

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

400A0780

SENATE BILL NO. 267

Introduced by: The Committee on Judiciary at the request of the Governor

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

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 less than two ounces of marijuana. 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
16 of a violation of this section not to exceed ten thousand dollars.

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

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

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

17 22-42-8. Any person who knowingly obtains possession of a controlled drug or substance
18 by theft, misrepresentation, forgery, fraud, deception or subterfuge is guilty of a ~~Class 5~~ Class
19 4 felony.

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

21 22-42-11. Any person who inhabits a room knowing that any controlled drug or substance
22 is being illegally stored or used therein, is guilty of a ~~Class 1 misdemeanor~~ Class 6 felony.

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

24 22-42-15. Any person who intentionally ingests, inhales, breathes or otherwise takes into the
25 body any substance, except alcoholic beverages as defined in § 35-1-1, for purposes of becoming

1 intoxicated, unless such substance is prescribed by a practitioner of the medical arts lawfully
2 practicing within the scope of their practice, is guilty of a ~~Class 1 misdemeanor~~ Class 6 felony.

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

4 22-42-16. No person may deliver or possess with intent to deliver or knowingly manufacture
5 any noncontrolled substance which ~~he~~ the person represents to be a substance controlled under
6 the provisions of this chapter. Any person who violates this section is guilty of a ~~Class 1~~
7 ~~misdemeanor~~ Class 6 felony.

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

9 22-42A-3. ~~It is unlawful for any~~ No person, knowing the drug related nature of the object,
10 ~~to~~ may use or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate,
11 grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack,
12 repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body
13 any controlled substance or marijuana in violation of this chapter. Any person who violates any
14 provision of this section is guilty of a ~~Class 2~~ Class 1 misdemeanor.

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

16 22-42A-4. ~~It is unlawful for any~~ No person, knowing the drug related nature of the object,
17 ~~to~~ may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug
18 paraphernalia, knowing, or under circumstances where one reasonably should know, that it will
19 be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,
20 process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or
21 otherwise introduce into the human body a controlled substance or marijuana in violation of this
22 chapter. Any person who violates any provision of this section is guilty of a ~~Class 1 misdemeanor~~
23 Class 6 felony.