



2025 South Dakota Legislature

House Bill 1230

SENATE JUDICIARY ENGROSSED

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: **Representative Hughes**

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

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~~

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

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

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

1 mandatory sentence applies, a conviction involving fourteen milligrams or more of fentanyl
2 shall be punished by a mandatory sentence of at least ten years in a state correctional
3 facility.

4 The distribution of a substance listed in Schedules I or II to a minor is a Class 2
5 felony. A first conviction under this section shall be punished by a mandatory sentence in
6 a state correctional facility of at least one year, which sentence may not be suspended.
7 Probation, suspended imposition of sentence, or suspended execution of sentence may
8 not form the basis for reducing the mandatory time of incarceration required by this
9 section. A second or subsequent conviction under this section shall be punished by a
10 mandatory sentence in a state correctional facility of at least ten years, which sentence
11 may not be suspended. Probation, suspended imposition of sentence, or suspended
12 execution of sentence may not form the basis for reducing the mandatory time of
13 incarceration required by this section. However, a first conviction for distribution to a
14 minor under this section shall be punished by a mandatory sentence in a state correctional
15 facility of at least five years, which sentence may not be suspended. Probation, suspended
16 imposition of sentence, or suspended execution of sentence may not form the basis for
17 reducing the mandatory time of incarceration required by this section. A second or
18 subsequent conviction for distribution to a minor under this section shall be punished by
19 a mandatory sentence in a state correctional facility of at least fifteen years, which
20 sentence may not be suspended. Probation, suspended imposition of sentence, or
21 suspended execution of sentence, may not form the basis for reducing the mandatory
22 time of incarceration required by this section.

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

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

33 A civil penalty may be imposed, in addition to any criminal penalty, upon a
34 conviction of a violation of this section not to exceed ten thousand dollars. A conviction
35 for the purposes of the mandatory sentence provisions of this chapter is the acceptance

- 1 by a court of any plea, other than not guilty, including nolo contendere, or a finding of
- 2 guilt by a jury or court.