B-11.1 Fire Marshal may prohibit or restrict open burning
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34-29B-9. Written report to fire marshal

Every fire shall be reported in writing to the state fire marshal by the fire department officer in whose jurisdiction such a fire has occurred within thirty days of the occurrence. The report shall be in a form prescribed by the state fire marshal and shall contain a statement of all facts relating to the cause, origin, and circumstances of the fire, the extent of the damage, the insurance upon such property and any other information as may be required, including the injury, death, or rescue of persons.

Source: SL 1991, ch 283, § 9.

34-29B-11.1. Fire marshal may prohibit or restrict open burning

The state fire marshal, after consultation with the Governor and the affected board of county commissioners, may prohibit or restrict open burning within a county in order to protect the public health and safety. This section does not limit or affect the laws of this state relating to the authority of counties or other local entities to prohibit or restrict open burning.

Source: SL 2001, ch 187, § 1.

Chapter 34-31

FIRE-FIGHTING EQUIPMENT AND AGREEMENTS

- 34-31-1 County agreements with other agencies for fire protection or purchase of equipment.
- 34-31-2 County agreements with other agencies for training and payment of costs.
- 34-31-3 County tax levy for fire-fighting purposes--Petition to include municipality--Maximum levy--Accumulation from year to year.
- 34-31-4 Municipal contracts with other agencies for fire protection.
- 34-31-5 Validation of prior municipal contracts for fire protection.
- 34-31-6 Shop acquisition, renovation, and distribution of equipment and excess vehicles and property--Costs--Assistance programs--Title.
- 34-31-7 Fire equipment fund created--Revenue.
- 34-31-8 Purchase of motor vehicles and equipment surplus or utilities--Costs--Assistance programs.
- 34-31-9 Repealed.

34-31-1. County agreements with other agencies for fire protection or purchase of equipment

The boards of county commissioners of the counties of this state may, in their discretion, cooperate with the governing bodies of organized townships or municipal corporations within their respective counties, with organized townships or municipal corporations in adjacent counties, the secretary of agriculture or his designee, nonprofit fire protection corporations or associations, and with the boards of county commissioners, organized townships or municipal corporations within adjacent states when reciprocal agreements between the contracting parties have been provided in the purchase and operation of any fire-fighting equipment or fire protection to safeguard the range, farm and forest lands within their respective counties and in prevention of fire nuisances thereon.

Source: SL 1947, ch 46, § 1; SL 1953, ch 19; SDC Supp 1960, § 12.0617-4; SL 1965, ch 26; SL 1969, ch 20; SL 1971, ch 206, § 1; SL 1980, ch 246; SL 1985, ch 15, § 43; SL 2002, ch 252 (Ex. Ord. 02-1), § 9.

34-31-2. County agreements with other agencies for training and payment of costs

The boards of county commissioners of the counties of this state may participate in cooperation with the organized townships and municipal corporations within their respective counties, organized townships and municipal corporations in adjacent counties, or the fire-fighting agencies thereof, and with organized townships, boards of county commissioners or municipal corporations in adjacent states when reciprocal agreements between contracting parties have been provided and with the secretary of agriculture or his designee in the organization and training of rural fire-fighting groups, and in the payment of the operation and maintenance of fire-fighting equipment and in the cost of suppressing fires.

Source: SL 1947, ch 46, § 2; SL 1953, ch 19; SDC Supp 1960, § 12.0617-4; SL 1965, ch 26; SL 1969, ch 20; SL 1971, ch 206, § 2; SL 1985, ch 15, § 44; SL 2002, ch 252 (Ex. Ord. 02-1), § 10.

**34-31-3. County tax levy for fire-fighting purposes--Petition to include municipality--
Maximum levy--Accumulation from year to year**

For the purpose of carrying out the provisions of §§ 34-31-1 and 34-31-2, the board of county commissioners may levy a tax not to exceed sixty cents per thousand dollars of taxable valuation in the county outside the limits of any municipality which provides fire protection service. However, the governing body of any municipality may by ordinance petition the board of county commissioners to include the taxable valuation within the limits of the municipality under the aforementioned levy for county fire protection service. The inclusion of the taxable valuation within the limits of the municipality under the levy for county fire protection service shall be in addition to the municipal levy for fire protection as provided in chapter 9-33. The proceeds of such tax shall be used only for the purposes of §§ 34-31-1 and 34-31-2 in the county in which the tax is levied and unexpended balances at the end of the fiscal year may not revert to the general fund but shall be permitted to accumulate and shall be available for carrying out the purposes of §§ 34-31-1 and 34-31-2. The levy authorized by this section is in addition to the levy authorized in § 10-12-21.

Source: SL 1947, ch 46, § 3; SL 1953, ch 19; SDC Supp 1960, § 12.0617-4; SL 1965, ch 26; SL 1975, ch 223; SL 1976, ch 223, § 1; SL 1985, ch 15, § 45; SL 1985, ch 77, § 23; SL 1989, ch 87, § 15E.

34-31-4. Municipal contracts with other agencies for fire protection

Every municipality shall have power when and to the extent deemed expedient by its governing body, to enter into contracts for the furnishing of fire-fighting equipment and protection for the municipality, with any other political subdivision or subdivisions or with any nonprofit fire protection corporation or association legally organized, provided that any contracts so entered shall extend for a term of not to exceed ten years. The term "nonprofit fire protection corporation or association" as used herein shall include any corporation or association legally organized for the primary purpose of providing fire-fighting equipment and protection for a particular political subdivision or subdivisions, and operated on a nonprofit basis. Such contracts may be entered into with political subdivisions of adjoining states when reciprocal agreements between the contracting parties have been provided.

Source: SDC Supp 1960, § 45.0201-1 (22) as added by SL 1961, ch 244, § 1; SL 1971, ch 206, § 3.

34-31-5. Validation of prior municipal contracts for fire protection

All acts of municipalities of this state prior to March 9, 1961, contracting with other political subdivisions or with nonprofit fire protection corporations or associations for the furnishing of fire-fighting equipment and protection for the municipality are hereby validated.

Source: SL 1961, ch 244, § 2.

34-31-6. Fire equipment shop--Acquisition, renovation, and distribution of equipment and excess vehicles--Assistance programs.

The Department of Agriculture may operate a fire equipment shop to acquire and renovate equipment and distribute fire equipment, supplies and parts, which are not available through the Bureau of Administration, and federal and state excess vehicles and property to counties and rural fire departments or districts for the suppression of rural fires. The department may charge recipients for reasonable direct and indirect costs of providing such rural fire equipment, vehicles, and supplies to counties and rural fire departments or districts. The department may administer federal and state cost assistance programs related to such rural fire protection. The vehicles and property may be provided with clear title by the department to counties and rural fire departments or districts, or the title may be retained by the state or federal government.

Source: SL 1984, ch 277, § 1; SL 1986, ch 285, § 2; SL 2002, ch 252 (Ex. Ord. 02-1), § 11; SL 2004, ch 237, § 1; SL 2009, ch 169, § 1.

34-31-7. Fire equipment fund created--Revenue

There is created in the state treasury the fire equipment fund. All revenues collected from counties and volunteer fire departments pursuant to § 34-31-6 shall be deposited in the fund for the administration of the provisions of § 34-31-6.

Source: SL 1984, ch 277, § 3.

**34-31-8. Purchase of motor vehicles and equipment surplus or utilities
--Costs-- Assistance programs**

Notwithstanding the provisions of § 5-23-2, the Department of Agriculture may purchase used motor vehicles and equipment at auctions of federal and state surplus property, or from public and private utility companies, irrespective of whether or not the sellers of the vehicles are licensed dealers as required by § 5-23-2, for distribution to fire departments or districts for fire suppression. The department may charge recipients for reasonable direct and indirect costs of providing such rural fire equipment, vehicles, and supplies to counties and rural fire departments or districts. The department may administer federal and state cost assistance programs related to such rural fire protection.

Source: SL 1986, ch 285, § 1; SL 2002, ch 252 (Ex. Ord. 02-1), § 12; SL 2004, ch 237, § 2.

34-31-9. Repealed by SL 2004, ch 237, § 3

Chapter 34-31A
RURAL FIRE PROTECTION DISTRICTS

- 34-31A-1 Temporary.
- 34-31A-2 Electors' petition to establish district--County commissioners' resolution to initiate proceedings.
- 34-31A-3 Inclusion of municipality in district.
- 34-31A-4 Contents of petition or resolution--Plat or map.
- 34-31A-5 Examination of petition by auditor--Time and place of hearing.
- 34-31A-6 Auditor's action where two or more counties included--Time and place of joint hearing.
- 34-31A-7 Publication of notice of commissioners' hearing.
- 34-31A-8 County commissioners' hearing on organization of district--Determination and order as to district and boundaries.
- 34-31A-9 Time and place of meeting of resident property owners of district.
- 34-31A-10 to 34-31A-12 Repealed.
- 34-31A-13 Election of first board of directors.
- 34-31A-14 Election of officers.
- 34-31A-15 Terms of directors and officers--Compensation of rural fire protection district director.
- 34-31A-15.1 Filling of vacancy on board of directors.
- 34-31A-16 District as body corporate and politic.
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- 34-31A-41 Notice of commissioners' hearing on annexation petition.
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- 34-31A-45 Deferred compensation program for volunteer firefighters--Establishment and management--Participation optional.
- 34-31A-46 Election by territory residents on annexation of territory.

34-31A-1. Temporary and executed

34-31A-2. Electors' petition to establish district--County commissioners' resolution to initiate proceedings

If an application for organization as provided in § 6-16-2 covering any rural territory is completed and requests to form, organize, establish, equip, and maintain a rural fire protection district, the application shall be filed with the county auditor of each county in which the territory is located. The board of county commissioners in each county where the rural fire protection district would be located may by resolution initiate the formation of the district.

Source: SL 1971, ch 208, § 1; SL 1973, ch 226, § 1; SL 1984, ch 241, § 1; SL 1998, ch 36, § 28.

See N Dak Cent Code, § 18-10-01.

