AN ACT

ENTITLED, An Act to provide remedies for assets omitted from the division of property in the entry of a divorce decree.

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

Section 1. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as follows:

Any court that has entered an original decree of marital annulment, dissolution, or legal separation and determined a division of the property shall reopen the case upon the motion of either party to the original decree if the moving party alleges all of the following regarding any assets belonging to either or both of the parties:

(1) The assets existed at the time of the entry of the decree;

(2) The assets were not encompassed by the original decree; and

(3) The assets are currently more than de minimus assets.

Section 2. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as follows:

If the court finds the assets were inadvertently omitted from the division of property, the court shall make an equitable division of the omitted assets. The court shall make an equitable division of the omitted assets, whether the titles to the assets are in the name of the husband or the wife. The court shall consider equity, the circumstances of the parties at the time of the original decree, and the circumstances of the parties when a motion for omitted assets is filed.

Section 3. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as follows:

If the court finds the omitted assets were intentionally concealed by the nonmoving party or the nonmoving party's agent, the court may order an equitable division of the omitted assets' appreciated value, a forfeiture of the omitted assets to the moving party, or any other appropriate distribution. In addition, the court may award either compensatory damages or punitive damages, or both, to the moving party.

Section 4. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as follows:

The court may award attorney fees for a motion for inadvertently omitted assets filed pursuant to this Act. The court shall award attorney fees to the moving party if the court finds the omitted assets were intentionally concealed by the nonmoving party or the nonmoving party's agent.

Section 5. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as follows:

Any court of this state that has entered an original decree of marital annulment, dissolution, or legal separation and determined the division of property has exclusive, continuing jurisdiction over the subsequent motions for omitted assets unless the court that entered the original decree determines a court of another state is a more convenient forum.

Section 6. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as follows:

A court of this state may adjudicate a motion for omitted assets when a court of another state entered the original decree of marital annulment, dissolution, or legal separation and determined the division of property only if the court of the other state that entered the original decree determines it does not have exclusive, continuing jurisdiction or determines a court of this state is a more convenient forum. However, if the omitted asset is real property that lies in this state, a court of this state may adjudicate a motion for omitted assets regardless of whether a court of another state entered the original decree.

Section 7. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as follows:

A motion for omitted assets alleging inadvertent omission of assets must be filed within two years after the date of discovery of the omission, but no later than three years after the entry of the original decree.

Section 8. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as follows:

A motion for omitted assets alleging intentional concealment of assets must be filed within two years after the date of discovery of the omission, but no later than ten years after the entry of the

original decree.

Section 9. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of this Act are not intended to be exclusive remedies and do not preclude the use of any other criminal or civil remedy.

An Act to provide remedies for assets omitted from the division of property in the entry of a divorce decree.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1226

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Chief Clerk

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_____
Speaker of the House

Attest:

_____
Chief Clerk

_____
President of the Senate

Attest:

_____
Secretary of the Senate

House Bill No. 1226
File No. ____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State