

Minutes: Senate Judiciary

Thursday, March 06, 2025 8:00 AM

Roll Call

Present: Sen. Blanc, Sen. Duhamel, Sen. Grove, Sen. Mehlhaff, Sen. Pischke,
Sen. Hulse, and Sen. Wheeler

The meeting was called to order by Senator Wheeler

MOTION: TO APPROVE THE MINUTES OF TUESDAY, MARCH 04TH

Moved by: Pischke
Second by: Hulse
Action: Prevailed by voice vote

HB 1230 : revise provisions related to, and establish the crime of, unauthorized distribution of fentanyl and provide a penalty therefor.

Presented by: Representative John Hughes

Proponents: Jenna Severyn, SD Police Chiefs Association, Pierre
Mike Milstead, Minnehaha County Sherriff, Sioux Falls
Richard Tieszen, South Dakota Sheriffs Association, Eureka
Grant Flynn, Attorney General

Opponents: Cash Anderson, South Dakota Association of Criminal Defense Lawyers, Rapid City

MOTION: AMEND HB 1230

1230A

On page 1, line 1, of the Introduced bill, delete " provisions" and insert " a provision"

On page 1, line 1, after "to" delete ", and establish the crime of,"

On the Introduced bill, delete everything after the enacting clause and insert:

"

Section 1. That § 22-42-2 be AMENDED:

22-42-2. Except as authorized by this chapter or chapter 34-20B, no person may manufacture, distribute, or dispense a substance listed in Schedules I or II; possess with intent to manufacture, distribute, or dispense a substance listed in Schedules I or II; create or distribute a counterfeit substance listed in Schedules I or II; or possess with intent to distribute a counterfeit substance listed in Schedules I or II. A violation of this section is a Class 4 felony. ~~However, a~~

A violation of this section is a Class 3 felony if three or more of the following aggravating circumstances apply:

- (1) The person is in possession of three hundred dollars or more in cash;
- (2) The person is in possession of a firearm or other weapon pursuant to §§ 22-14-6, 22-14-15, 22-14-15.1, 22-14-15.3, and subdivision 22-1-2(8);

- (3) The person is in possession of bulk materials used for the packaging of controlled substances;
- (4) The person is in possession of a pill press;
- ~~(5)~~ The person is in possession of materials used to manufacture a controlled substance including recipes, precursor chemicals, laboratory equipment, lighting, ventilating or power generating equipment; or
- ~~(5)~~(6) The person is in possession of drug transaction records or customer lists.

A violation of this section is a Class 2 felony if the offense involves four milligrams or more of fentanyl. Unless a higher mandatory sentence applies, a conviction involving four milligrams but fewer than fourteen milligrams of fentanyl shall be punished by a mandatory sentence of at least three years in a state correctional facility. Unless a higher mandatory sentence applies, a conviction involving fourteen milligrams or more of fentanyl shall be punished by a mandatory sentence of at least ten years in a state correctional facility.

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

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

Any person who, for consideration, intentionally distributes any controlled substance or counterfeit substance in violation of this section and another person dies as a direct result of using that substance is guilty of a Class 2 felony. If three or more of the above aggravating circumstances apply, the person is guilty of a Class 1 felony. If the substance is fentanyl and the person knew the substance was fentanyl, the person is guilty of a Class 1 felony. If the decedent is a minor, the person is guilty of a Class C felony.

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

Moved by: Hulse
Second by: Mehlhaff

Action: Prevailed by voice vote

MOTION: DO PASS HB 1230 AS AMENDED

Moved by: Pischke

Second by: Blanc

Action: Prevailed by Majority Members Elect (7-0-0-0)

Voting Yes: Blanc, Duhamel, Grove, Mehlhaff, Pischke, Hulse, and Wheeler

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED HB 1230 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

HB 1239 : revise certain affirmative defenses to dissemination of material harmful to minors and obscenity offenses.

Presented by: Representative Bethany Soye (Handout(s) HO#1, HO#2, HO#6)

Proponents: Amy Bruner, Self, Sioux Falls
Diana Page, Self, Brookings
Michele Klimek, Self, Sioux Falls
Timothy Tracy, Self, Lake City
Lisa Gennaro, Concerned Women for America, Alexandria, VA
Lisa Gennaro, Protecting South Dakota Kids, Incorporated, Rapid City
Michael G. Pauley, South Dakota Catholic Conference, Rapid City
Jason Alan Glodt, Families for Alternative Instruction Rights in SD, Rapid City
Norman Woods, SD Family Voice Action, Rapid City (Handout(s) HO#3)
Florence K. Thompson, SD Citizens for Liberty, Rapid City (Handout(s) HO#4)
Florence K. Thompson, South Dakota Parents Involved in Education, Caputa
Senator Lauren Nelson (Handout(s) HO#5)
Representative Kathy Rice

Opponents: Robin Lerseth, Self, Pierre
Sam Matson, South Dakota Trial Lawyers Association, Sioux Falls
Sarah Myers, Self, Custer
Cash Anderson, South Dakota Association of Criminal Defense Lawyers, Rapid City
Karen Schlekeway, Self, Belle Fourche
Baylee Schultz, Self, Spearfish
Shari Theroux, Self, Brookings
Brianna Leesch, Self, Sioux Falls
Jason Jenkins, Self, Dell Rapids
Samuel J. Nelson, Sioux Falls School District, Sioux Falls
Sandra Marie Waltman, South Dakota Education Association, Pierre
Melissa McCauley, South Dakota Advocacy Network for Women, Sioux Falls
Sara Rankin, South Dakota Municipal League, Fort Pierre
Grace Gill, American Federation of State, County and Municipal Employees, Sioux Falls
Dianna Miller, Large School Group, Sioux Falls
Heath Larson, Associated School Boards of South Dakota, Pierre
Eric Erickson, South Dakota Library Association, Sioux Falls
Ranee McFarland Haglund, Self, Rapid City

Others: Ryan Rolfs, South Dakota Education Association, Pierre

MOTION: DEFER HB 1239 TO THE 41ST LEGISLATIVE DAY

Moved by: Duhamel
Second by: Wheeler
Action: Was not acted on.

MOTION: SUBSTITUTE MOTION: DO PASS HB 1239

Moved by: Blanc
Second by: Grove
Action: Prevailed by Majority Members Elect (5-2-0-0)

Voting Yes: Blanc, Grove, Mehlhaff, Pischke, and Hulse

Voting No: Duhamel and Wheeler

MOTION: ADJOURN

Moved by: Hulse
Second by: Grove
Action: Prevailed by voice vote

Doug Mortenson, Committee Secretary

/s/ DAVID WHEELER
David Wheeler, Chair