34-31A-3. Inclusion of municipality in district

Any municipality located within the area, whether the municipality has a fire department or not, may be included in the rural fire district if twenty percent of the landowners within the municipality who are also registered voters within the municipality sign a separate petition from that municipality, or if the governing body of the municipality establishes intent by passing a resolution so indicating.

Source: SL 1971, ch 208, § 1; SL 1973, ch 226, § 2; SL 1992, ch 60, § 2; SL 1998, ch 36, § 29; SL 2002, ch 144, § 5.

See N Dak Cent Code, § 18-10-01.

34-31A-4. Contents of petition or resolution--Plat or map

The petition shall contain the suggested name of the proposed district, the area in square miles to be included, and a complete description according to government survey, if possible, of the boundaries of the real properties intended to be embraced in the proposed rural fire protection district. The petitioners shall also present to the county auditor a plat or map showing the suggested boundaries of the proposed district.

Source: SL 1971, ch 208, § 1; SL 1973, ch 226, § 3; SL 1998, ch 36, § 30.

See N Dak Cent Code, § 18-10-01.

34-31A-5. Examination of petition by auditor--Time and place of hearing

Upon the filing of the petition in the office of the county auditor, the county auditor shall determine and certify that the petition has been signed by the number of voters as specified in § 6-16-2. If the petition contains sufficient names, the county auditor shall designate a time and place for the petition or resolution of the county commissioners to be heard by the board of county commissioners.

Source: SL 1971, ch 208, § 2; SL 1973, ch 226, § 4; SL 1998, ch 36, § 31.

See N Dak Cent Code, § 18-10-02.

34-31A-6. Auditor's action where two or more counties included--Time and place of joint hearing

If the proposed district shall be situated within two or more counties, the county auditor of the county wherein the largest area is contained, shall confer with the auditor or auditors of the other counties concerned, and shall obtain a certificate as to the adequacy of the petitions or resolution pertaining to said county or counties, and thereafter he shall designate a time and place for hearing before a joint meeting of the boards of county commissioners of all counties in which the proposed district is to be situated and shall give notice thereof by publication in a manner provided in § 34-31A-7.

Source: SL 1971, ch 208, § 2; SL 1973, ch 226, § 5.

See N Dak Cent Code, § 18-10-02.

34-31A-7. Publication of notice of commissioners' hearing

Notice of the hearing shall be given by publication two weeks in the legal newspapers of each county affected, the last publication appearing at least seven days prior to the hearing. The notice shall include a statement of the proposed boundaries as set forth in the petition.

Source: SL 1971, ch 208, § 2; SL 1992, ch 80, § 211; SL 1998, ch 36, § 32.

See N Dak Cent Code, § 18-10-02.

34-31A-8. County commissioners' hearing on organization of district--Determination and order as to district and boundaries

At the time and place so fixed, the board or boards of county commissioners shall meet, and all persons residing in or owning taxable property within the proposed district shall have an opportunity to be heard respecting the formation of such district or the location of the boundaries thereof. Thereupon the board or boards of county commissioners shall determine whether the proposed district is suited to the general fire protection policy of the county, or each of such counties, as a whole, determine the boundaries of the proposed district, whether as suggested in the petition or otherwise, and make a written order of such determination which shall describe the boundaries of the district and be filed in the office of the county auditor or auditors of each county in which such district is situated.

Source: SL 1971, ch 208, § 2.

See N Dak Cent Code, § 18-10-02.

34-31A-9. Time and place of meeting of resident property owners of district

Following the filing of the order of the board of county commissioners, an election shall be conducted as provided in §§ 6-16-4 to 6-16-6, inclusive.

Source: SL 1971, ch 208, § 3; SL 1992, ch 80, § 212; SL 1998, ch 36, § 33.

See N Dak Cent Code, § 18-10-03

34-31A-10 to 34-31A-12. Repealed by SL 1998, ch 36, §§ 34 to 36

34-31A-13. Election of first board of directors

Permanent organization shall be effected by the election of a board of directors consisting of not less than five residents of the district. If the district includes any incorporated municipalities which are located within the boundaries of the district, no more than two members of a five-member board of directors may be voters who are residents of the incorporated municipal areas of the district if at least forty percent of the registered voters of the district live outside the incorporated areas of the district, and no more than three members of the board of directors may be voters who are residents of the incorporated municipal areas of the district if at least twenty percent of the registered voters of the district live outside the incorporated areas of the district. If the board of directors consists of more than five members, the additional members, as nearly as can be accomplished, shall be in the proportions set forth in this section.

Source: SL 1971, ch 208, § 4; SL 1976, ch 224, § 1; SL 1981, ch 264, § 1; SL 1986, ch 286; SL 1998, ch 36, § 37.

See N Dak Cent Code, § 18-10-04.

34-31A-14. Election of officers

The board of directors shall meet as soon after the organizational meeting as possible to elect a president, a vice-president, and a secretary-treasurer.

Source: SL 1971, ch 208, § 4.

See N Dak Cent Code, § 18-10-04.

34-31A-15. Terms of directors and officers--Compensation of rural fire protection district director

All directors and officers shall be elected for two years and hold office until their successors have been elected and qualified, except that at the first election the vice-president shall be elected as provided in § 34-31A-14 for a one-year term, and one-half, or as close to one-half as possible depending upon the total number of directors, of the directors elected at the first election shall be selected by lot in the presence of a majority of such directors to serve one-year terms. A rural fire protection district director may receive compensation for his services in an amount not to exceed forty dollars per day and may receive expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

Source: SL 1971, ch 208, § 4; SL 1988, ch 275, § 2.

34-31A-15.1. Filling of vacancy on board of directors

The board of county commissioners shall fill a vacancy on the board of directors of a rural fire protection district by appointing a voter of the district who meets the requirements in § 34-31A-13 to complete the unexpired term.

Source: SL 1987, ch 257.

34-31A-16. District as body corporate and politic

Upon compliance with the provisions of this chapter relating to organization and upon compliance with chapter 6-10, the district under its designated name shall be and constitute a body politic and corporate.

Source: SL 1971, ch 208, § 17.

34-31A-17. General powers of directors

The board of directors shall have the following general powers:

- (1) To determine upon a general fire protection program for the district;
- (2) To manage and conduct the business affairs of the district;
- (3) To make and execute contracts in the name of and on behalf of the district;
- (4) To purchase or lease such fire-fighting equipment, supplies, and other real or personal property as shall be necessary and proper to carry out the general fire protection program of the district;
- (5) To incur indebtedness on behalf of the district within the limits prescribed by § 34-31A-31, and to authorize the issuance of evidences of such indebtedness permitted under this subdivision, and to pledge any real or personal property owned or acquired by the district as security for the same;
- (6) To organize, establish, equip, maintain, and supervise a fire department or company to serve the district;
- (7) Generally to perform all acts necessary to fully carry out the purposes of this chapter.

Source: SL 1971, ch 208, § 6.

See N Dak Cent Code, § 18-10-06.

34-31A-18. District contracts with other agencies or nonprofit corporations for fire protection--Validity of contracts.

Any rural fire protection district may enter into a contract with another rural fire protection district to consolidate or cooperate for mutual fire protection and prevention purposes, or may enter into a contract with any federal, state, or local government agency for fire protection service or fire protection cooperation upon terms suitable to all concerned. Power to make such contracts is hereby conferred upon such state or local government agency in addition to such powers as are otherwise provided by law. Any rural fire protection district may enter into a contract with any nonprofit corporation, organized under the laws of this state and whose sole purpose is fire protection, for fire protection service or fire protection cooperation upon terms suitable to all concerned. Any contract between a rural fire protection district and a nonprofit corporation that was entered into prior to July 1, 2005, and which now complies with the provisions of this section is hereby declared to be valid and legal.

Source: SL 1971, ch 208, § 10; SL 2005, ch 192, § 1.

See N Dak Cent Code, § 18-10-10.

34-31A-19. State system of rural fire protection routings

The Department of Public Safety, with the advice and cooperation of the South Dakota Firemen's Association may establish a system of rural routings which shall be as uniform as is practicable throughout the state, for the purpose of aiding rural fire-fighting equipment and other emergency vehicles in locating and arriving quickly at the scene of a fire or other emergency within any area which they might logically be called upon to serve.

Source: SL 1971, ch 208, § 16; SL 2003, ch 272, §§ 20, 121.

See N Dak Cent Code, § 18-10-16.

34-31A-20. Preparation of annual budget--Certification of estimated tax levy

The board of directors shall:

- (1) Prepare an annual budget of the expenditures necessary to carry out the general fire protection program for the district. Grants, resources of fire departments within the district, and other revenues shall be considered by the board when preparing the revenues available to fund the district's budget;
- (2) Annually certify an estimated tax levy request in dollars to the proper county auditor in the manner provided by § 34-31A-21. The estimated tax levy request shall be determined by subtracting the grants, resources of fire departments within the district, and other revenues from the prepared budget.

Source: SL 1971, ch 208, § 6 (2), (3); SL 1994, ch 279.
See N Dak Cent Code, § 18-10-06.

34-31A-21. Certification of budget estimates to county auditor--Tax levy

The president and secretary shall certify the estimate provided by § 34-31A-20 to the proper county auditor or county auditors, on or before October first of each year. The auditor shall levy a tax not to exceed one dollar per thousand dollars of taxable valuation upon the taxable property within the district for the maintenance of the fire protection district for the fiscal year as provided by law.

Source: SL 1971, ch 208, § 7; SL 1976, ch 224, § 2; SL 1981, ch 265, § 1; SL 1998, ch 212, § 1.

See N Dak Cent Code, § 18-10-07.

34-31A-22. Maximum tax levy

The rate of tax for functions authorized by this chapter may not exceed sixty cents per thousand dollars of taxable valuation in the rural fire district for the purchase of rural fire-fighting equipment in rural fire districts or for the purpose of assisting and contributing to the purchase and upkeep of fire-fighting equipment in adjoining first or second class municipalities or villages.

Source: SL 1971, ch 208, § 14; SL 1984, ch 241, § 2; SL 1989, ch 87, § 15I; SL 1992, ch 60, § 2.

See N Dak Cent Code, § 18-10-14.

