

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

166U0439

HOUSE BILL NO. 1227

Introduced by: Representatives Kaiser, May, and Olson (Betty) and Senators Tieszen, Adelstein, Bradford, and Frerichs

1 FOR AN ACT ENTITLED, An Act to provide for an affirmative defense of medical necessity
2 for certain marijuana offenses.

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

4 Section 1. It is an affirmative defense to the charge of possession of two ounces or less of
5 marijuana under § 22-42-6 or the charge of ingesting marijuana for purpose of becoming
6 intoxicated under § 22-42-15 if the defendant proves by a preponderance of the evidence, that
7 the defendant has a medical necessity to possess or use marijuana. The court may consider
8 expert testimony, the testimony of lay persons with similar medical conditions, any
9 recommendation by a competent medical authority, and any other relevant testimony to
10 determine whether a defendant has a medical necessity.

11 Section 2. For purposes of this Act, a medical necessity is:

- 12 (1) Any medical condition recognized by a competent medical authority as a condition
13 for which marijuana is palliative; or
- 14 (2) Any medical condition that a competent medical authority has recommended that the
15 defendant use marijuana for palliative care.

