COMMITTEE REPORT

March 31, 2010

**S. 1185**

Introduced by Senators Malloy, Ford, Pinckney, McConnell, Rose and Campsen

S. Printed 3/31/10--S.

Read the first time February 17, 2010.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 1185) to amend Title 20, Code of Laws of South Carolina, 1976, by adding Chapter 8 entitled the “South Carolina Family Law Mediation Act”, so as to mandate mediation, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking Section 20-8-40, beginning on page 2, line 38, and inserting therein the following:

/ Section 20‑8‑40. (A) All issues in domestic relations actions are subject to court ordered mediation, except where exempted. The following cases must be automatically exempted from mediation:

(1) contempt actions;

(2) Family Court cases initiated by the South Carolina Department of Social Services;

(3) any case where a party has been convicted of, pled guilty to, or pled nolo contendere to a charge of spousal abuse of another party, or child abuse or neglect of a child of either party;

(4) any case where there has been a finding, including a current order of protection, by a court of competent jurisdiction within one year of the date of filing the action of spousal abuse of another party or child abuse or neglect of a child of either party;

(5) juvenile proceedings;

(6) uncontested issues;

(7) actions where there is an agreement between the parties for voluntary mediation, subject to court approval; or

(8) the entry of a divorce or separate maintenance decree.

Certification that an action is exempt from court ordered mediation shall be on a form approved by the Supreme Court.

(B) A party or the court may move to dispense with or defer mediation due to exceptional circumstances. Upon a showing of exceptional circumstances and after a hearing, the Chief Judge for Administrative Purpose of the Family Court may grant the motion and notify the parties or their attorneys of the ruling. Exceptional circumstances may relate to such factors as, but are not limited to:

(1) geographic considerations;

(2) incapacity of a party;

(3) incompetence of a party;

(4) cases where there has been a finding by a court of competent jurisdiction more than one year from the date of filing the action of spousal abuse of a party or child abuse or neglect of a child of either party, except as provided for in Section 20-8-40(A)(3) and (4);

(5) substance abuse by one of the parties; or

(6) cases where there has been:

(a) an arrest of one of the parties for spousal abuse of another party or child abuse or neglect of a child of either party; or

(b) an order of protection that has expired or been dismissed pursuant to Section 20-4-70, a restraining order, or other injunctive relief issued against a party where the underlying basis for the order was based on spousal abuse of a party or child abuse or neglect of a child of either party; or

(c) a documented report to a domestic violence shelter by a party alleging spousal abuse of a party or child abuse or neglect of a child of either party; and

(d) a finding by the Family Court that, in its discretion, exceptional circumstances justify the party’s request to dispense with mediation.

(C) For purposes of this Section, the terms ‘spousal abuse’ and ‘child abuse or neglect’ include, but are not limited to, criminal domestic violence, stalking, harassment, criminal sexual conduct, and child abuse and neglect.

(D) The court must order that the mediation conference or conferences shall be conducted no sooner than ninety days after the filing of the action, unless, in the court’s discretion, the mediation conference should commence at an earlier date, and concluded no later than one hundred eighty days after the filing of the action. A party may seek an extension of time to complete mediation, and the court, in its discretion, may extend the time to complete mediation in a written order.

(E) The South Carolina Supreme Court shall establish the minimum number of hours that parties must participate in mediation.

(F) No final hearing in any domestic relations action shall be scheduled or heard prior to the completion of mediation, unless the matter is exempt from mediation by operation of this chapter or by order of the Chief Judge for Administrative Purpose of the Family Court upon a showing of exceptional circumstances. A request for a final hearing must be accompanied by a copy of the written mediation report.

(G) In cases exempt from court ordered mediation pursuant to this section, the Chief Judge for Administrative Purposes of the Family Court may, upon the motion of the court or of any party, order a case to mediation. /

Renumber sections to conform.

Amend title to conform.

PAUL G. CAMPBELL, JR. for Committee.

