

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

655M0655

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1203 - 02/08/2006

Introduced by: Representative Gillespie and Senator Bogue

1 FOR AN ACT ENTITLED, An Act to define marital and nonmarital property for the purposes
2 of the division of property between parties at divorce.

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

4 Section 1. That § 25-4-44 be amended to read as follows:

5 25-4-44. When a divorce is granted, the ~~courts~~ court may make an equitable division of the
6 marital property belonging to either or both, whether the title to such property is in the name of
7 the husband or the wife. In making such division of the property, the court shall have regard for
8 equity and the circumstances of the parties. The court may consider the nonmarital property
9 when determining an equitable division of property, the need of a spouse for support, and the
10 ability to provide support.

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

13 For the purposes of § 25-4-44, there is a rebuttable presumption that nonmarital property is
14 all property:

15 (1) Acquired prior to the marriage;



- 1 (2) Acquired by inheritance or gift from any third party or source;
- 2 (3) Excluded by valid agreement;
- 3 (4) That is the direct result of the increase in value of assets that are nonmarital property.
- 4 All other assets of the parties are marital property.

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

7 Nonmarital property does not become marital property solely because of commingling.
8 However, the increase in value of assets that are nonmarital property may be marital property
9 if:

- 10 (1) Appreciation was the result of investment of marital property in the nonmarital
11 property; or
- 12 (2) Appreciation was the result of marital labor in managing or improving the nonmarital
13 property.