

Committee: House Judiciary

Wednesday, February 08, 2023 10:00 AM

Roll Call

Present: Rep. Fitzgerald, Rep. Kull, Rep. Massie, Rep. Odenbach, Rep. Pourier, Rep. Reimer, Rep. Reisch, Rep. Soye, Rep. St. John, Rep. Teunissen, Rep. Tordsen, Rep. Stevens, and Rep. Hansen

OTHERS PRESENT: See Original Minutes

**The meeting was called to order by Representative Hansen**

**MOTION: TO APPROVE THE MINUTES OF MONDAY, FEBRUARY 06<sup>TH</sup>**

Moved by: Odenbach  
Second by: Stevens  
Action: Prevailed by voice vote

**SB 95 : amend provisions regarding trusts.**

Presented by: Representative Mike Stevens  
Proponents: Terra Larson, South Dakota Trust Association, Rapid City (Handout(s) 1, 2)  
Tom Simmons, self, Vermillion  
Bret Afdahl, Department of Labor and Regulation

**MOTION: DO PASS SB 95**

Moved by: Reimer  
Second by: Fitzgerald  
Action: Prevailed by Majority Members Elect (11-1-1-0)

Voting Yes: Fitzgerald, Kull, Massie, Odenbach, Reimer, Reisch, St. John, Teunissen, Tordsen, Stevens, and Hansen

Voting No: Pourier

Excused: Soye

**HB 1160 : limit probation for offenders with four or more felony convictions.**

Presented by: Representative Chris Karr (Handout(s) 3)  
Proponents: Charles McGuigan, Attorney General  
Jon Thum, self, Sioux Falls  
Staci Ackerman, South Dakota Sheriffs' Association, Eureka  
Grant M. Flynn, South Dakota State's Attorneys Association, Pierre  
Opponents: Doug Clark, Department of Corrections  
Cash Anderson, South Dakota Association of Criminal Defense Lawyers, Rapid City

**MOTION: DO PASS HB 1160**

Moved by: Fitzgerald  
Second by: Pourier

Action: Prevailed by Majority Members Elect (13-0-0-0)

Voting Yes: Fitzgerald, Kull, Massie, Odenbach, Pourier, Reimer, Reisch, Soye, St. John, Teunissen, Tordsen, Stevens, and Hansen

**HB 1170 : establish mandatory sentences for certain driving while under the influence violations.**

Presented by: Representative Chris Karr

Proponents: Charles McGuigan, Attorney General  
Grant M. Flynn, South Dakota State's Attorneys Association, Pierre

Opponents: Greg Sattizahn, Unified Judicial System  
Doug Clark, Department of Corrections  
Cash Anderson, South Dakota Association of Criminal Defense Lawyers, Rapid City  
Steve Siegel, South Dakota Trial Lawyers Association, Pierre

**MOTION: DEFER HB 1170 TO THE 41<sup>ST</sup> LEGISLATIVE DAY**

Moved by: Reisch  
Second by: Stevens  
Action: Was not acted on.

**MOTION: SUBSTITUTE MOTION: DO PASS HB 1170**

Moved by: Odenbach  
Second by: Soye  
Action: Prevailed by Majority Members Elect (8-5-0-0)

Voting Yes: Fitzgerald, Odenbach, Reimer, Soye, St. John, Teunissen, Tordsen, and Hansen

Voting No: Kull, Massie, Pourier, Reisch, and Stevens

**HB 1171 : establish a parole hearing requirement for certain inmates.**

Presented by: Representative Chris Karr

Proponents: Charles McGuigan, Attorney General

**MOTION: TO TABLE HB 1171**

Moved by: Odenbach  
Second by: Reisch  
Action: Prevailed by Majority Members Elect (11-0-2-0)

Voting Yes: Fitzgerald, Kull, Massie, Odenbach, Pourier, Reimer, Reisch, St. John, Teunissen, Stevens, and Hansen

Excused: Soye and Tordsen

**HB 1193 : amend provisions of the Uniform Commercial Code.**

Presented by: Representative Mike Stevens (Handout(s) 4, 5, 6)