34-31A-23. Tax levy not to exceed estimates of expenses

In no case shall the amount of tax levy exceed the amount of funds required to defray the expenses of the district for a period of one year as embraced in the annual estimate of expenses including the amount of principal and interest upon the indebtedness of the district for the ensuing year.

Source: SL 1971, ch 208, § 7.

See N Dak Cent Code, § 18-10-07.

34-31A-24. Collection of taxes

Said tax shall be collected as other taxes are collected in the county.

Source: SL 1971, ch 208, § 7 (1).

See N Dak Cent Code, § 18-10-07.

34-31A-25. Tax proceeds to secretary-treasurer--Surety bond

Said tax shall be turned over to the secretary-treasurer of the rural fire protection district, who shall have a surety bond in the amount of at least five thousand dollars.

Source: SL 1971, ch 208, § 7 (2).

See N Dak Cent Code, § 18-10-07.

34-31A-26, 34-31A-27. Transferred to §§ 34-31A-32, 34-31A-33

34-31A-28. Fire protection payments by tax-exempt organizations--Minimum-- Assessment

Any club, lodge, chapter, charitable home, dormitory, state or county fair association, or like organization located within a rural fire protection district and outside the boundaries of any municipality, shall pay to the board of directors of the district annually for fire protection such amount as may be agreed upon, but not less than twenty-five percent of the amount which would be levied against such property under the provisions of this chapter if such property were subject to such levy. For the purposes of this section, such property shall be assessed by the director of equalization of the county in which such property lies, or by his deputies.

Source: SL 1971, ch 208, § 15; SL 1976, ch 224, § 3.

See N Dak Cent Code, § 18-10-15.

34-31A-29. Annual statement of payments by tax-exempt organizations

The board of directors shall file an annual statement with the Department of Public Safety showing the names of persons or organizations making payments and the amounts of payments made under § 34-31A-28.

Source: SL 1971, ch 208, § 15; SL 2003, ch 272, §§ 20, 121.

See N Dak Cent Code, § 18-10-15.

34-31A-30. Expenditure of payments by tax-exempt organizations

Funds derived from payments pursuant to § 34-31A-28 shall be expended by the district for fire-fighting supplies and equipment and the training of fire department personnel.

Source: SL 1971, ch 208, § 15.

See N Dak Cent Code, § 18-10-15.

34-31A-31. Maximum indebtedness of district--Borrowing power

No district may incur debt greater than an amount equal to twenty times the annual maximum tax levy as authorized by § 34-31A-21. A district may borrow money and issue appropriate evidence of indebtedness within the limits authorized by this section.

Source: SL 1971, ch 208, § 8; SL 1983, ch 28, § 27; SL 1990, ch 277.

See N Dak Cent Code, § 18-10-08.

34-31A-32. Deposit in bank of district receipts--Warrants for disbursement

All funds collected on behalf of the district through the levy of taxes; all donations, contributions, bequests, or annuities; and all borrowed money received by or on behalf of the district shall be deposited in state or national bank to the credit of the district fund and shall be drawn out only by warrant.

Source: SL 1971, ch 208, §§ 7 (3), 9; SDCL Supp, § 34-31A-26.

See N Dak Cent Code, §§ 18-10-07, 18-10-09.

34-31A-33. Claim vouchers for district funds

Such claim voucher shall be authorized by the board of directors and shall bear the signature of the treasurer and the countersignature of the president of such district.

Source: SL 1971, ch 208, §§ 7 (4), 9; SDCL Supp, § 34-31A-27.

See N Dak Cent Code, §§ 18-10-07, 18-10-09. 16

34-31A-34. Filing of financial report with county auditor--Examination of district records

The secretary-treasurer of the rural fire protection district shall, on or before January thirty-first of each year, file a financial report of the previous calendar year with the proper county auditor or county auditors. When the Department of Legislative Audit examines other county records, it shall examine the financial report of the secretary-treasurer of the rural fire protection district.

Source: SL 1971, ch 208, § 9; SL 1986, ch 287.

See N Dak Cent Code, § 18-10-09.

34-31A-35. Change of district boundaries--Prior rights unimpaired--Liability for debts

The boundaries of any rural fire protection district organized under the provisions of this chapter may be changed in the manner prescribed by §§ 34-31A-5 to 34-31A-11, inclusive, but the changes of boundaries of any such district may not impair or affect its organization or its right in or to property; nor may it impair, affect or discharge any contract, obligation, lien, or charge for or upon which it might be liable had such change of boundaries not been made. Any portion or area of land which was part of a rural fire district, organized under §§ 34-31A-5 to 34-31A-11, inclusive, and which is annexed into a bordering municipality, is liable for any indebtedness incurred while within the boundaries of the fire district. Nothing in this section may preclude a municipality, by ordinance, when annexing land within a rural fire protection district, of assuming a portion or all of the indebtedness on the annexed land which is a result of being in the rural fire protection district.

Source: SL 1971, ch 208, § 12; SL 1983, ch 258.

See N Dak Cent Code, § 18-10-12.

34-31A-36. Procedure for annexation of territory

Any territory which is adjacent to the boundary of an existing rural fire protection district may be annexed to such district in the manner provided in §§ 34-31A-37 to 34-31A-42, inclusive.

Source: SL 1971, ch 208, § 11.

See N Dak Cent Code, § 18-10-11.

34-31A-37. Annexation resolution or petition filed with county auditor

The proceedings for the annexation, referred to in § 34-31A-36, may be initiated by resolution or by the presentation to the auditor of a petition signed by ten percent of the electors who are owners of any interest in real property assessed for taxation in the territory to be annexed and who are residing within the boundaries of such territory stating the desires and purposes of such petitioners or governmental body. The petition or resolution shall contain a description of the boundaries of the territory proposed to be annexed. It shall be accompanied by a map or plat and a deposit for publication costs.

Source: SL 1971, ch 208, § 11 (1); SL 1973, ch 226, § 6; SL 1992, ch 80, § 215.

See N Dak Cent Code, § 18-10-11.

34-31A-38. Auditor's examination of annexation petition--Papers forwarded to directors

The county auditor shall consult the tax schedules in the office of the county auditor and determine and certify whether or not such petition complies with the requirements of § 34-31A- 37 and that the persons signing the same appear to reside within the boundaries described by such petition. Thereafter, the county auditor shall forward such petition, resolution, map or plat, and certificate to the board of directors of the district concerned.

Source: SL 1971, ch 208, § 11 (2); SL 1973, ch 226, § 7.

See N Dak Cent Code, § 18-10-11.

34-31A-39. Transmittal of annexation petition or resolution to county board--Approval or disapproval by directors

Within thirty days after receiving the petition or resolution, map or plat, and certificate of the county auditor, in accordance with § 34-31A-38, from the county auditor, such board of directors shall transmit the same to the proper county board, accompanied by a report in writing approving or disapproving the proposal contained in said petition, or approving such proposal in part and disapproving it in part.

Source: SL 1971, ch 208, § 11 (3); SL 1973, ch 226, § 8.

See N Dak Cent Code, § 18-10-11.

34-31A-40. Annexation petition rejected if directors disapprove

No area shall be annexed to an existing rural fire protection district contrary to the recommendation of the board of directors of such existing district. If the report of the board of directors, referred to in § 34-31A-39, disapproves the proposal, the petition shall be rejected.

Source: SL 1971, ch 208, § 11 (4), (5).

See N Dak Cent Code, § 18-10-11.

34-31A-41. Notice of commissioners' hearing on annexation petition

If the report of the board of directors, referred to in § 34-31A-39, is favorable to such proposal, either in whole or in part, the board of county commissioners shall promptly designate a time and place for a hearing upon the petition and shall give notice thereof in the manner prescribed by § 34-31A-7. At such hearing, any person owning taxable property or residing within the boundaries of the existing district or the territory to be annexed, shall have the opportunity to be heard respecting the proposed annexation.

Source: SL 1971, ch 208, § 11 (4).

See N Dak Cent Code, § 18-10-11.

34-31A-42. County commissioners' determination on proposed annexation

The board of county commissioners shall, at or shortly after the hearing referred to in § 34-31A-41, determine whether such territory should be annexed to the existing district and shall fix the boundaries of the territory to be annexed. The determination of the board of county commissioners shall be set forth in written order which shall describe the boundaries determined upon and shall be filed in the office of the county auditor.

Source: SL 1971, ch 208, § 11 (5).

See N Dak Cent Code, § 18-10-11.

34-31A-43. Annual meeting of resident property owners in district--Special meetings-- Annual election--Notice of election.

A regular meeting of the electors who are owners of any interest in real property assessed for taxation in the district and who are residing within the boundaries of a district shall be held in the first quarter of each calendar year and special meetings may be called by the board of directors at any time. The annual election shall be conducted during the regular meeting consistent with the provisions of chapter 8-3. Notice of the annual election shall be given by the secretary-treasurer by one publication in a legal newspaper of general circulation in each county in which the district is situated. The meeting shall be held not less than seven days nor more than fourteen days after the date of publication of the notice.

Source: SL 1971, ch 208, § 5; SL 1992, ch 80, § 216; SL 2002, ch 144, § 6; SL 2007, ch 75, § 6.

See N Dak Cent Code, § 18-10-05.

34-31A-44. Secretary-treasurer's report at annual public meeting

The secretary-treasurer of the district shall, at each annual public meeting of the district, present a financial report concerning the affairs of the district.

Source: SL 1971, ch 208, § 9.

See N Dak Cent Code, § 18-10-09.

34-31A-45. Deferred compensation program for volunteer firefighters--Establishment and management--Participation optional

Any rural fire protection district with a volunteer fire department may establish a deferred compensation program for its volunteer firefighters. Such a program may be financed by the rural fire protection district or by the volunteer firefighters and may be managed through the rural fire protection district or through an insurance company or other financial institution. Such program shall be established by ordinance. Each fire protection district shall establish requirements for participation in the program. Participation in the program of deferred compensation shall be at the option of the volunteer firefighter.

Source: SL 1986, ch 71, § 4.

