

# State of South Dakota

EIGHTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2013

727U0701

## HOUSE BILL NO. 1226

Introduced by: Representatives Stevens, Feinstein, Hajek, Hunhoff (Bernie), Johns, Mickelson, Russell, and Schoenfish and Senators Lederman and Van Gerpen

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

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

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

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

- 10 (1) The assets existed at the time of the entry of the decree;  
11 (2) The assets were not encompassed by the original decree; and  
12 (3) The assets are currently more than de minimus assets.

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

15 If the court finds the assets were inadvertently omitted from the division of property, the



1 court shall make an equitable division of the omitted assets. The court shall make an equitable  
2 division of the omitted assets, whether the titles to the assets are in the name of the husband or  
3 the wife. The court shall consider equity, the circumstances of the parties at the time of the  
4 original decree, and the circumstances of the parties when a motion for omitted assets is filed.

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

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

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

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

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

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

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

1 follows:

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

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

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

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

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

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

21 A party may file a motion for omitted assets in trial court while an appeal of the original  
22 decree is pending before the South Dakota Supreme Court. The moving party shall serve a copy  
23 of the motion with the South Dakota Supreme Court if an appeal of the original decree is  
24 pending. The trial court may then rule on the motion. The moving party shall file a copy of the

1 trial court's order in the South Dakota Supreme Court within seven days after the date of the trial  
2 court order if an appeal of the original decree is pending. If the ruling on the motion for omitted  
3 assets affects the appeal of the original decree, the South Dakota Supreme Court shall modify  
4 the appeal if necessary.

5 Section 10. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as  
6 follows:

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