



## 2025 South Dakota Legislature

# House Bill 1088

Introduced by: **Representative Ismay**

1 **An Act to enhance the penalty for causing death by distributing a Schedule I or II**  
 2 **substance.**

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 or~~ 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 materials used to manufacture a controlled substance  
 19 including recipes, precursor chemicals, laboratory equipment, lighting, ventilating  
 20 or power generating equipment; or
- 21 (5) The person is in possession of drug transaction records or customer lists.

22 The distribution of a substance listed in Schedules I or II to a minor is a Class 2  
 23 felony.

24 A first conviction under this section ~~shall~~ must be punished by a mandatory  
 25 sentence of at least one year in a state correctional facility ~~of at least one year~~, which  
 26 sentence may not be suspended. ~~Probation, suspended imposition of sentence, or~~

1 ~~suspended execution of sentence may not form the basis for reducing the mandatory time~~  
2 ~~of incarceration required by this section.~~ A second or subsequent conviction under this  
3 section shall must be punished by a mandatory sentence of at least ten years in a state  
4 correctional facility ~~of at least ten years~~, which sentence may not be suspended. Probation,  
5 suspended imposition of sentence, or suspended execution of sentence may not form the  
6 basis for reducing the mandatory time of incarceration required ~~by this~~ for a first, second,  
7 or subsequent offense pursuant to this section. ~~However, a~~

8 A first conviction for distribution to a minor under this section ~~shall must~~ be  
9 punished by a mandatory sentence of at least five years in a state correctional facility ~~of~~  
10 ~~at least five years~~, which sentence may not be suspended. ~~Probation, suspended~~  
11 ~~imposition of sentence, or suspended execution of sentence may not form the basis for~~  
12 ~~reducing the mandatory time of incarceration required by this section.~~ A second or  
13 subsequent conviction for distribution to a minor under this section ~~shall must~~ be punished  
14 by a mandatory sentence of at least fifteen years in a state correctional facility ~~of at least~~  
15 ~~fifteen years~~, which sentence may not be suspended. Probation, suspended imposition of  
16 sentence, or suspended execution of sentence, may not form the basis for reducing the  
17 mandatory time of incarceration required ~~by this~~ for a first, second, or subsequent offense  
18 pursuant to this section.

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

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

29 A civil penalty may be imposed, in addition to any criminal penalty, upon a  
30 conviction of a violation of this section not to exceed ten thousand dollars. A conviction  
31 for the purposes of the mandatory sentence provisions of this chapter is the acceptance  
32 by a court of any plea, other than not guilty, including nolo contendere, or a finding of  
33 guilt by a jury or court.