34-31A-46. Election by territory residents on annexation of territory

The residents of any territory proposed to be annexed into a rural fire protection district may, by petition, call for an election on such annexation. The petition shall be signed by five percent of the voters residing within the territory included within the proposed annexation. The petition shall be submitted within twenty days of the district's governing body's vote to propose the annexation. The election shall be held within ninety days of the submission of the petition, but if the petition is submitted within one hundred twenty days of a regularly scheduled election of the rural fire protection district, the governing body of the rural fire protection district may place such question on the regular election ballot. The election on the annexation shall be voted upon only by those residing within the territory proposed to be annexed, and shall be decided by majority vote.

Source: SL 1995, ch 198.

Chapter 34-32A

EXCHANGE OF FIRE LOSS INFORMATION

34-32A-1	Definition of Terms.
34-32A-2	Notice and information to governmental agency when insurer believes fire loss other than accidental.
34-32A-3	Information required of insurer by governmental agency investigating fire loss.
34-32A-4	Exchange of information between governmental agencies.
34-32A-5	Insurer obtaining information from governmental agency.
34-32A-6	Notice to policy holder of request for information.
34-32A-7	Immunity from liability of insurer or governmental agency releasing information.
34-32A-8	Information received held in confidence—Requiring testimony when insurer is party to litigation.
34-32A-9	Arson control laws unimpaired—Concurrent jurisdiction.
34-32A-10	Rights and powers unimpaired.

34-32A-1. Definition of terms

Terms used in this chapter, unless the context plainly otherwise requires, mean:

- (1) "Action," includes nonaction or the failure to take action.
- (2) "Authorized agency or authorized agencies," the Department of Public Safety, the attorney general, the state's attorney in the county where the fire occurred, and, solely for the purposes of § 34-32A-3, the federal bureau of investigation or any other federal agency and United States attorney's office when authorized or charged with investigation or prosecution of the fire in question;
- (3) "Deemed important," material within the sole discretion of the authorized agency which is requested by that authorized agency; and
- (4) "Relevant," information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the evidence.

Source: SL 1979, ch 240, § 1; SL 2003, ch 272, §§ 20, 121.

34-32A-2. Notice and information to governmental agency when insurer believes fire loss other than accidental

If an insurance company has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, then, for the purpose of notification and for having such fire loss investigated, the company shall, in writing, notify an authorized agency and provide it with all relevant information from the company's inquiry into the fire loss. If an insurance company provides any authorized agency with notice of a fire loss, it shall be deemed sufficient notice for the purpose of this chapter. Nothing in this section shall abrogate or impair the rights or powers created under § 34-32A-3.

Source: SL 1979, ch 240, § 3.

34-32A-3. Information required of insurer by governmental agency investigating fire loss

Any authorized agency may, in writing, require the insurance company at interest to release to the requesting agency all relevant information or evidence deemed important to the authorized agency which the company may have in its possession relating to the fire loss in question. Relevant information may include, without limitation:

- (1) Pertinent insurance policy information relevant to the fire loss under investigation and any application for such policy;
- (2) Policy premium payment records which are available;
- (3) History of previous claims made by the insured; and
- (4) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence relevant to the investigation.

Source: SL 1979, ch 240, § 2.

34-32A-4. Exchange of information between governmental agencies

The authorized agency provided with information pursuant to §§ 34-32A-2 and 34-32A-3 and in furtherance of its own purposes, may release or provide such information to any other authorized agency.

Source: SL 1979, ch 240, § 4.

34-32A-5. Insurer obtaining information from governmental agency

Any insurance company providing information to an authorized agency pursuant to § 34-32A-2 or 34-32A-3 shall have the right to request and obtain relevant information within thirty days of its request to an authorized agency.

Source: SL 1979, ch 240, § 5.

34-32A-6. Notice to policy holder of request for information

Notwithstanding the provisions of §§ 34-32A-2 to 34-32A-5, inclusive, the authorized agency shall notify, in writing, the policy holder of the request for information.

Source: SL 1979, ch 240, § 10.

34-32A-7. Immunity from liability of insurer or governmental agency releasing information

Any insurance company, person acting in its behalf, or authorized agency who releases information, whether oral or written, pursuant to §§ 34-32A-2 to 34-32A-5, inclusive, shall be immune from civil liability or criminal prosecution. "Immune," as used in this section, means that neither a civil action nor a criminal prosecution may arise from any action taken pursuant to §§ 34-32A-2 to 34-32A-8, inclusive, if actual malice, bad faith or situations involving compounding on the part of the insurance company or authorized agency against the insured is not present.

Source: SL 1979, ch 240, §§ 1(5), 6.

34-32A-8. Information received held in confidence--Requiring testimony when insurer is party to litigation

Any authorized agency or insurance company who receives any information furnished pursuant to this chapter shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding. Any authorized agency, or its personnel, may be required to testify in any litigation in which the insurance company at interest is named as a party.

Source: SL 1979, ch 240, § 7.

34-32A-9. Arson control laws unimpaired--Concurrent jurisdiction

This chapter shall not be construed to affect or repeal any statute of this state or any ordinance of any municipality relating to fire prevention or control of arson, but the jurisdiction of the Department of Public Safety and of the attorney general as to fire prevention and the control of arson in a municipality shall be concurrent with that of the municipal and county authorities.

Source: SL 1979, ch 240, § 8; SL 2003, ch 272, §§ 20, 121.

34-32A-10. Rights and powers unimpaired

With the exception of § 34-32A-7, all other provisions of this chapter shall not be construed to impair any existing statutory or common law rights or powers.

Source: SL 1979, ch 240, § 9.

Chapter 34-35

RANGE AND FOREST FIRE PREVENTION

- 34-35-1 Plowing of fireguards around township—Grading for roadway.
- 34-35-2 Fireguards across center of township—Tax levy.
- 34-35-3 Entry on private land for fireguards.
- 34-35-4 Time of plowing township fireguards—Maximum cost.
- 34-35-5 Harrowing of fireguards—Burning of grass.
- 34-35-6 Fireguards not in organized townships.
- 34-35-7 Road fund used for fireguards—expense of boundary fireguards.
- 34-35-8 Throwing match or burning object from vehicle as misdemeanor.
- 34-35-9 Negligently allowing fire to spread as misdemeanor—Failure to extinguish fire—Interference with control efforts.
- 34-35-10 Burning off land or other flammable material without firebreak and considering weather a misdemeanor.
- 34-35-11 Repealed
- 34-35-12 Civil liability for fire.
- 34-35-12.1 Liability for suppression and extinguishment costs collectable by secretary of agriculture.
- 34-35-13 Sheriff's investigation of violations—Prosecution by state's attorney.
- 34-35-14 Possessory claim supporting recovery of fire damages.
- 34-35-15 Black Hills forest fire protection district—Area included.
- 34-35-15.1 Sellers of fireworks or pyrotechnics in business before July 1, 2007 not subject to Black Hills district boundary change.
- 34-35-16 Permit required for open fire in Black Hills district – Violation as misdemeanor—Liability for civil damages.
- 34-35-17 Issuance of permit for open fire in Black Hills district—Conditions required.
- 34-35-18 Setting fires for forest and range management.
- 34-35-19 Promulgation of rules by secretary.
- 34-35-20 Interstate compact for the prevention and control of forest fires.

34-35-1. Plowing of fireguards around township--Grading for roadway

In all organized civil townships at the annual meeting of the electors thereof in March of each year, the electors may instruct the township supervisors to plow, or to have plowed, fireguards around every township, not less than ten nor more than twenty feet in width, commencing not exceeding two rods from the center of the roadway and plowing toward the center of the same. If upon such plowing the sod is or has been destroyed and the ground is in a workable condition, the township supervisors immediately after such plowing shall with a road grader, grade and work the dirt so plowed away from the outside and toward the center of the road, so that the roadway will incline and drain from the center toward the side of the road, and they shall thoroughly surface and smooth the same so as to form a graded highway, the primary purpose of such work being to form an efficient fireguard, but, incidentally to grade and perfect the roadway.

Source: SL 1893, ch 91, § 1; RPolC 1903, § 1131; SL 1905, ch 111; SL 1915, ch 193; RC 1919, § 6128; SDC 1939, § 58.1001.

34-35-2. Fireguards across center of township--Tax levy

The electors at the annual meeting of an organized civil township may also provide fireguards similar to those authorized by § 34-35-1 each way across the center of the township and they shall vote a tax, in addition to the amount levied for other purposes, upon the property, including railroads, embraced in such area, for the purpose of defraying the necessary expenses of such fireguards.

Source: SL 1893, ch 91, § 1; RPolC 1903, § 1131; SL 1905, ch 111; SL 1915, ch 193; RC 1919, § 6128; SDC 1939, § 58.1001.

34-35-3. Entry on private land for fireguards

For the purpose of plowing fireguards the township supervisors or the persons employed by them for that purpose may, with the consent of the owner, enter upon land adjacent to the right of way and construct such fireguards upon the real estate of private persons.

Source: SL 1893, ch 91, § 2; RPolC 1903, § 1132; SL 1905, ch 111; RC 1919, § 6129; SDC 1939, § 58.1002.

34-35-4. Time of plowing township fireguards--Maximum cost

Plowing pursuant to § 34-35-1 or 34-35-2 shall be done prior to the first day of July each year, and shall be inspected and approved by the township supervisors before a warrant for the payment of the same is allowed. Such plowing shall be at the cost of not more than four dollars per acre for the first plowing, and not more than two dollars per acre for each subsequent plowing.

Source: SL 1893, ch 91, § 1; RPolC 1903, § 1131; SL 1905, ch 111; SL 1915, ch 193; RC 1919, § 6128; SDC 1939, § 58.1001.

34-35-5. Harrowing of fireguards--Burning of grass

To prevent the growth of grass and weeds upon the fireguards, if the township supervisors or board of county commissioners deem it necessary, they shall cause the same to be dragged with a harrow between the first day of July and the first day of September. Not later than the first day of October, or whenever there is any danger from prairie fires, it shall be their duty to cause the grass along the roadway between the fireguards, when there is plowing along both sides of such roadway, to be burned; and a reasonable price shall be paid out of the fireguard fund for such breaking and burning.

Source: SL 1893, ch 91, § 5; RPolC 1903, § 1135; SL 1905, ch 111; RC 1919, § 6132; SDC 1939, § 58.1005.

