

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

954X0430

HOUSE BILL NO. 1165

Introduced by: Representatives Haugaard, DiSanto, Greenfield (Lana), Qualm, and
Steinhauer and Senators Holien and Jensen (Phil)

1 FOR AN ACT ENTITLED, An Act to repeal the requirement for a marriage license and to
2 provide for a marriage certificate.

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

4 Section 1. That § 25-1-10 be repealed.

5 ~~— 25-1-10. Previous to any marriage within this state, a license shall be obtained from the~~
6 ~~county register of deeds of any county, the fee for which is forty dollars. Ten dollars of the~~
7 ~~marriage license fee shall be retained by the county in which the fee is collected and placed in~~
8 ~~the county general fund. Thirty dollars of the marriage license fee shall be deposited in the~~
9 ~~county domestic abuse program fund. The license and record of marriage form shall be~~
10 ~~prescribed and furnished by the Department of Health. Certified copies of the marriage record~~
11 ~~shall be furnished by the county register of deeds for a fee established pursuant to § 34-25-52~~
12 ~~and such fee shall be retained by the county in which the fee is collected and placed in the~~
13 ~~county general fund.~~

14 Section 2. That § 25-1-10.1 be repealed.

15 ~~— 25-1-10.1. To obtain a marriage license, each applicant shall sign the application in person~~



1 in the presence of the register of deeds or in the presence of a person duly appointed by the
2 register to act in the register's behalf. Each applicant shall provide proof of age prior to issuance
3 of the marriage license. Proof of age may be satisfied by providing a certified copy of a birth
4 certificate or any photographic identification which includes the applicant's name and date of
5 birth. No person may use a power of attorney to obtain a marriage license.

6 Section 3. That § 25-1-10.2 be repealed.

7 ~~—25-1-10.2. The application for a marriage license shall contain the following statement:~~

8 ~~—"The laws of this state affirm your right to enter into this marriage and at the same time to~~
9 ~~live within the marriage free from violence and abuse. Neither of you is the property of the~~
10 ~~other. Physical abuse, sexual abuse, battery, and assault of a spouse or other family member, as~~
11 ~~well as other provisions of the criminal laws of this state, are applicable to spouses and other~~
12 ~~family members and violations thereof are punishable by law."~~

13 ~~—The application shall contain a separate line for the signatures of the applicants verifying~~
14 ~~that the applicants have read and understand the statement:~~

15 Section 4. That § 25-1-11 be repealed.

16 ~~—25-1-11. Such license must not in any case be granted where either party is under the age~~
17 ~~necessary to render the marriage absolutely valid nor where the condition of either party is such~~
18 ~~as to disqualify him from making any other civil contract nor in any case where the marriage~~
19 ~~would be void under the provisions of §§ 25-1-6 to 25-1-8, inclusive.~~

20 Section 5. That § 25-1-24 be repealed.

21 ~~—25-1-24. Marriage licenses issued under the provisions of this chapter shall become void and~~
22 ~~of no effect unless the marriage be solemnized within twenty days following the issuance~~
23 ~~thereof.~~

24 Section 6. That § 25-1-28.1 be repealed.

1 ~~25-1-28.1. At the time the application for a marriage license is filed, the register of deeds~~
2 ~~shall distribute to each applicant educational materials prepared and provided at no cost to the~~
3 ~~counties by the Department of Health on topics related to sexually transmitted disease, HIV~~
4 ~~transmission, and prenatal care. The information shall include a list of locations where~~
5 ~~counseling and testing services are available.~~

6 Section 7. That § 25-1-29 be repealed.

7 ~~25-1-29. Marriage must be solemnized, authenticated, and recorded as provided in this~~
8 ~~chapter provided, however, that noncompliance with its provisions does not invalidate any~~
9 ~~lawful marriage consented to and subsequently consummated prior to July 1, 1959.~~

10 Section 8. That § 25-1-31 be repealed.

11 ~~25-1-31. If any marriage is solemnized without the license required by this title being~~
12 ~~procured, the parties so married and all persons aiding in such marriage are guilty of a Class 1~~
13 ~~misdemeanor.~~

14 Section 9. That § 25-1-35 be repealed.

15 ~~25-1-35. After performing the ceremony, the person solemnizing the marriage shall deliver~~
16 ~~the marriage certificate to the persons married and return, within ten days, the license and record~~
17 ~~of marriage to the county register of deeds.~~

