



Name of Country and Jurisdiction:

South Dakota, United States

- 1. What forms of legally recognized relationships are available?
- 2. What are the requirements to be able to enter into the above relationships?
- 3. Differences between marriage and civil unions and how the two sets of laws interact.
- 4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?
- 5. When a couple comes to South Dakota, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?
- 6. How can each form of relationship be dissolved? What is the residency requirement or other link to South Dakota for an authority to grant a divorce/dissolution?



1. What forms of legally recognized relationships are available?



LEGAL RECOGNITION FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
Marriage	South Dakota	<i>Obergefell v. Hodges</i> , 576 U.S. ____ (2015).	Yes ¹

¹ On June 26, 2015, the United States Supreme Court issued a decision in four consolidated cases from the Sixth Circuit Court of Appeals under the name *Obergefell v. Hodges*, 576 U.S. ____ (2015), regarding same-sex marriage. The appeals arose from federal district court decisions in Michigan, Kentucky, Ohio, and Tennessee, which struck down as unconstitutional laws that denied the 14 petitioners the right to marry or refused to give full recognition to marriages lawfully performed in another state. The laws at issue in those states define marriage as a union between one man and one woman. The Sixth Circuit had reversed those decisions (in *DeBoer v. Snyder*, 772 F.3d 388 (2014)), holding that a state had no constitutional obligation to allow same-sex marriages or to recognize those performed in another state. In a 5-4 majority opinion, the U.S. Supreme Court held that the Fourteenth Amendment requires a state to license marriages between same-sex couples and to recognize lawfully performed same-sex marriages from another state. The Court held that the right to marry is protected under both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. Because the Court found that state laws at issue burden the liberty and abridge the equality of same-sex couples, they must be struck down.

On August 11, 2015, the United States Court of Appeals for the Eighth Circuit affirmed the judgment of the United States District Court for the District of South Dakota in *Rosenbrahn v. Daugaard*, 61 F. Supp. 3d 862 (D.S.D. 2015), striking down South Dakota's constitutional and statutory prohibitions on same-sex marriage. See ____ F.3d ____, No. 15-1186 (8th Cir. Aug. 11, 2015).

Q

2. What are the requirements to be able to enter into the above relationships?

A

(i) Geographic requirements:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	There is no residency requirement for marriage in South Dakota.

(ii) Other substantive eligibility criteria:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	Two persons wishing to establish a marriage in South Dakota must satisfy all of the following criteria: <ol style="list-style-type: none"> 1) Neither person may already be a party to a marriage; 2) Each person must be at least 18 years of age to marry without consent. However, marriage applicants aged 16 or 17 may enter into a marriage with parental consent; and 3) The spouses must not be related by blood, half blood, or adoption (second cousins or more distantly related).

Q

3. If both marriage and civil unions exist:

- (a) Identify any significant differences in eligibility; and
- (b) Briefly highlight how they interact if both are in effect (e.g., in some countries, entering into a marriage with the same or a different person automatically dissolves any civil union that the two parties were previously party to, making the latter vulnerable and potentially circumventing separation laws).
- (c) If both marriage and civil unions are available to same-sex couples, briefly highlight areas where major differences exist between marriage and civil unions (e.g., taxes, adoption, immigration, etc.).

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(a)–(c)	Not applicable. South Dakota does not recognize civil unions.
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4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	If you are already married, you cannot marry in South Dakota.

Q

5. When a couple comes to South Dakota, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	South Dakota will recognize any out-of-state marriage that is valid by the laws of the state in which it was performed.

Q

6. How can each form of relationship be dissolved? What is the residency requirement or other link to South Dakota for an authority to grant a divorce/ dissolution?

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	A person can obtain a divorce decree by filing a complaint with the Circuit Court of South Dakota in the Judicial Circuit in which either spouse resides. The plaintiff must be a resident of South Dakota or stationed in South Dakota as a member of the armed services at the time the action is commenced. The plaintiff need not maintain residency throughout the proceeding.

Sources:

Statutes:

- S.D. Codified Laws § 25-1-1 (2015).
- S.D. Codified Laws § 25-1-6 (2015).
- S.D. Codified Laws § 25-1-7 (2015).
- S.D. Codified Laws § 25-1-8 (2015).
- S.D. Codified Laws § 25-1-9 (2015).
- S.D. Codified Laws § 25-1-13 (2015).
- S.D. Codified Laws § 25-1-38 (2015).
- S.D. Codified Laws § 25-4-30 (2015).
- S.D. Codified Laws § 25-4-30.1 (2015).

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Cases:

- *Obergefell v. Hodges*, 576 U.S. _____ (2015).
- *Rosenbrahn v. Daugaard*, _____ F.3d _____, No. 15-1186 (8th Cir. Aug. 11, 2015).
- *Rosenbrahn v. Daugaard*, 61 F. Supp. 3d 862 (D.S.D. 2015).

Administrative Materials:

- *South Dakota Marriage Requirements*, South Dakota Department of Health, available at <https://doh.sd.gov/records/marriage-requirements.aspx?> (last visited Aug. 31, 2015).