34-35-6. Fireguards not in organized townships

In counties containing areas not embraced in any civil township, fireguards as described in §§ 34-35-1 and 34-35-2 may be constructed under the supervision of the board of county commissioners and the cost thereof met by special levy upon the real property, including railroads, within the area embraced by such fireguards.

Source: SL 1893, ch 91, § 3; RPolC 1903, § 1133; SL 1905, ch 111; RC 1919, § 6130; SDC 1939, § 58.1003.

34-35-7. Road fund used for fireguards--Expense of boundary fireguards

Any civil township, or county not divided into civil townships, may use one-half of the general road fund to help defray the expense of making fireguards; and the expense of making any fire-guard running upon or adjacent to the township line shall be borne equally by the two townships between which such fireguard is made.

Source: SL 1893, ch 91, § 4; RPolC 1903, § 1134; SL 1905, ch 111; RC 1919, § 6131; SDC 1939, § 58.1004.

34-35-8. Throwing match or burning object from vehicle as misdemeanor.

Any person who shall drop or throw from any vehicle or other means of transportation any burning match, cigarette, cigar, ashes of pipe, or other burning substance of any kind is guilty of a Class 2 misdemeanor.

Source: SL 1937, ch 94; SDC 1939, § 13.1613; SL 1977, ch 190, § 91.

34-35-9. Negligently allowing fire to spread as misdemeanor--Failure to extinguish fire--Interference with control efforts.

Every person who negligently kindles or causes to be kindled, fire in any woods, brush, fields, marshes, or prairies and leaves it unquenched or who negligently or without full precaution to prevent fire spreading permits it to spread beyond his control so as to endanger the property of another, whether such fire is kindled upon his own land or not, or who, finding any uncontrolled fire burning, fails to give immediate warning and to make reasonable attempt to quench it, or who at any fire at any place is guilty of any disobedience to the lawful orders of any public official or fireman attempting to control said fire, or who interferes with any such officer in any such case or refuses to assist in controlling said fire, is guilty of a Class 1 misdemeanor.

Source: PenC 1877, §§ 458 to 460; SL 1881, ch 106, § 1; 91887, ch 123, § 1; CL 1887, §§ 2398, 6659 to 6661; RPolC 1903, § 3158; RPenC 1903, §§ 472 to 474; SL 1917, ch 239, § 1; RC 1919, §§ 3982 to 3984, 10361; SL 1925, ch 255; SL 1937, ch 93; SL 1937, ch 97; SDC 1939, § 13.1612; SL 1977, ch 190, § 92.

34-35-10. Burning off land or other flammable material without firebreak and considering weather a misdemeanor.

It is a Class 1 misdemeanor to set or cause to be set on fire any woods, marsh, prairie, grass, or stubble land or any other inflammable material at any time of the year without first having in place a natural or manmade firebreak and without giving due caution to the prevailing and forecasted weather conditions.

Source: PenC 1877, ch 40, §§ 1, 2; CL 1887, §§ 2392, 2393; RPolC 1903, §§ 3152, 3153; RC 1919, §§ 10355, 10356; SDC 1939, §§ 20.0201, 20.0202, 20.9901; SL 1955, ch 66, §§ 1, 2; SDCL, § 34- 35-11; SL 1977, ch 190, § 93; SL 1980, ch 249, § 1; SL 1986, ch 288, § 1.

34-35-11. Repealed by SL 1977, ch 190, § 94

34-35-12. Civil liability for fire.

A person who sets a fire as provided in § 34-35-10 is liable for civil damages for all injury and fire suppression and extinguishment costs caused by the fire. For the purposes of this section, person includes but is not limited to public utilities, railroads, and private utilities.

Source: PenC 1877, ch 40, § 3; CL 1887, § 2394; RPolC 1903, § 3154; RC 1919, § 10357; SDC 1939, § 20.0203; SL 1955, ch 66, § 3; SL 1980, ch 249, § 2; SL 1986, ch 288, § 2; SL 1992, ch 251, § 1.

34-35-12.1. Liability for suppression and extinguishment costs collectable by secretary of agriculture.

Any person who negligently causes a fire to be started or who does not take reasonable precautions to prevent a fire from spreading and permits a fire to spread beyond the person's control is liable for all fire suppression and extinguishment costs that were caused by the fire and that are collectable by the secretary of agriculture or his designee under §§ 41-20-4 and 41-20-8. For purposes of this section, the term, person, includes public utilities, railroads, and private utilities.

Source: SL 1996, ch 217, § 1; SL 2002, ch 252 (Ex. Ord. 02-1), § 13.

34-35-13. Sheriff's investigation of violations--Prosecution by state's attorney.

It shall be the duty of every county sheriff, whenever complaint is made to him of the violation of any provisions of § 34-35-10, to diligently investigate such charge or charges, to ascertain whether any of the provisions of said section have been violated and to make a full and complete report thereof to the state's attorney who shall diligently prosecute anyone violating any of the provisions of said section.

Source: SDC 1939, § 20.0208 as enacted by SL 1955, ch 66, § 7.

34-35-14. Possessory claim supporting recovery of fire damages.

In any action instituted in any court to recover damages for injury caused by the fire as provided in § 34-35-12 it is not necessary for any person injured by such fire to allege in a complaint, or prove on the trial of such action, title to the real property over which the fire has spread. It is sufficient in any such action to allege and prove that the person so injured was in the occupancy or possession of the property. In any action instituted in any court to recover fire suppression and extinguishment costs as provided in §§ 34-35-12 and 34-35-12.1, it is not necessary for the person or governmental entity providing fire suppression services to allege or prove that it was in occupancy or had any possessory interest in the property over which the fire has spread.

Source: SDC 1939, § 20.0207; SL 1992, ch 251, § 2; SL 1996, ch 217, § 2.

34-35-15. Black Hills Forest Fire Protection District--Area included.

To protect the timber on areas subject to unusual fire dangers, there is hereby created the Black Hills Forest Fire Protection District, consisting of all that part of the state described by metes and bounds as follows: Commencing at a point on the Wyoming-South Dakota state line at the junction of Interstate Highway 90 at the state line; thence east and southeast along Interstate Highway 90 via Rapid City to the intersection of U.S. Highway 16B; thence south and southwest along U.S. Highway 16B to the intersection of State Highway 79; thence south along State Highway 79 to the intersection of U.S. Highway 18; thence south along U.S. Highway 18 to the Cheyenne River; thence west and northwest along the Cheyenne River to the Wyoming-South Dakota state line; thence north along said state line to the place of beginning. The Black Hills Forest Fire Protection District does not include any area within the limits of any municipality.

Source: SDC Supp 1960, § 25.1304 as enacted by SL 1966, ch 73, § 2; SL 1992, ch 60, § 2; SL 1995, ch 199; SL 2007, ch 198, § 1.

34-35-15.1. Sellers of fireworks or pyrotechnics in business before July 1, 2007 not subject to Black Hills district boundary change.

Any person or commercial entity that, before July 1, 2007, was legally engaged in the retail sale, wholesale sale, storage, or transport of fireworks or pyrotechnics, or any successor to any such person or commercial entity, may continue to engage in any such sales, storage, or transport activity, notwithstanding any changes made to the boundaries of the Black Hills Forest Fire Protection District that take effect on July 1, 2007.

Source: SL 2007, ch 198, § 2.

34-35-16. Permit required for open fire in Black Hills district--Violation as misdemeanor--Liability for civil damages.

The starting of an open fire within the Black Hills forest fire protection district by a person or a group of persons is prohibited unless a permit to do so is first obtained from the secretary of agriculture or his designee or from the United States forest service supervisor. An open fire as used in this section and § 34-35-17 is any fire to burn slash, brush, grass, stubble, debris, rubbish, or other inflammable material not enclosed in a stove, sparkproof incinerator, or an established fireplace approved or constructed by public agencies in designated recreation areas. A violation of this section is a Class 1 misdemeanor. Any person who violates this section is liable for civil damages for all injuries caused by the fire.

Source: SDC Supp 1960, §§ 25.1305, 25.1306 as enacted by SL 1966, ch 73, § 2; SL 1986, ch 289; SL 2002, ch 252 (Ex. Ord. 02-1), § 14.

34-35-17. Issuance of permit for open fire in Black Hills district--Conditions required.

Any United States forest service supervisor, or his designee, the secretary of agriculture or his designee shall have authority to issue a permit upon an application to any person to start an open fire within the Black Hills forest fire protection district if in his opinion such fire will not endanger the life or property of another, or deny such permit if in his opinion the climatic conditions or location of the material to be burned is such that the burning would endanger the life or property of others and he may issue a permit subject to such conditions and restrictions as he may consider necessary to prevent the spread of the fire permitted; and he may revoke a permit issued by him upon the change of climatic or other conditions which he considers would make the burning unsafe.

Source: SDC Supp 1960, § 25.1307 as enacted by SL 1966, ch 73, § 2; SL 2002, ch 252 (Ex. Ord. 02-1), § 15.

34-35-18. Setting fires for forest and range management.

The secretary of agriculture or his designee may set fires in woods or prairie for the purposes of forest and range management provided that he has reasonable forces and equipment available to suppress the spread of the fire.

Source: SL 1980, ch 249, § 3; SL 2002, ch 252 (Ex. Ord. 02-1), § 16.

34-35-19. Promulgation of rules by secretary. The secretary of agriculture may promulgate rules pursuant to chapter 1-26 concerning:

- (1) The permit application procedures;
- (2) The conditions for awarding a permit;
- (3) The provisions to carry out a safe open burn; and
- (4) The procedures for appointing designees.

Source: SL 1986, ch 326, § 3.

34-35-20. Interstate compact for the prevention and control of forest fires.

The Governor of South Dakota may execute a compact on behalf of the state with any one or more states who may by their legislative bodies, authorize a compact, in form substantially as follows:

ARTICLE I

The purpose of this compact is to promote effective prevention and control of forest fires in the great plains region of the United States by the maintenance of adequate forest fire fighting services by the member states, and by providing for reciprocal aid in fighting forest fires among the compacting states of the region, including South Dakota, North Dakota, Wyoming, Colorado and any adjoining state of a current member state.