18 Section 10. That § 25-1-36 be repealed.

19 ~~25-1-36. Persons married in accordance with the creed or custom of any sect or~~
20 ~~denomination to which they belong which dispenses with the services of any minister or other~~
21 ~~person authorized to perform marriages by § 25-1-30 are themselves required to make return~~
22 ~~of such marriage within thirty days thereafter to the county register of deeds. It is a petty offense~~
23 ~~for a husband and wife to fail to make the return of a certificate of a marriage made under this~~
24 ~~section.~~

1 Section 11. That § 25-1-9 be amended to read:

2 25-1-9. Any unmarried ~~applicant for a marriage license~~ person who is eighteen years old or
3 older, and who is not otherwise disqualified, is capable of consenting to and consummating a
4 marriage. If either applicant for a marriage ~~license~~ certificate is between the age of sixteen and
5 eighteen, that applicant shall submit to the ~~register of deeds~~ person who will solemnize the
6 marriage a notarized statement of consent to marry from one parent or legal guardian of the
7 applicant. The person who had solemnized the marriage shall submit to the register of deeds the
8 notarized statement at the time of the filing of the marriage certificate. No person may use
9 power of attorney to obtain a marriage certificate.

10 Section 12. That § 25-1-13 be amended to read:

11 25-1-13. If either party is a minor, no marriage ~~license shall~~ certificate may be granted unless
12 the written consent of the parent or guardian, duly acknowledged by the parent or guardian, or
13 proved to be genuine, is filed ~~in the office of the county register of deeds prior to issuing the~~
14 ~~license, and~~ with the person who will solemnize the marriage before issuing the certificate. The
15 written consent form and a memorandum of the facts shall be entered ~~in the marriage record~~
16 ~~book with the other records of the marriage license~~ with the marriage certificate filing pursuant
17 to section 14 of this Act.

18 Section 13. That § 25-1-15 be amended to read:

19 25-1-15. Any ~~register of deeds who grants~~ person who provides a marriage ~~license~~ certificate
20 contrary to the provisions of this ~~title~~ chapter is guilty of a Class 1 misdemeanor.

21 Section 14. That § 25-1-37 be amended to read:

22 25-1-37. The Department of Health shall maintain marriage ~~licenses~~ certificates issued and
23 records of marriages solemnized in South Dakota. A duly certified copy of the recorded
24 marriage ~~license~~ certificate shall be received as competent evidence of the marriage. The fee to

1 file the certificate is forty dollars. Ten dollars of the fee shall be retained by the county in which
2 the fee is collected and placed in the county general fund. Thirty dollars of the fee shall be
3 deposited in the county domestic abuse program fund. Certified copies of the marriage record
4 shall be furnished by the county register of deeds for a fee established pursuant to § 34-25-52
5 and this fee shall be retained by the county in which the fee is collected and placed in the county
6 general fund. The local registrar shall file monthly, or more frequently if required by the
7 department, a record of all marriages occurring in the local registrar's county with the
8 Department of Health by electronic means, if available. If electronic means are not available,
9 the registrar shall file such record of all marriages on a form prescribed by the department.

10 Section 15. That § 25-7A-56.2 be amended to read:

11 25-7A-56.2. To facilitate the collection of child support and to facilitate locating child
12 support obligors, the following information shall be recorded in the following manners:

13 (1) The social security number of any applicant for a professional license, ~~drivers~~ driver
14 license, occupational license, recreational license, sporting license, or marriage
15 ~~license~~ certificate shall be recorded on the application or filing. If an agency allows
16 the use of a number, other than the social security number as the license number, the
17 agency shall advise the applicant;

18 (2) The social security number of any person who is subject to a divorce decree, support
19 order, paternity adjudication, or paternity acknowledgment shall be recorded on the
20 document relating to the matter;

21 (3) The social security number of any person who has died shall be placed in the death
22 records and recorded on the death certificate;

23 (4) The social security number, drivers license number, or identification number of the
24 owners shall be recorded in the records maintained by the Division of Motor Vehicles

1 upon the issuance of the title or renewal of a registration.

2 Section 16. That chapter 25-1 be amended by adding a NEW SECTION to read:

3 A marriage certificate may be issued by any person authorized to solemnize a marriage
4 pursuant to § 25-1-30. Prior to issuance of the certificate, any solemnizing party issuing a
5 marriage certificate shall certify that both applicants are eligible to marry pursuant to this
6 chapter. After the marriage is certified and the marriage solemnized, the married couple shall
7 submit to the register of deeds the marriage certificate and any forms required pursuant to this
8 chapter within fifteen days of the issuance of the marriage certificate. Before filing, the register
9 of deeds shall confirm the names and ages of the married parties by valid identification at the
10 time of the marriage certificate filing.