

# State of South Dakota

SEVENTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 1998

770B0705

## HOUSE BILL NO. 1197

Introduced by: Representatives Gabriel, Duniphan, Hunt, Pederson (Gordon), and Van Gerpen  
and Senators Rounds, Daugaard, Dunn (Jim), Halverson, Shoener, Vitter, and  
Whiting

1 FOR AN ACT ENTITLED, An Act to increase the penalties for drug distribution and storage  
2 and for possession of drugs and drug paraphernalia.

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

4 Section 1. That § 22-42-5 be amended to read as follows:

5 22-42-5. No person may knowingly possess a controlled drug or substance unless ~~such~~ the  
6 substance was obtained directly or pursuant to a valid prescription or order from a practitioner,  
7 while acting in the course of ~~his~~ the practitioner's professional practice; or except as otherwise  
8 authorized by chapter 34-20B. A violation of this section is a ~~Class 5~~ Class 4 felony.

9 Section 2. That § 22-42-6 be amended to read as follows:

10 22-42-6. No person may knowingly possess marijuana. It is a Class 1 misdemeanor to  
11 possess two ounces of marijuana or less. It is a Class 6 felony to possess more than two ounces  
12 of marijuana but less than one-half pound of marijuana. It is a ~~Class 6~~ Class 5 felony to possess  
13 one-half pound but less than one pound of marijuana. It is a ~~Class 5~~ Class 4 felony to possess one  
14 to ten pounds of marijuana. It is a ~~Class 4~~ Class 3 felony to possess more than ten pounds of  
15 marijuana. A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction

1 of a violation of this section not to exceed ten thousand dollars.

2 Section 3. That § 22-42-7 be amended to read as follows:

3 22-42-7. The distribution of less than one-half ounce of marijuana without consideration is  
4 a ~~Class 2~~ Class 1 misdemeanor; otherwise, the distribution of one ounce or less of marijuana is  
5 a ~~Class 1 misdemeanor~~ Class 6 felony. The distribution of more than one ounce but less than  
6 one-half pound of marijuana is a ~~Class 6~~ Class 5 felony. The distribution of one-half pound but  
7 less than one pound of marijuana is a ~~Class 5~~ Class 4 felony. The distribution of one pound or  
8 more of marijuana is a ~~Class 4~~ Class 3 felony. However, the distribution of any amount of  
9 marijuana to a minor is a ~~Class 5~~ Class 4 felony. A first conviction of a felony under this section  
10 shall be punished by a mandatory sentence in the state penitentiary or county jail of at least thirty  
11 days, which sentence may not be suspended. A second or subsequent conviction of a felony  
12 under this section shall be punished by a mandatory sentence of at least one year. Conviction of  
13 a Class 1 misdemeanor under this section shall be punished by a mandatory sentence in county  
14 jail of not less than fifteen days, which sentence may not be suspended. A civil penalty may be  
15 imposed, in addition to any criminal penalty, upon a conviction of a felony violation of this  
16 section not to exceed ten thousand dollars.

17 Section 4. That § 22-42-8 be amended to read as follows:

18 22-42-8. Any person who knowingly obtains possession of a controlled drug or substance  
19 by theft, misrepresentation, forgery, fraud, deception, or subterfuge is guilty of a ~~Class 5~~ Class  
20 4 felony.

21 Section 5. That § 22-42-11 be amended to read as follows:

22 22-42-11. Any person who inhabits a room knowing that any controlled drug or substance  
23 is being illegally stored or used therein, is guilty of a ~~Class 1 misdemeanor~~ Class 6 felony.

24 Section 6. That § 22-42-15 be amended to read as follows:

25 22-42-15. Any person who intentionally ingests, inhales, breathes, or otherwise takes into

1 the body any substance, except alcoholic beverages as defined in § 35-1-1, for purposes of  
2 becoming intoxicated, unless such substance is prescribed by a practitioner of the medical arts  
3 lawfully practicing within the scope of their practice, is guilty of a ~~Class 1 misdemeanor~~ Class  
4 6 felony.

5 Section 7. That § 22-42-16 be amended to read as follows:

6 22-42-16. No person may deliver or possess with intent to deliver or knowingly manufacture  
7 any noncontrolled substance which ~~he~~ the person represents to be a substance controlled under  
8 the provisions of this chapter. Any person who violates this section is guilty of a ~~Class 1~~  
9 ~~misdemeanor~~ Class 6 felony.

10 Section 8. That § 22-42A-3 be amended to read as follows:

11 22-42A-3. ~~It is unlawful for any~~ No person, knowing the drug related nature of the object,  
12 ~~to~~ may use or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate,  
13 grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack,  
14 repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body  
15 any controlled substance or marijuana in violation of this chapter. Any person who violates any  
16 provision of this section is guilty of a ~~Class 2~~ Class 1 misdemeanor.

17 Section 9. That § 22-42A-4 be amended to read as follows:

18 22-42A-4. ~~It is unlawful for any~~ No person, knowing the drug related nature of the object,  
19 ~~to~~ may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug  
20 paraphernalia, knowing, or under circumstances where one reasonably should know, that it will  
21 be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,  
22 process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or  
23 otherwise introduce into the human body a controlled substance or marijuana in violation of this  
24 chapter. Any person who violates any provision of this section is guilty of a ~~Class 1 misdemeanor~~  
25 Class 6 felony.