

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

400Z0558

## SENATE BILL NO. 65

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding drug deliveries that  
2 result in death and to 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 to read:

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 intent  
7 to manufacture, distribute, or dispense a substance listed in Schedules I or II; create or distribute  
8 a counterfeit substance listed in Schedules I or II; or possess with intent to distribute a  
9 counterfeit substance listed in Schedules I or II. A violation of this section is a Class 4 felony.  
10 However, a violation of this section is a Class 3 felony if the person is in possession of three or  
11 more of the following:

- 12 (1) Three hundred dollars or more in cash;
- 13 (2) A firearm or other weapon pursuant to §§ 22-14-6, 22-14-15, 22-14-15.1, 22-14-15.3,  
14 and subdivision 22-1-2(8);
- 15 (3) Bulk materials used for the packaging of controlled substances;



1 (4) Materials used to manufacture a controlled substance including recipes, precursor  
2 chemicals, laboratory equipment, lighting, ventilating or power generating  
3 equipment; or

4 (5) Drug transaction records or customer lists.

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

22 Any person who, for consideration, intentionally distributes any controlled substance or  
23 counterfeit substance in violation of this section and another person dies as a result of using that  
24 substance, the sentence for the principal felony shall be enhanced by increasing the class of the

1 principal felony two levels. The enhancement may not exceed the sentence for a Class C felony.

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