

58-37c-19.7 Red phosphorus is a precursor -- Affirmative defense.

- (1) A person is guilty of a class A misdemeanor who is not licensed to engage in a regulated transaction and is not excepted from licensure who, under circumstances not amounting to a violation of Subsection 58-37c-3(11)(k) or 58-37d-4(1)(a), possesses any amount of red phosphorus.
- (2) It is an affirmative defense to a charge under Subsection (1) that the person in possession of red phosphorus:
 - (a) is conducting a licensed business that involves red phosphorus in the manufacture of any of the following:
 - (i) the striking surface used for lighting matches, which is sometimes referred to as the striker plate;
 - (ii) flame retardant in polymers; or
 - (iii) fireworks, for which the person or entity possesses a federal license to manufacture explosives as required under 27 CFR Chapter II, Part 555, Commerce in Explosives; or
 - (b)
 - (i) is a wholesaler, manufacturer, warehouseman, or common carrier handling red phosphorus, or is an agent of any of these persons; and
 - (ii) possesses the substances in the regular course of lawful business activities.
- (3)
 - (a) A defendant shall provide written notice of intent to claim an affirmative defense under this section as soon as practicable, but not later than 10 days prior to trial. The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.
 - (b) The notice shall include the specifics of the affirmative defense.
 - (c) The defendant shall establish the affirmative defense by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.
- (4) Subsection (1) does not apply to:
 - (a) a chemistry or chemistry-related laboratory maintained by:
 - (i) a public or private regularly established secondary school; or
 - (ii) a public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education; or
 - (b) a retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons who possesses red phosphorus in the regular course of lawful business activities.

Amended by Chapter 262, 2013 General Session

Amended by Chapter 413, 2013 General Session