



2025 South Dakota Legislature

House Bill 1230

ENROLLED

AN ACT

ENTITLED An Act to revise a provision related to unauthorized distribution of fentanyl and provide a penalty therefor.

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

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.

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
- (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.

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I certify that the attached Act originated in the:

House as Bill No. 1230

Received at this Executive Office
this ____ day of _____,

2025 at _____ M.

Chief Clerk

By _____
for the Governor

Speaker of the House

The attached Act is hereby
approved this ____ day of
_____, A.D., 2025

Attest:

Chief Clerk

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2025
at _____ o'clock ____ M.

Secretary of the Senate

Secretary of State

House Bill No. 1230
File No. ____
Chapter No. ____

By _____
Asst. Secretary of State