**A** **BILL**

TO AMEND TITLE 20, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 8 ENTITLED THE “SOUTH CAROLINA FAMILY LAW MEDIATION ACT”, SO AS TO MANDATE MEDIATION IN ALL DOMESTIC RELATIONS ACTIONS IN FAMILY COURT; TO PROVIDE FOR DEFINITIONS OF MEDIATION AND MEDIATOR; TO PROVIDE FOR AUTOMATIC EXCEPTIONS WHERE MEDIATION IS NOT REQUIRED; TO INCLUDE CONTEMPT ACTIONS, CHILD ABUSE AND NEGLECT PROCEEDINGS, DEPARTMENT OF SOCIAL SERVICES ADULT PROTECTIVE SERVICES CASES, CASES WHERE THERE HAS BEEN A FINDING OF ABUSE OR NEGLECT, JUVENILE PROCEEDINGS, UNCONTESTED ISSUES, ACTIONS WHERE PARTIES AGREE TO VOLUNTARY MEDIATION, AND THE ENTRY OF DIVORCE OR SEPARATE MAINTENANCE DECREES; TO PROVIDE CIRCUMSTANCES WHERE MEDIATION MAY BE WAIVED BY THE FAMILY COURT; TO INCLUDE GEOGRAPHIC CONSIDERATIONS, INCAPACITY OF ONE OR MORE PARTIES, INCOMPETENCE OF ONE OR MORE PARTIES, CASES WHERE INVOLVING ABUSE OR NEGLECT OCCURRING MORE THAN ONE YEAR FROM THE HEARING, CASES INVOLVING SUBSTANCE ABUSE BY ONE OR MORE PARTIES; TO PROVIDE THAT MEDIATION MUST OCCUR BETWEEN NINETY AND ONE HUNDRED AND EIGHTY DAYS AFTER THE FILING OF THE ACTION; AND TO PROVIDE THAT NO FINAL HEARING IN A DOMESTIC RELATIONS ACTION SHALL BE SCHEDULED UNTIL MEDIATION IS COMPLETED IN THE MATTER, UNLESS IT IS EXEMPTED OR EXCEPTED FROM MEDIATION.

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

SECTION 1. Title 20 of the 1976 Code is amended by adding:

“CHAPTER 8

South Carolina Family Law Mediation Act

Section 20‑8‑10. This act shall be cited as the ‘South Carolina Family Law Mediation Act’.

Section 20‑8‑20. The General Assembly finds and declares as follows:

(A) that it is the public policy of this State that family law, divorce, and domestic relations cases including custody, visitation, child support, alimony, equitable apportionment, and fee issues shall be adjudicated quickly, fairly, and inexpensively;

(B) that mediation is one of several methods of accomplishing this goal, and that mediation should be encouraged in all domestic relations and family law matters; and

(C) that the family courts of South Carolina should encourage and expedite such proceedings as should the South Carolina Bar, the medical community, counselors and mental health professionals, and financial experts.

Section 20‑8‑30. For purposes of this chapter, the following definitions apply:

(A) ‘Mediation’ is an informal process in which a third‑party mediator facilitates settlement discussions between parties. Any settlement is voluntary. In the absence of settlement, the parties lose none of their rights to trial in the family court.

(B) A ‘mediator’ is a neutral person who acts to encourage and facilitate the resolution of pending family court actions and/or ongoing family disputes. The mediator has no authority to make decisions or to impose settlement.

Section 20‑8‑40. (A) All issues in domestic relations actions are subject to court‑ordered mediation, except where exempted. The following cases must be automatically exempted from mediation:

(1) contempt actions;

(2) child abuse and neglect proceedings;

(3) Department of Social Services Adult Protective Services cases;

(4) any case where there has been a finding by a court of competent jurisdiction within one year of the date of filing the action of spousal abuse or child abuse or neglect by one of the parties;

(5) juvenile proceedings;

(6) uncontested issues;

(7) actions where there is an agreement between the parties for voluntary mediation, subject to court approval; or

(8) the entry of a divorce or separate maintenance decree.

Certification that an action is exempt from court‑ordered mediation shall be on a form approved by the Supreme Court.

(B) A party or the court may move to dispense with or defer mediation due to exceptional circumstances. Upon a showing of exceptional circumstances, and after a hearing, the Chief Judge for Administrative Purpose of the Family Court may grant the motion without a hearing and notify the parties or their attorneys of the ruling. Exceptional circumstances may relate to such factors as, but are not limited to:

(1) geographic considerations;

(2) incapacity of a party;

(3) incompetence of a party;

(4) cases where there has been a finding by a court of competent jurisdiction more than one year from the date of filing the action of spousal abuse or child abuse or neglect by one of the parties; or

(5) substance abuse by one of the parties.

(C) The court must order that the mediation conference or conferences shall be conducted no sooner than ninety days after the filing of the action, unless, in the court’s discretion, the mediation conference should commence at an earlier date, and concluded no later than one hundred eighty days after the filing of the action. A party may seek an extension of time to complete mediation, and the court, in its discretion, may extend the time to complete mediation in a written order.

(D) The South Carolina Supreme Court shall establish the minimum number of hours that parties must participate in mediation.

(E) No final hearing in any domestic relations action shall be scheduled or heard prior to the completion of mediation, unless the matter is exempt from mediation by operation of this chapter or by order of the Chief Judge for Administrative Purpose of the Family Court upon a showing of exceptional circumstances. A request for a final hearing must be accompanied by a copy of the written mediation report.

Section 20‑8‑50. All mediation must be conducted in accordance with the procedures established in the South Carolina Family Court Alternative Dispute Resolution Rules in effect at the time for the State.”

SECTION 2. This act takes effect upon approval by the Governor.

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