Proponents: Brett Koenecke, South Dakota Bankers Association, Pierre  
 Opponents: Isaac Latterell, self, Sioux Falls

**MOTION: DO PASS HB 1193**

Moved by: Fitzgerald  
 Second by: Stevens  
 Action: Prevailed by Majority Members Elect (7-4-2-0)

Voting Yes: Fitzgerald, Kull, Massie, Reimer, Teunissen, Tordsen, and Stevens

Voting No: Odenbach, Pourier, Soye, and Hansen

Excused: Reisch and St. John

**HB 1173 : prevent the enforcement of federal laws and directives related to firearms, accessories, and ammunition.**

Presented by: Representative Tony Randolph

Proponents: Liam Slavin, self, Rapid City  
 Hannah Determan, self, Brookings  
 Zach Lautenschlager, self, Layton, Utah  
 Annaliese Wollman, self, Custer  
 David Graves, self, Sturgis  
 Jordan D. Mason, State Freedom Caucus Network, Washington, DC  
 Travis Lassetter, self, New Underwood  
 Florence K. Thompson, SD Citizens for Liberty, Rapid City  
 Michael Boyle, self, Parkston

Opponents: Staci Ackerman, South Dakota Sheriffs' Association, Eureka  
 Joel Peterson, Department of Public Safety  
 Jenna R Severyn, South Dakota Police Chiefs Association, Fort Pierre  
 Grant M. Flynn, South Dakota State's Attorneys Association, Pierre  
 Charles McGuigan, Attorney General  
 Bill Stahl, Sully County Sheriff, Onida  
 Julie Parker, self, Sioux Falls

**MOTION: AMEND HB 1173**

1173D

On the Introduced bill, delete everything after the enacting clause and insert:

"

**Section 1. That chapter 23-7 be amended with a NEW SECTION:**

Any federal act, law, order, or regulation, whether past, present, or future, which infringes on the people's right to keep and bear arms, as guaranteed by the U.S. Const. amend. II and S.D. Const., Art. VI, § 24, is invalid in this state, may not be recognized by this state, is specifically rejected and unenforceable by this state, and is to be considered null, void, and of no effect in this state.  
The application of this section includes:

(1) Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition, not common to all other goods and services, which could have a chilling effect on the purchase or ownership of those items by law-abiding citizens;

- (2) Any registration or tracking of firearms, firearm accessories, or ammunition, which could have a chilling effect on the purchase or ownership of those items by law-abiding citizens;
- (3) Any registration or tracking of the owners of firearms, firearm accessories, or ammunition, which could have a chilling effect on the purchase or ownership of those items by law-abiding citizens;
- (4) Any act forbidding the possession, ownership, use, or transfer of any type of firearm, firearm accessory, or ammunition, by law-abiding citizens;
- (5) Any act ordering the confiscation of firearms, firearm accessories, or ammunition from law-abiding citizens; and
- (6) Any other federal act, law, order, or regulation, that is determined by the Legislature of South Dakota or a court to contravene rights granted by the U.S. Const. amend. II or the S.D. Const., Art. VI, § 24.

**Section 2. That chapter 23-7 be amended with a NEW SECTION:**

It is the duty of the courts and law enforcement agencies of this state to protect, from infringement, the right of each law-abiding citizen to keep and bear arms within the borders of this state.

**Section 3. That chapter 23-7 be amended with a NEW SECTION:**

No elected or appointed official or employee of this state, or of any political subdivision of this state, may enforce or attempt to enforce any act, law, order, or regulation, described in section 1 of this Act, or any local ordinance that infringes upon the right of a law-abiding citizen to keep and bear arms.

Nothing in this section precludes the acceptance of federal aid for the purpose of enforcing the laws of this state.

**Section 4. That chapter 23-7 be amended with a NEW SECTION:**

If a law enforcement officer knowingly acts, in an official capacity, to enforce or attempt to enforce any act, law, order, or regulation, described in section 1 of this Act, or any local ordinance that infringes upon the right of a law-abiding citizen to keep and bear arms, the officer's employing agency is liable to any injured party, and subject to a civil penalty in the amount of fifty thousand dollars per occurrence. Any civil penalty collected under this section must be deposited in the state general fund.

