

# State of South Dakota

SEVENTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 1997

400A0780

## SENATE ENGROSSED NO. **SB267** - 2/20/97

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 and to appropriate money for at-risk  
3 youth programs.

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

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

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

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

11 22-42-6. No person may knowingly possess marijuana. It is a Class 1 misdemeanor to  
12 possess two ounces of marijuana or less. It is a Class 6 felony to possess more than two ounces  
13 of marijuana but less than one-half pound of marijuana. Any person who transports five or more  
14 live marijuana plants or seedlings is guilty of a Class 6 felony regardless of penalty which could  
15 be charged pursuant to § 22-42-6 if the weight of live marijuana plants or seedlings were to be  
16 calculated. It is a ~~Class 6~~ Class 5 felony to possess one-half pound but less than one pound of

1 marijuana. It is a ~~Class 5~~ Class 4 felony to possess one to ten pounds of marijuana. It is a ~~Class~~  
2 ~~4~~ Class 3 felony to possess more than ten pounds of marijuana. A civil penalty may be imposed,  
3 in addition to any criminal penalty, upon a conviction of a violation of this section not to exceed  
4 ten thousand dollars.

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

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

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

21 22-42-8. Any person who knowingly obtains possession of a controlled drug or substance  
22 by theft, misrepresentation, forgery, fraud, deception or subterfuge is guilty of a ~~Class 5~~ Class  
23 4 felony.

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

25 22-42-16. No person may deliver or possess with intent to deliver or knowingly manufacture

1 any noncontrolled substance which ~~he~~ the person represents to be a substance controlled under  
2 the provisions of this chapter. Any person who violates this section is guilty of a ~~Class 1~~  
3 ~~misdemeanor~~ Class 6 felony.

4 Section 6. That § 22-42A-3 be amended to read as follows:

5 22-42A-3. ~~It is unlawful for any~~ No person, knowing the drug related nature of the object,  
6 ~~to~~ may use or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate,  
7 grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack,  
8 repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body  
9 any controlled substance or marijuana in violation of this chapter. Any person who violates any  
10 provision of this section is guilty of a ~~Class 2~~ Class 1 misdemeanor.

11 Section 7. That § 22-42A-4 be amended to read as follows:

12 22-42A-4. ~~It is unlawful for any~~ No person, knowing the drug related nature of the object,  
13 ~~to~~ may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug  
14 paraphernalia, knowing, or under circumstances where one reasonably should know, that it will  
15 be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,  
16 process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or  
17 otherwise introduce into the human body a controlled substance or marijuana in violation of this  
18 chapter. Any person who violates any provision of this section is guilty of a ~~Class 1 misdemeanor~~  
19 Class 6 felony.

20 Section 8. There is hereby appropriated from the youth-at-risk trust fund two hundred  
21 thousand dollars (\$200,000) to the Department of Education and Cultural Affairs for grants to  
22 school districts for programs which identify at-risk youth and address their problems.

23 Section 9. The secretary of the Department of Education and Cultural Affairs shall approve  
24 vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

1 **BILL HISTORY**

2 2/4/97 First read in Senate and referred to Judiciary. S.J. 308

3 2/12/97 Scheduled for Committee hearing on this date.

4 2/12/97 Deferred to another day. S.J. 408

5 2/14/97 Scheduled for Committee hearing on this date.

6 2/14/97 Judiciary Do Pass Amended, Passed, AYES 4, NAYS 3. S.J. 467

7 2/19/97 Motion to Amend.

8 2/19/97 Motion to Amend. S.J. 535

9 2/19/97 Motion to Amend. S.J. 536

10 2/19/97 Motion to Amend. S.J. 537

11 2/19/97 Senate Do Pass Amended, Passed, AYES 32, NAYS 1. S.J. 537

12 2/19/97 Senate Title Amended. S.J. 544