

2023 South Dakota Legislature

House Bill 1238**AMENDMENT 1238A
FOR THE INTRODUCED BILL**

1 **An Act to revise certain provisions related to marriage certificates and divorce.**

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

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

4 **25-1-38.** Any marriage contracted outside the jurisdiction of this state, except a
5 marriage contracted between two persons of the same gender, which is valid by the laws
6 of the jurisdiction in which such marriage was contracted, is valid in this state.

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

11 **Section 2. That chapter 25-1 be amended with a NEW SECTION:**

12 The written application required to be filed for the issuance of a marriage license
13 must include a section with a checklist of the grounds for divorce and separation under §
14 25-4-2. The parties must mark the box beside each ground for divorce and separation in
15 the checklist which the parties chose to apply to their marriage. Any ground not selected
16 by the parties will be considered waived. Extreme cruelty is a non-waivable ground for
17 separation. No government official may discriminate against any person for choosing or
18 not choosing certain grounds for divorce and separation.

19 All individuals married in South Dakota prior to the enactment of this section must
20 be provided the same opportunity as a newly married couple to apply for and obtain an
21 amended marriage license that conforms with the provisions of this section.

22 **Section 3. That chapter 25-1 be amended with a NEW SECTION:**

23 The county register of deeds shall record and file the application for a marriage
24 license and the checklist of grounds for divorce and separation with the marriage license

1 and marriage certificate issued to the applicants. The application and checklist are open
2 to inspection or copy by the applicants upon proper proof of identification.

3 **Section 4. That chapter 25-1 be amended with a NEW SECTION:**

4 At the time of filling out the application for a marriage license, each party must be
5 given a copy of chapter 25-4 of the South Dakota Codified Laws regarding divorce and
6 separation maintenance.

7 **Section 5. That § 25-4-17.2 be AMENDED:**

8 **25-4-17.2.** If from the evidence at the hearing, the court finds that there are
9 irreconcilable differences, which have caused the irremediable breakdown of the marriage,
10 it shall order the dissolution of the marriage or a legal separation. If it appears that there
11 is a reasonable possibility of reconciliation, the court shall continue the proceeding for a
12 period not to exceed thirty days. During the period of the continuance, the court may
13 enter any order for the support and maintenance of the parties, the custody, support,
14 maintenance, and education of the minor children of the marriage, attorney fees, and for
15 the preservation of the property of the parties. At any time after the termination of the
16 thirty-day period, either party may move for the dissolution of the marriage or a legal
17 separation, and the court may enter its judgment decreeing the dissolution or separation.

18 The court may not render a judgment decreeing the legal separation or divorce of
19 the parties on the grounds of irreconcilable differences without the consent of both
20 parties ~~unless one party has not made a general appearance.~~ Immediately before
21 rendering such judgment, the court shall individually ask each party if the party believes
22 he or she has been compelled or coerced in any manner related to the process. The court
23 may not render such judgment if either party indicates he or she has been compelled,
24 coerced, or lacked consent.

25 **Section 6. That § 25-4-17.3 be AMENDED:**

26 **25-4-17.3.** In any action for divorce or separate maintenance in which the parties
27 have consented to the use of irreconcilable differences, the court may only grant the
28 divorce based on the affidavits of the parties establishing the requisite jurisdiction and
29 grounds for the divorce or separate maintenance action ~~without requiring their personal~~
30 ~~appearance.~~

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

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

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

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

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

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

- 18 (1) The effects of divorce on minor children, including depression and suicidal thoughts
19 and attempts, changes in academic performance, school attendance, and dropout
20 rates, drug and alcohol use, and other symptoms of maladjustment to divorce;
21 (2) The effects of divorce on the parties, including the financial consequences of
22 divorce, rates of divorce in subsequent marriages, changes in parental
23 relationships with children, and changes in time spent with children by parents
24 after divorce;
25 (3) The benefits of reconciling and restoring marriages where divorce is unnecessary,
26 including the benefits to children of being raised by both parents in a healthy
27 marriage, and the potential for reconciliation among couples who have begun the
28 divorce process;
29 (4) Information on relationship building skills related to parenting, communication,
30 conflict resolution, money management, and overcoming infidelity;
31 (5) The availability of resources including relationship education, counseling, and
32 online classes to help couples considering reconciliation; and

1 (6) Information concerning domestic violence, substance abuse, and mental health
2 information, and where to seek and obtain assistance related to these issues.

3 **Section 10. That chapter 25-4 be amended with a NEW SECTION:**

4 Any spouse that commits domestic abuse as defined in subdivision 25-10-1(1) or
5 violates a protective order under § 25-10-13 to intentionally cause a spouse to sign an
6 affidavit for divorce or any other legal document is guilty of a Class 5 felony.

7 **Section 11. That § 25-10-3.1 be AMENDED:**

8 **25-10-3.1.** Any person who is involved in one of the following relationships with
9 another party:

- 10 (1) Spouse or former spouse, or former spouse or adulterer of a spouse or former
11 spouse;
- 12 (2) Is in a significant romantic relationship or has been in one during the past twelve
13 months with the abusing party;
- 14 (3) Has a child or is expecting a child with the abusing party;
- 15 (4) Parent and child, including a relationship by adoption, guardianship, or marriage;
16 or
- 17 (5) Siblings, whether of the whole or half blood, including a relationship through
18 adoption or marriage;
19 is entitled to apply for a protection order or a temporary protection order pursuant
20 to the provisions of this chapter.