ARTICLE II

This compact is operative immediately as to those states ratifying it if any two or more of the member states have ratified it.

ARTICLE III

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control may act as compact administrator for that state and may consult with like officials of the other member states and may implement cooperation between the states in forest fire prevention and control. The compact administrators of the member states may organize to coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact. Each member state may formulate and put in effect a forest fire plan for that state.

ARTICLE IV

If the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling, or preventing forest fires, the state forest fire control agency of that state may render all possible aid to the requesting agency, consonant with the maintenance of protection at home.

ARTICLE V

If the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of the state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges, and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact is liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection with rendering the outside aid.

All liability, except as otherwise provided in this compact, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving the aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and maintenance of employees and equipment incurred in connection with such request. However, nothing in this compact prevents any assisting member state from assuming such loss, damage, expense, or other cost or from loaning such equipment or from donating such services to the receiving member state without charge or cost.

Each member state shall assure that workers compensation benefits in conformity with the minimum legal requirements of the state are available to all employees and contract firefighters sent to a requesting state pursuant to this compact.

For the purposes of this compact the term, employee, includes any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws of the aiding state.

The compact administrators may formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

ARTICLE VI

Ratification of this compact does not affect any existing statute so as to authorize or permit curtailment or diminution of the forest fighting forces, equipment, services, or facilities of any member state.

Nothing in the compact authorizes or permits any member state to curtail or diminish its forest fire fighting forces, equipment, services, or facilities. Each member state shall maintain adequate forest fire fighting forces and equipment to meet demands for forest fire protection within its borders in the same manner and to the same extent as if this compact were not operative.

Nothing in this compact limits or restricts the powers of any state ratifying the compact to provide for the prevention, control, and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules, or regulations intended to aid in the prevention, control, and extinguishment in the state.

Nothing in this compact affects any existing or future cooperative relationship or arrangement between the United States Forest Service and a member state or states.

ARTICLE VII

Representatives of the United States Forest Service may attend meetings of the compact administrators.

ARTICLE VIII

The provisions of Articles IV and V of this compact that relate to reciprocal aid in combating, controlling, or preventing forest fires are operative as between any state party to this compact and any other state which is party to this compact and any other state that is party to a regional forest fire protection compact in another region if the Legislature of the other state has given its assent to the mutual aid provisions of this compact.

ARTICLE IX

This compact shall continue in force and remain binding on each state ratifying it until the Legislature or the Governor of the state takes action to withdraw from the compact. Such action is not effective until six months after notice of the withdrawal has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the compact.

Source: SL 2006, ch 186, § 1.

Chapter 34-37 FIREWORKS

- 34-37-1 Definition of terms.
 - 34-37-2 License required for sale of fireworks—Application—Fee—Duration—Display.
 - 34-37-2.1 Minimum age for sale or dispensing of fireworks.
 - 34-37-2.2 Special retail licenses for sales to nonresidents—Copy of law and map provided with sale.
 - 34-37-3 Prohibited firecrackers—Manufacture or use as misdemeanor.
 - 34-37-4 Possession, sale or use of unauthorized fireworks unlawful.
 - 34-37-5 Permissible fireworks enumerated and described.
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 - 34-37-8 Importation by unlicensed persons prohibited—Retailer to purchase from licensed wholesaler.
 - 34-37-9 Purchase invoices held by licensee—Inspection by department.
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 - 34-37-10.1 Sale from vehicle prohibited.
 - 34-37-10.2 Exits from structures where fireworks sold.
 - 34-37-10.3 “No smoking” signs where fireworks sold.
 - 34-37-10.4 Minimum distance for igniting of fireworks.
 - 34-37-10.5 Open flame prohibited where fireworks sold – Fire extinguisher required.
 - 34-37-10.6 Approved exit.
 - 34-37-11 Sale or use prohibited in forests, parks and other specified areas—Exception—Violation as misdemeanor.
 - 34-37-12 Exportation of fireworks from state.
 - 34-37-12.1 Evidence of delivery outside of state.
 - 34-37-13 Public display of fireworks.
 - 34-37-14 Violation of chapter as misdemeanor.
 - 34-37-15 Subsequent conviction as ground for revocation or suspension of license.
 - 34-37-16 Possession of unauthorized fireworks unlawful— Seizure and destruction.
 - 34-37-16.1 Period during which discharge of fireworks permitted—Violation as misdemeanor.
 - 34-37-17 Enforcement by department and law enforcement officers.
 - 34-37-18 Record forms prescribed by secretary.
 - 34-37-19 County regulation of fireworks— Use of South Dakota Grassland fire danger index.
 - 34-37-20 Use of explosives or fireworks for protection of sunflower crops.
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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.

Source: SL 1964, ch 31, § 1; SL 1983, ch 259, § 1; SL 1998, ch 213, § 1.

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.

Source: SL 1964, ch 31, §§ 3, 4; SL 1977, ch 190, § 101; SL 1982, ch 18, § 101; SL 1998, ch 213, § 3; SL 2003, ch 272, §§ 20, 121.

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.

Source: SL 1971, ch 207, § 1.

34-37-2.2. Special retail licenses for sales to nonresidents--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. 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.

Source: SL 1983, ch 259, § 2; SL 1985, ch 282, § 1; SL 1986, ch 27, § 32.

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.

Source: SDC 1939, § 13.1607; SL 1977, ch 190, § 102; SL 1983, ch 259, § 3; SL 1998, ch 213, § 4.

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.

Source: SL 1949, ch 41, § 1; SDC Supp 1960, § 13.1607-1; SL 1964, ch 31, § 2; SL 1977, ch 190, § 103.

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.

Source: SL 1949, ch 41, § 1; SDC Supp 1960, § 13.1607-1; SL 1964, ch 31, § 1 (4); SL 1983, ch 259, § 4; SL 1998, ch 213, § 5.

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.

Source: SL 1964, ch 31, § 5; SL 1982, ch 18, § 102; SL 1983, ch 259, § 5; SL 1998, ch 213, § 6; SL 2003, ch 272, §§ 20, 121.

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.

Source: SL 1949, ch 41, §§ 1, 4; SDC Supp 1960, § 13.1607-1; SL 1964, ch 31, § 1.

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.

Source: SL 1964, ch 31, § 6; SL 1977, ch 190, § 104.

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.

Source: SL 1964, ch 31, § 6; SL 1983, ch 259, § 6; SL 2003, ch 272, §§ 20, 121.

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 before the twenty-seventh day of June and after the fifth day of July. 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 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.

Source: SL 1949, ch 41, § 2; SDC Supp 1960, § 13.1607-1; SL 1964, ch 31, § 1; SL 1983, ch 259, § 8; SL 1985, ch 282, § 2; SL 1986, ch 27, § 33.

34-37-10.1. Sale from vehicle prohibited.

No retailer shall sell fireworks from any motor vehicle.

Source: SL 1971, ch 207, § 2.

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.

Source: SL 1971, ch 207, § 3; SL 1998, ch 213, § 7.

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."

Source: SL 1971, ch 207, § 4.

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.

Source: SL 1971, ch 207, § 5.

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.

Source: SL 1971, ch 207, § 6; SL 1977, ch 190, § 105; SL 1982, ch 18, § 103; SL 1998, ch 213, § 8.

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.

Source: SL 1998, ch 213, § 2.

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.

Source: SL 1957, ch 91, § 1; SDC Supp 1960, § 20.0506; SL 1963, ch 130, § 1; SL 1964, ch 31, § 10; SL 1977, ch 190, § 106; SL 1981, ch 266; SL 1989, ch 301; SL 1990, ch 279, § 1; SL 2004, ch 238, § 1; SL 2007, ch 198, § 3.

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.

Source: SL 1949, ch 41, § 4; SDC Supp 1960, § 13.1607-1; SL 1964, ch 31, § 7; SL 1982, ch 18, § 104; SL 1983, ch 259, § 14.

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.

Source: SL 1983, ch 259, § 10.

34-37-13. Public display of fireworks.

Nothing in this chapter prohibits the use of public display of fireworks. However, any person, association, organization, municipality, county, firm, partnership, or corporation, before making such public display of fireworks shall secure a written permit from the governing board of the municipality, township, or county where the public display is to be fired, and shall have purchased fireworks for the display from a licensed wholesaler under this chapter. Any public display shall comply with the National Fire Protection Association Standard 1123, 1995 edition.

Source: SL 1949, ch 41, § 3; SDC Supp 1960, § 13.1607-1; SL 1964, ch 31, § 8; SL 1983, ch 259, § 11; SL 1992, ch 60, § 2; SL 1998, ch 213, § 9.

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.

Source: SL 1949, ch 41, § 5; SL 1957, ch 91, § 2; SDC Supp 1960, §§ 13.1607-1, 20.9905; SL 1964, ch 31, § 12 (1); SL 1977, ch 190, § 107; SL 1983, ch 259, § 12.

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.

Source: SL 1964, ch 31, § 12(2); SL 1983, ch 259, § 13.

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.

Source: SL 1964, ch 31, § 12 (3); SL 1977, ch 190, § 108.

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 after the fifth day of July or prior to the twenty-seventh day of June. A violation of this section is a Class 2 misdemeanor.

Source: SL 1983, ch 259, § 7.

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.

Source: SL 1964, ch 31, § 9; SL 2003, ch 272, §§ 20, 121.

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.

Source: SL 1983, ch 259, § 7; SL 2003, ch 272, §§ 20, 121.

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. During such period, the county's action is suspended if the grassland fire danger index falls below the very high category and shall again become effective if the grassland fire danger index reaches the extreme category.

Source: SL 1989, ch 302; SL 2002, ch 252 (Ex. Ord. 02-1), § 17; SL 2003, ch 187, § 1; SL 2004, ch 239, § 1.

34-37-20. Use of explosives or fireworks for protection of sunflower crops.

Nothing in this chapter prohibits the purchase, sale, or use of explosives, pyrotechnics, or fireworks at any time for the purposes provided in § 34-36-7.

Source: SL 1991, ch 286, § 3.

38-1-30. Cooperation with commissioner of school and public lands in forest protection.