A citizen who has been subjected to the enforcement or attempted enforcement of any act, law, order, or regulation, described in section 1 of this Act, has a private cause of action for a declaratory judgment and for damages and costs.

**Section 5. That chapter 23-7 be amended with a NEW SECTION:**

Any political subdivision of this state is subject to a civil penalty in the amount of fifty thousand dollars, if the political subdivision:

(1) Permits the knowing employment of a person who:

(a) Prior to that employment, was an official, agent, or employee of the United States government; and

(b) On or after July 1, 2023, while acting in a capacity referenced in subsection (a), and under the color of federal law, knowingly enforced or attempted to enforce any act, law, order, or regulation, described in section 1 of this Act; or

(2) Permits the knowing employment of a person who, on or after July 1, 2023, gave material aid and support to the efforts of another for the purpose of enforcing or attempting to enforce any act, law, order, or regulation, described in section 1 of this Act.

Any civil penalty collected under this section must be deposited in the state general fund.

Any person residing within this state and having grounds to believe that a violation of this section has occurred, may bring a private cause of action.

Any person residing within the political subdivision and having grounds to believe that a violation of this section has occurred, may seek injunctive relief. A court shall hold a hearing to consider a petition for injunctive relief within thirty days. The court may award a person bringing an action or seeking relief under this section reasonable attorney's fees and costs.

**Section 6. That chapter 23-7 be amended with a NEW SECTION:**

Nothing in section 5 of this Act precludes the provision of material aid and support to:

- (1) Any federal official pursuing a suspect, if there is a demonstrable criminal nexus with another state or country and the suspect is not a citizen of this state and is not present in this state; or
- (2) Any person prosecuting any crime of violence or a felony pursuant to §§ 22-42-2, 22-42-3, 22-42-4, 22-42-8, 22-42-9, 22-42-10, or 22-42-19, if that prosecution includes weapons violations that are merely ancillary to the prosecution.

**Section 7. That chapter 23-7 be amended with a NEW SECTION:**

Terms used in this Act mean:

- (1) "Law-abiding citizen," a person who is legally present in the United States and is not otherwise precluded under state law from possessing a firearm; and
- (2) "Material aid and support," voluntarily providing or allowing another person to make use of:
  - (a) Clothing;
  - (b) Communications equipment or services, including social media accounts;
  - (c) Facilities;
  - (d) Lodging;
  - (e) Personnel;
  - (f) Transportation;
  - (g) Weapons; or
  - (h) Any other physical assets.

**Section 8. That chapter 23-7 be amended with a NEW SECTION:**

Material aid and support, as the term is defined in section 7 of this Act, does not preclude any person from:

- (1) Giving or allowing the use of medicine or other goods or materials necessary for the treatment of a physical injuries; or
- (2) Assisting a person in escaping a serious, immediate risk of a life-threatening injury.

**Section 9.** Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval."

Moved by: Stevens  
 Second by: Teunissen  
 Action: Prevailed by voice vote

**MOTION: DEFER HB 1173 TO THE 41<sup>ST</sup> LEGISLATIVE DAY**

Moved by: Kull  
 Second by: Fitzgerald  
 Action: Prevailed by Majority Members Elect (10-2-1-0)

Voting Yes: Fitzgerald, Kull, Massie, Poirier, Reimer, Reisch, St. John, Teunissen, Tordsen, and Stevens

Voting No: Odenbach and Hansen

Excused: Soye

**HB 1238 : revise certain provisions related to marriage certificates and divorce.**

Presented by: Representative Tony Randolph

Proponents: Isaac Latterell, self, Sioux Falls  
 Steven Haugaard, self, Sioux Falls  
 Walter Weber, American Center for Law & Justice, Alexandria, VA  
 Daniel Woodard, self, Washington, DC

Opponents: Patti Duffy, Stanley Co. Register of Deeds, Fort Pierre  
 Roger Tellinghuisen, South Dakota Association of County Officials, Pierre  
 Steve Siegel, South Dakota Trial Lawyers Association, Pierre

**MOTION: AMEND HB 1238**

1238A

On page 1, after line 2, of the Introduced bill, insert: "

**Section 1. That § 25-1-38 be AMENDED:**

**25-1-38.** Any marriage contracted outside the jurisdiction of this state, except a marriage contracted between two persons of the same gender, which is valid by the laws of the jurisdiction in which such marriage was contracted, is valid in this state.

