



2022 South Dakota Legislature

House Bill 1069

Introduced by: **Representative Perry**

1 **An Act to include out-of-state convictions as a basis of an enhanced penalty for**
 2 **certain drug crimes.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 22-42-2 be AMENDED:**

5 **22-42-2.** Except as authorized by this chapter or chapter 34-20B, no person may
 6 manufacture, distribute, or dispense a substance listed in Schedules I or II; possess with
 7 intent to manufacture, distribute, or dispense a substance listed in Schedules I or II;
 8 create or distribute a counterfeit substance listed in Schedules I or II; or possess with
 9 intent to distribute a counterfeit substance listed in Schedules I or II. A violation of this
 10 section is a Class 4 felony. However, a violation of this section is a Class 3 felony if the
 11 person is in possession of three or more of the following:

- 12 (1) Three hundred dollars or more in cash;
- 13 (2) A firearm or other weapon pursuant to §§ 22-14-6, 22-14-15, 22-14-15.1, 22-14-
 14 15.3, and subdivision 22-1-2(8);
- 15 (3) Bulk materials used for the packaging of controlled substances;
- 16 (4) Materials used to manufacture a controlled substance including recipes, precursor
 17 chemicals, laboratory equipment, lighting, ventilating or power generating
 18 equipment; or
- 19 (5) Drug transaction records or customer lists.

20 The distribution of a substance listed in Schedules I or II to a minor is a Class 2
 21 felony. A first conviction under this section shall be punished by a mandatory sentence in
 22 the state penitentiary of at least one year, which sentence may not be suspended.
 23 Probation, suspended imposition of sentence, or suspended execution of sentence may
 24 not form the basis for reducing the mandatory time of incarceration required by this
 25 section. A second or subsequent conviction under this section shall be punished by a
 26 mandatory sentence in the state penitentiary of at least ten years, which sentence may

1 not be suspended. Probation, suspended imposition of sentence, or suspended execution
2 of sentence may not form the basis for reducing the mandatory time of incarceration
3 required by this section. However, a first conviction for distribution to a minor under this
4 section shall be punished by a mandatory sentence in the state penitentiary of at least
5 five years, which sentence may not be suspended. Probation, suspended imposition of
6 sentence, or suspended execution of sentence may not form the basis for reducing the
7 mandatory time of incarceration required by this section. A second or subsequent
8 conviction for distribution to a minor under this section shall be punished by a mandatory
9 sentence in the state penitentiary of at least fifteen years, which sentence may not be
10 suspended. Probation, suspended imposition of sentence, or suspended execution of
11 sentence, may not form the basis for reducing the mandatory time of incarceration
12 required by this section.

13 Any conviction for, or plea of guilty to, an offense in another state which, if
14 committed in this state, would be a violation of this section, and occurring within fifteen
15 years prior to the date of the violation being charged, must be used to determine if the
16 violation being charged is a second or subsequent offense. This does not apply to § 22-
17 42-2.4.

18 Any person who, for consideration, intentionally distributes any controlled
19 substance or counterfeit substance in violation of this section and another person dies as
20 a direct result of using that substance, the sentence for the principal felony shall be
21 enhanced by increasing the class of the principal felony two levels. The enhancement may
22 not exceed the sentence for a Class C felony.

23 A civil penalty may be imposed, in addition to any criminal penalty, upon a
24 conviction of a violation of this section not to exceed ten thousand dollars. A conviction
25 for the purposes of the mandatory sentence provisions of this chapter is the acceptance
26 by a court of any plea, other than not guilty, including nolo contendere, or a finding of
27 guilt by a jury or court.