The Department of Agriculture shall have power to cooperate with the commissioner of school and public lands in protecting the forests of the State of South Dakota, and particularly in the matter of guarding against and preventing the devastation or destruction thereof by any insects, pests, or fires.

Source: SL 1925, ch 115, ch III, art I, § 2; SDC 1939, § 4.0104 (6).

Chapter 41-20 FORESTRY

- 41-20-1 Employment of state forester--Qualifications and general authority.
- 41-20-1.1 Employment of state wildland fire coordinator--Qualifications and general authority.
- 41-20-2 Forester continued within Department of Agriculture--Allocation of functions.
- 41-20-3 Administration of forestry and forest protection laws.
- 41-20-3.1 Adoption of rules by secretary.
- 41-20-3.2 Establishment of policy to provide additional forest fire protection in Black Hills National Forest area.
- 41-20-4 Prevention and suppression of forest fires--Court action against persons setting fires.
- 41-20-4.1 Interference with forest service fire equipment as misdemeanor.
- 41-20-5 Fire suppression special revenue fund established--Purpose--Reimbursements and contributions deposited in fund.
- 41-20-6 Payments from fire suppression special revenue fund.
- 41-20-7 Repealed.
- 41-20-8 Cooperation with other agencies in forest and rangeland management and protection- - Scope of activities--Collection of costs incurred by wildland fire coordinator.
- 41-20-8.1 Suppression of range fires in county--Reimbursement by county.
- 41-20-8.2 Mutual aid agreements--Determination of assumed costs.
- 41-20-8.3 Training and fire prevention or suppression--Agreements with government entities or fire suppression organizations.
- 41-20-8.4 Drug screening program for certain applicants and employees of Wildland Fire Suppression Division.
- 41-20-8.5 Solicitations for employment to include notice of drug screening program.
- 41-20-8.6 Confidentiality of test results and medical information.
- 41-20-8.7 Disclosure of confidential medical information as misdemeanor.
- 41-20-8.8 Promulgation of rules regarding drug screening program.
- 41-20-9 Cooperation with federal government in tree planting activities--Seeds and plants furnished to landowners.
- 41-20-10 Preference to native trees and South Dakota dealers--Payments from forestry fund.
- 41-20-11 Money from sale of trees and seeds placed in forestry fund.
- 41-20-12 Forestry fund continued--Source of funds--Appropriation and expenditure.
- 41-20-13 Conservation and development of forests and timber by Department of Agriculture-- Cooperation with other landowners.

41-20-1. Employment of state forester--Qualifications and general authority.

The Department of Agriculture may at its discretion employ a state forester who shall be qualified for and authorized to carry out all the activities necessary for the management, protection, harvest, and sale of timber for all interested state agencies.

Source: SL 1945, ch 90, § 2; SDC Supp 1960, § 25.1302; SDC Supp 1960, § 25.1301 as enacted by SL 1966, ch 73, § 2; SDCL, § 38-25-1.

41-20-1.1. Employment of state wildland fire coordinator--Qualifications and general authority.

The Department of Agriculture may employ a state wildland fire coordinator who shall be qualified for and authorized to carry out all wildfire suppression activities.

Source: SL 2001, ch 238, § 1.

41-20-2. Forester continued within Department of Agriculture--Allocation of functions.

The state forester shall continue within the Department of Agriculture, and his functions shall be allocated between the forester and the department as they were formerly allocated between the forester and the Game, Fish and Parks Commission.

Source: SL 1973, ch 2, §§ 5, 113; SDCL Supp, § 38-25-1.1.

41-20-3. Administration of forestry and forest protection laws.

The state forester, under the direction of the Department of Agriculture, shall administer and enforce all state laws with reference to forests, woodlands, trees, and tree plantations, public and private, and the state wildland fire coordinator shall provide their protection from fire, trespass, and all other damaging influences.

Source: SL 1945, ch 90, § 9; SL 1953, ch 104; SDC Supp 1960, § 25.1310 (1); SDC Supp 1960, § 25.1302 as enacted by SL 1966, ch 73, § 2; SDCL, § 38-25-2; SL 2001, ch 238, § 2.

41-20-3.1. Adoption of rules by secretary.

The secretary of agriculture may adopt rules, pursuant to chapter 1-26, concerning:

- (1) The establishment of a register of qualified professional foresters for the referral of timber sale assistance requests;
- (2) Provisions for the removal of foresters from the register;
- (3) Provisions for the authorized actions to prevent, suppress and extinguish forest fires and provide aid to other forces involved in such fires;
- (4) Provisions for the reimbursement of aid provided by the department for the suppression of forest fires;
- (5) Provisions for the payment of fire suppression costs from the fire suppression revolving fund;
- (6) Provisions for the purchase and sale of tree seedlings;
- (7) Provisions for the collection, accounting, and reimbursement of normal and extraordinary structural and other fire protection costs resulting from forest fires.

Source: SL 1986, ch 326, § 92; SL 2002, ch 197, § 2.

41-20-3.2. Establishment of policy to provide additional forest fire protection in Black Hills National Forest area.

The federal government's management of the Black Hills National Forest increasingly threatens the safety of the families that live within the forest-urban interface. Providing greater guidance for the collection, accounting and reimbursement of costs associated with structural fire protection is necessary as these threats continue to escalate. Because of these increased threats, the secretary of agriculture may establish a policy to provide for the protection of homes and other structures during forest fires.

Source: SL 2002, ch 197, § 1.

41-20-4. Prevention and suppression of forest fires--Court action against persons setting fires.

The state wildland fire coordinator, under the direction of the Department of Agriculture, shall take authorized action to prevent, suppress, and extinguish forest fires on all state and privately owned lands and on other lands while acting pursuant to a cooperative fire suppression agreement. The coordinator shall direct and aid the efforts of all fire suppression forces involved in the fires. The coordinator may bring an action in circuit court against the responsible person to obtain reimbursement for reasonable fire suppression and extinguishment costs.

Source: SL 1945, ch 90, § 9; SL 1953, ch 104; SDC Supp 1960, § 25.1310 (2); SDC Supp 1960, § 25.1302 as enacted by SL 1966, ch 73, § 2; SDCL, § 38-25-3; SL 1992, ch 251, § 3; SL 1996, ch 217, § 3; SL 2001, ch 238, § 3; SL 2006, ch 221, § 1.

41-20-4.1. Interference with forest service fire equipment as misdemeanor.

It is a Class 2 misdemeanor for any person to break, remove, or in any manner interfere with or molest any fire toolboxes or any fire tools, implements, or equipment furnished or located by the state or federal forest service upon any of the public lands or elsewhere within this state excepting when necessary to use in case of fire.

Source: SDC Supp 1960, § 25.1313 as enacted by SL 1966, ch 73, § 2; SDCL, § 41-16-7; SL 1977, ch 190, § 609.

41-20-5. Fire suppression special revenue fund established--Purpose--Reimbursements and contributions deposited in fund.

There is hereby established a fund in the state treasury to be known as the state fire suppression special revenue fund which is hereby appropriated for the payment of costs incurred by the state wildland fire coordinator in suppressing and extinguishing forest fires and emergency rangeland fires; for the payment of costs incurred by the Governor in authorizing fire prevention measures; and for the payment of costs incurred by the secretary of agriculture in hiring a fire suppression force to assist any other fire suppression agency, regardless of whether the fire being suppressed is within the territorial jurisdiction of the State of South Dakota. The fire suppression agency shall either execute or have an existing cooperative fire suppression agreement with the South Dakota Department of Agriculture.

As used in this section, emergency rangeland fires, includes fires outside the Black Hills Forest Fire Protection District that the Governor declares as an emergency and the state wildland fire division assists with fire suppression and extinguishment.

Any damages paid from judgments or settlements in civil actions taken under § 41-20-4 and reimbursements or contributions from other sources for suppressing forest fires may be deposited into the fund.

Source: SL 1967, ch 292, §§ 1, 3; SDCL § 38-25-4; SL 1992, ch 251, § 4; SL 2001, ch 238, § 4; SL 2006, ch 221, § 2; SL 2008, ch 220, § 1.

41-20-6. Payments from fire suppression special revenue fund.

Costs payable from the state fire suppression special revenue fund shall be paid by warrant of the state auditor on vouchers approved by the secretary of agriculture.

Source: SL 1967, ch 292, § 2; SDCL, § 38-25-5; SL 2002, ch 198, § 1.

41-20-7. Repealed by SL 1986, ch 360

41-20-8. Cooperation with other agencies in forest and rangeland management and protection--Scope of activities--Collection of costs incurred by wildland fire coordinator.

The state forester, with the sanction of the Department of Agriculture, may, upon request, assist and cooperate with any agency of the United States government, all state, county, and municipal agencies, and with any corporation, association, partnership, or individual owning or controlling any forestland, woodland, shelterbelt, or rangeland in the management and protection of such forestland, woodland, shelterbelt, or rangeland, including:

- (1) Preparation of plans for management, protection, replacement;
- (2) Management, surveying, harvesting, marketing, and processing of forest products;
- (3) Creation and administration of fire protection districts;
- (4) Disposal of slash, debris from logging operations, and other fire and insect hazards;

- (5) Assistance to the state wildland fire coordinator in the prevention and suppression of fires;
- (6) Prevention and suppression of other nuisances.

In providing timber sale assistance pursuant to subdivisions (1) and (2) of this section, on private lands, the state forester shall determine that such assistance is not reasonably available through a consulting forester. If the assistance is determined to be unavailable from a consulting forester, the state forester may provide the assistance after courtesy notification to private industrial foresters. However, the assistance provided shall be limited to thirty man days over a period of six years per individual owner.

After providing assistance in the suppression of fires pursuant to subdivision (5) of this section, the state wildland fire coordinator may collect fire suppression and extinguishment costs pursuant to § 41-20-5 if the costs were initially incurred by the coordinator or if the secretary of agriculture has repaid any of the governmental agencies or persons described by this section for goods or services used in fire suppression efforts directed by the coordinator.