Incestuous marriage, marriage with a stepchild, polygamous marriage, bigamous marriage, marriage of a minor without parental consent, and marriage of a minor under the age of 16 are not valid in this state, regardless if such marriage is valid by the laws of the foreign or domestic jurisdiction in which such marriage was contracted."

On page 2, line 13, of the Introduced bill, after "appearance." insert " Immediately before rendering such judgment, the court shall individually ask each party if the party believes he or she has been compelled or coerced in any manner related to the process. The court may not render such judgment if either party indicates he or she has been compelled, coerced, or lacked consent."

On page 2, after line 19, of the Introduced bill, insert: "

**Section 7. That chapter 25-4 be amended with a NEW SECTION:**

For the purposes of this section, the term, consent, means an informed, knowing, and voluntary agreement made with complete knowledge of all relevant facts including the risks of and available alternatives to dissolution or legal separation that a reasonable person would consider significant to the decision of whether to consent to dissolution of a marriage or legal separation."

On page 2, after line 19, of the Introduced bill, insert: "

**Section 8. That chapter 25-4 be amended with a NEW SECTION:**

At least seventy-two hours prior to commencing an action for dissolution of a marriage or legal separation, attorneys shall provide the plaintiff with information, produced and maintained by the Department of Health as described in section 9 of this Act, concerning the risks of and available alternatives to divorce. In the case of pro se plaintiffs, the clerk of the circuit court where the case is to be filed shall provide the information. Attorneys and pro se plaintiffs shall notify defendants of the same and attach such information to the summons and complaint."

On page 2, after line 19, of the Introduced bill, insert: "

**Section 9. That chapter 25-4 be amended with a NEW SECTION:**

The information required by section 8 of this Act must be made available, free of charge, to the parties of any marriage or legal separation action. The information shall include the following:

- (1) The effects of divorce on minor children, including depression and suicidal thoughts and attempts, changes in academic performance, school attendance, and dropout rates, drug and alcohol use, and other symptoms of maladjustment to divorce;
- (2) The effects of divorce on the parties, including the financial consequences of divorce, rates of divorce in subsequent marriages, changes in parental relationships with children, and changes in time spent with children by parents after divorce;
- (3) The benefits of reconciling and restoring marriages where divorce is unnecessary, including the benefits to children of being raised by both parents in a healthy marriage, and the potential for reconciliation among couples who have begun the divorce process;
- (4) Information on relationship building skills related to parenting, communication, conflict resolution, money management, and overcoming infidelity;
- (5) The availability of resources including relationship education, counseling, and online classes to help couples considering reconciliation; and
- (6) Information concerning domestic violence, substance abuse, and mental health information, and where to seek and obtain assistance related to these issues."

On page 2, line 23, of the Introduced bill, after "divorce " insert "or any other legal document "

Moved by: Stevens  
 Second by: St. John  
 Action: Prevailed by voice vote

**MOTION: DEFER HB 1238 TO THE 41<sup>ST</sup> LEGISLATIVE DAY**

Moved by: Reimer  
 Second by: Tordsen  
 Action: Prevailed by Majority Members Elect (12-0-1-0)

Voting Yes: Fitzgerald, Kull, Massie, Odenbach, Pourier, Reimer, Reisch, St. John, Teunissen, Tordsen, Stevens, and Hansen

Excused: Soye

**MOTION: ADJOURN**

Moved by: Stevens  
 Second by: Reisch  
 Action: Prevailed by voice vote

Janelle Toman, Committee Secretary

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 /s/ JON HANSEN  
 Jon Hansen, Chair