



2024 South Dakota Legislature

Senate Bill 6

Introduced by: **Senator Wheeler**

1 **An Act to revise provisions related to death by distribution of a Schedule I or II**
 2 **substance.**

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 a state correctional facility 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 a state correctional facility of at least ten years, which sentence

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

17 Any person who, for consideration, intentionally distributes any controlled
18 substance or counterfeit substance in violation of this section and another person dies as
19 a direct result of using that substance, ~~the sentence for the principal felony shall be~~
20 ~~enhanced by increasing the class of the principal felony two levels. The enhancement may~~
21 ~~not exceed the sentence for~~ is guilty of a Class 2 felony. If the substance is fentanyl, the
22 person is guilty of a Class 1 felony. If the decedent is a minor, the person is guilty of a
23 Class C felony.

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