



2024 South Dakota Legislature

Senate Bill 6

SENATE JUDICIARY ENGROSSED

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 aggravating circumstances apply:

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

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

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

14 Any conviction for, or plea of guilty to, an offense in another state which, if
15 committed in this state, would be a violation of this section, and occurring within fifteen
16 years prior to the date of the violation being charged, must be used to determine if the
17 violation being charged is a second or subsequent offense.

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~~ is guilty of a Class 2 felony. If three or more of the above
23 aggravating circumstances apply, the person is guilty of a Class 1 felony. If the substance
24 is fentanyl and the person knew the substance was fentanyl, the person is guilty of a Class
25 1 felony. If the decedent is a minor, the person is guilty of a Class C felony.

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