**South Carolina General Assembly**

125th Session, 2023-2024

**H. 3488**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Beach and Chumley

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Introduced in the House on January 10, 2023

Currently residing in the House Committee on **Judiciary**

Summary: Religious Freedom of Marriage Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/8/2022 House Prefiled

12/8/2022 House Referred to Committee on **Judiciary**

1/10/2023 House Introduced and read first time ([House Journal‑page 186](h:\hj\20230110.docx))

1/10/2023 House Referred to Committee on **Judiciary** ([House Journal‑page 186](h:\hj\20230110.docx))

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**VERSIONS OF THIS BILL**

[12/08/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/3488_20221208.docx)

A bill

to amend the South Carolina Code of Laws by enacting the “Religious Freedom of Marriage Act”; by adding Section 20‑1‑225 so as to require the selection of divorce grounds on the marriage license application and for other purposes; by amending Section 20‑3‑10, relating to Grounds for divorce, so as to require mutual application for a divorce based on the ground of living separate and apart and to make other related changes; by amending Section 16‑3‑658, relating to Criminal sexual conduct when the victim is a spouse, so as to change the exception related to purported marriages of minors; and by amending Section 20‑1‑100, relating to the Minimum age for a valid marriage, so as to apply also to out‑of‑state marriages.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Religious Freedom of Marriage Act”.

SECTION 2. The General Assembly hereby finds all of the following:

(1) As stated in the United States Supreme Court decision of Obergefell v. Hodges:

(a) “The right to marry is fundamental because it supports a two‑person union unlike any other in its importance to the committed individuals.”

(b) “The right to marry thus dignifies couples who ‘wish to define themselves by their commitment to each other’… Marriage responds to the universal fear that a lonely person might call out only to find no one there. It offers the hope of companionship and understanding and assurance that while both still live there will be someone to care for the other.”

(c) “The nature of marriage is that, through its enduring bond, two persons together can find other freedoms, such as expression, intimacy, and spirituality.”

(d) “No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were.

(2) The South Carolina Religious Freedom Act provides that the State may not substantially burden a person’s exercise of religion, even if the burden results from a rule of general applicability, unless the State demonstrates that the application of the burden to the person is in furtherance of a compelling state interest and is the least restrictive means of furthering that compelling state interest. Section 2, Article 1 of the South Carolina Constitution and the First Amendment of the United States Constitution prohibit the General Assembly and Congress respectively from enacting any law that prohibits the free exercise of religion.

(3) The State violates the South Carolina Religious Freedom Act, the South Carolina Constitution, and the United States Constitution when the State substantially burdens a person’s exercise of religion by denying a person their constitutional right to solemnize a marriage, or by denying a minister the right to perform a marriage ceremony, unless such person or minister accepts at the time of marriage all of the grounds to terminate that marriage in Section 20‑3‑10 of the South Carolina Code, even where such grounds violate a person’s or minister’s religious beliefs or moral convictions.

(4) State imposition of all grounds for divorce on all married persons in violation of their religious beliefs or moral convictions is not the least restrictive means of providing persons the ability to divorce. Every person has a fundamental right to choose to marry with grounds for divorce consistent with the person’s fundamental right to free exercise of their religious beliefs or moral convictions.

SECTION 3. Article 3, Chapter 1, Title 20 of the S.C. Code is amended by adding:

Section 20‑1‑225. (A) The written application required to be filed for the issuance of a marriage license pursuant to Section 20‑1‑220 must include a section with a checklist of the grounds for divorce as set forth in Section 20‑3‑10 at the time of applying for a marriage license. The applicants must mark the box beside each ground for divorce in the checklist which the applicants choose to apply to their marriage. Any ground not selected by the applicants will be considered waived.

(B) Residents who married in South Carolina before enactment of this section and residents from other states who married in South Carolina shall be provided the same opportunity as newly married couples to file an amended application for a marriage license and to obtain a marriage license based on the amended application that conforms with the provisions of this section.

SECTION 4. Section 20‑3‑10 of the S.C. Code is amended to read:

Section 20‑3‑10. (A) No divorce from the bonds of matrimony shall be granted except upon one or more of the following grounds, to wit:

(1) adultery;

(2) desertion for a period of one year;

(3) physical cruelty;

(4) habitual drunkenness; provided, that this ground shall be construed to include habitual drunkenness caused by the use of any narcotic drug; or

(5) on the mutual application of either party both parties if and when the husband and wife have lived separate and apart without cohabitation for a period of one year. A plea of res judicata or of recrimination with respect to any other provision of this section shall not be a bar to either party the parties obtaining a divorce on this ground.

(B)(1) In the following situations in which one of the spouses is under severe stress, no mutual application for divorce pursuant to subsection (A)(5) shall be valid unless the spouse under severe stress has access to independent legal representation:

(a) a spouse or minor child is in the hospital;

(b) a spouse enters into a coma or otherwise becomes incapacitated or incapable of giving informed consent as determined by a court of competent jurisdiction;

(c) a spouse or minor child develops late‑stage cancer, cardiovascular disease, diabetes, AIDS, HIV, tuberculosis, or other serious medical condition;

(d) a minor child is present including, but not limited to, a minor child who is blind or deaf, or who has Down Syndrome, autism, cleft palate, or other developmental disabilities;

(e) a spouse loses his or her job due to downsizing or is injured in an accident;

(f) a spouse is working abroad as a missionary or for an international nonprofit business or other enterprise;

(g) a spouse is deployed for a military tour of duty in a branch of the United States Armed Forces, Greenpeace, or other work abroad; or

(h) any other situation involving one of the spouses who is under severe stress where the court determines that independent legal representation is appropriate.

(2) A party has access to independent legal representation if:

(a) before signing a mutual application for divorce, the party has reasonable time to:

(i) decide whether to retain an attorney to provide independent legal representation; and

(ii) locate an attorney to provide independent legal representation, obtain the attorney’s advice, and consider the advice provided; and

(b) the other party is not represented by the same attorney.

SECTION 5. Section 16‑3‑658 of the S.C. Code is amended to read:

Section 16‑3‑658. A person cannot be guilty of criminal sexual conduct under Sections 16‑3‑651 through 16‑3‑659.1 if the victim is the legal spouse unless the couple is living apart and the offending spouse's conduct constitutes criminal sexual conduct in the first degree or second degree as defined by Sections 16‑3‑652 and 16‑3‑653.

The offending spouse’s conduct must be reported to appropriate law enforcement authorities within thirty days in order for a person to be prosecuted for these offenses.

This section is not applicable to a purported marriage entered into by a male under the age of sixteen or a female under the age of fourteen sixteen.

SECTION 6. Section 20‑1‑100 of the S.C. Code is amended to read:

Section 20‑1‑100. Any person under the age of sixteen is not capable of entering into a valid marriage, and all marriages hereinafter entered into by such persons are void ab initio. A common‑law marriage or out‑of‑state marriage hereinafter entered into by a person under the age of sixteen is void ab initio.

SECTION 7. This act takes effect upon approval by the Governor.

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