Source: SL 1945, ch 90, § 4; SL 1953, ch 104; SDC Supp 1960, § 25.1310 (3); SDC Supp 1960, § 25.1302 as enacted by SL 1966, ch 73, § 2; SDCL, § 38-25-7; SL 1980, ch 290; SL 1981, ch 304; SL 1991, ch 348; SL 1992, ch 251, § 5; SL 2001, ch 238, § 5; SL 2002, ch 198, § 2.

41-20-8.1. Suppression of range fires in county--Reimbursement by county.

At the request of a board of county commissioners or a person designated by a board of county commissioners for such purpose, the state wildland fire coordinator may assist in the suppression of any range fire within the county. If the coordinator provides the assistance, the county to which the assistance is given shall reimburse the coordinator for the reasonable expenses incurred in giving the assistance if the assistance includes the use of more than one state vehicle and more than two state employees.

Source: SL 1988, ch 342; SL 2001, ch 238, § 6.

41-20-8.2. Mutual aid agreements--Determination of assumed costs.

The Department of Agriculture may enter into mutual aid agreements with other fire suppression organizations and determine what costs these organizations would assume during an initial fire attack.

Source: SL 2003, ch 226, § 1.

41-20-8.3. Training and fire prevention or suppression--Agreements.

The Department of Agriculture may assist, cooperate, and enter agreements with any agency of the United States government, with any state, county, and municipal agency, any fire suppression organization, any person qualified by the state wildland fire coordinator, or any person needed for an incident management team for the purposes of training and of fire prevention or suppression.

Source: SL 2004, ch 268, § 1; SL 2007, ch 246, § 1.

41-20-8.4. Drug screening program for certain applicants and employees of Wildland Fire Suppression Division.

The commissioner of the Bureau of Personnel shall establish and implement a drug screening program for applicants seeking positions in the Department of Agriculture, Wildland Fire Suppression Division whose duties include firefighting. In addition, the commissioner may establish and implement a drug screening program for employees holding positions in the Department of Agriculture, Wildland Fire Suppression Division whose duties include firefighting, based upon reasonable suspicion of illegal drug use by any employee.

Source: SL 2009, ch 214, § 1.

41-20-8.5. Solicitations for employment to include notice of drug screening program.

Any printed public announcement or advertisement soliciting applications for employment at the Department of Agriculture, Wildland Fire Suppression Division for a position in which the duties include firefighting, shall include a statement of the requirements of the drug screening program established pursuant to § 41-20-8.4.

Source: SL 2009, ch 214, § 2.

41-20-8.6. Confidentiality of test results and medical information.

Individual test results and medical information collected pursuant to §§ 41-20-8.4 to 41-20-8.8, inclusive, are confidential. This information may be revealed only as authorized by the commissioner of the Bureau of Personnel. An applicant or employee may have access to the applicant's or employee's information or test results, upon written request to the commissioner.

Source: SL 2009, ch 214, § 3.

41-20-8.7. Disclosure of confidential medical information as misdemeanor.

Except as provided in § 41-20-8.6, any person responsible for recording, reporting, or maintaining medical information required pursuant to the provisions of §§ 41-20-8.4 to 41-20-8.8, inclusive, who knowingly or intentionally discloses or fails to protect medical information declared to be confidential under § 41-20-8.6, or who compels another person to disclose such medical information, is guilty of a Class 2 misdemeanor.

Source: SL 2009, ch 214, § 4.

41-20-8.8. Promulgation of rules regarding drug screening program.

The commissioner of the Bureau of Personnel may promulgate rules, pursuant to chapter 1-26, necessary to carry out the provisions of §§ 41-20-8.4 to 41-20-8.7, inclusive, with regard to:

- (1) Listing of positions whose duties include firefighting;
- (2) Substances to be screened;

- (3) Drug screening procedures for applicants for positions at the Department of Agriculture, Wildland Fire Suppression Division, whose duties include firefighting;
- (4) Drug screening procedures for employees at the Department of Agriculture, Wildland Fire Suppression Division, whose duties include firefighting;
- (5) Procedures for collecting, analyzing, and evaluating test samples;
- (6) Confidentiality of testing procedures;
- (7) Referral for education or treatment; and
- (8) Consequences that may result from valid positive test results or from failure to submit to a test.

Source: SL 2009, ch 214, § 5.

41-20-9. Cooperation with federal government in tree planting activities--Seeds and plants furnished to landowners.

The state forester is hereby authorized and directed to cooperate with the secretary of the United States Department of Agriculture in providing assistance to owners of land in tree planting, in the procurement of forest trees, seeds, and plants, not including fruit or ornamental trees, and in the distribution of such seeds and plants at reasonable cost to the end that such seeds or plants so distributed shall be used effectively for planting forest trees for domestic and industrial purposes and for protecting farm buildings, crops, and fields from erosion, and for furnishing forest cover beneficial for water conservation and for wildlife habitat.

Source: SDC 1939, § 4.1304; SL 1943, ch 5; SDC Supp 1960, § 25.1303 as enacted by SL 1966, ch 73, § 2; SDCL, § 38-25-8; SL 1968, ch 105, § 1.

41-20-10. Preference to native trees and South Dakota dealers--Payments from forestry fund.

In all purchases of seeds or trees under the provisions of § 41-20-9, preference shall be given to trees and tree seeds grown in this state and to South Dakota dealers and such purchases shall be paid for out of the fund provided for in § 41-20-12, and accruals thereto, from sales of seeds and trees purchased.

Source: SDC 1939, § 4.1304; SL 1943, ch 5; SDC Supp 1960, § 25.1303 as enacted by SL 1966, ch 73, § 2; SDCL, § 38-25-9; SL 1968, ch 105, § 1.

41-20-11. Money from sale of trees and seeds placed in forestry fund.

All moneys received from the sale of trees and seeds shall be placed in the forestry fund created by § 41-20-12.

Source: SDC Supp 1960, § 25.1303 as enacted by SL 1966, ch 73, § 2; SDCL, § 38-25-10; SL 1968, ch 105, § 1.

41-20-12. Forestry fund continued--Source of funds--Appropriation and expenditure.

There is continued the forestry fund which is in addition to any fund which may be made available by appropriation to the Department of Agriculture for the operation of forestry programs. The fund shall consist of funds coming into the Department of Agriculture as may be made available to that department for the operation of forestry programs and all money in the fund is hereby annually appropriated to be disbursed by the Department of Agriculture as provided by law. The money in these funds shall be expended for necessary expenses upon warrants drawn by the state auditor on vouchers approved by authorized personnel.

Source: SL 1984, ch 276, § 7; SDCL Supp, § 41-16-1.1.

41-20-13. Conservation and development of forests and timber by Department of Agriculture--Cooperation with other landowners.

The Department of Agriculture shall conserve, protect, improve, develop, and increase trees and forests and wood and timber products on state-owned lands, and cooperate with the United States, any agency thereof or with any other department, public corporation or person of this state in such forestry activities on state-owned lands or on lands of such cooperator.

Source: SL 1945, ch 91, § 5; SDC Supp 1960, § 25.0106-1 (3); SL 1966, ch 68, § 1; SDCL, § 41-2-28; SL 1984, ch 276, § 3.

41-21-2. Definition of terms.

The following definition of terms used in this chapter is prescribed:

- (1) "Certificate of treatment" means a written statement by the state forester certifying treatment of a forest insect or disease infestation on private land, and containing information on the number of trees treated, location of the trees, ownership of the land, the cost of treatment, and other pertinent information;
- (2) "Declared forest insect or disease emergency" means any state of forest insect or disease infestation or infection deemed a serious threat to the forest or tree resource by the state forester of South Dakota;
- (3) "Private owned forestland" means any land not in government ownership and which is at least ten percent stocked with trees and is outside the limits of incorporated municipalities;
- (4) "State forester" means the state forester of South Dakota, his assistants, employees, or designated agents.

Source: SL 1970, ch 226, § 2; SDCL Supp, § 38-26-2; SL 1974, ch 257, § 1.

62-1-5.2. Requirements for volunteer firefighters to become eligible for workers' compensation--Amount of benefits--Limitation on eligibility.

Any firefighter who is a member of any county, municipal, special purpose district, township, or private nonprofit corporation operating as a fire department that has on file a cooperative fire suppression agreement with the South Dakota Department of Agriculture, and has been approved by the governing body for assignment to the state, is eligible for workers' compensation benefits from the state if injured during a period of time commencing from the time dispatched by the secretary of agriculture until the time the firefighter returns to the location from which the firefighter was originally dispatched by the secretary of agriculture. In the event of injury or death, the firefighter shall, for the purpose of computing compensation, be considered to be earning a wage that would entitle that person to the maximum compensation for death or injury allowable under this title; but in no event may payments to any firefighter exceed the maximum limitations for benefits as set out in this title.

For purposes of determining compensation any remuneration received by a member who voluntarily serves the department may not be considered.

No firefighter under this section may be deemed a state employee for any purpose other than eligibility to receive workers' compensation from the state under this section.

No workers' compensation benefits may be provided by the state if the claim arises while dispatched to a wildland fire outside the state, unless the fire is a threat to resources within South Dakota.

Source: SL 1991, ch 417, §§ 1, 2; SL 1995, ch 295; SL 1997, ch 303, § 2; SL 2002, ch 245, § 1; SL 2002, ch 252 (Ex. Ord. 02-1), § 18; SL 2005, ch 284, § 1; SL 2006, ch 270, § 1.

22-11-6. Obstructing law enforcement officer, firefighter, or emergency management personnel--Misdemeanor.

Except as provided in §§ 22-11-4 and 22-11-5, any person who, by using or threatening to use violence, force, or physical interference or obstacle, intentionally obstructs, impairs, or hinders the enforcement of the criminal laws or the preservation of the peace by a law enforcement officer or jailer acting under color of authority, or intentionally obstructs, impairs, or hinders the prevention, control, or abatement of fire by a firefighter acting under color of authority, or intentionally obstructs emergency management personnel acting under color of authority, is guilty of obstructing a law enforcement officer, firefighter, or emergency medical technician. Obstructing a law enforcement officer, jailer, firefighter, or emergency medical technician is a Class 1 misdemeanor.

Source: SL 1976, ch 158, § 11-3; SL 2005, ch 120, § 196.

