~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 28, 2012

**H. 4738**

Introduced by Reps. Govan and Hearn

S. Printed 3/28/12--H.

Read the first time February 7, 2012.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4738) to amend Section 20‑3‑130, as amended, Code of Laws of South Carolina, 1976, relating to the award of alimony in divorce and separate maintenance, 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 all after the enacting words and inserting:

/SECTION 1. Section 20‑3‑170 of the 1976 Code is amended to read:

“Section 20‑3‑170. (A) Whenever any husband or wife, pursuant to a judgment of divorce from the bonds of matrimony, has been required to make his or her spouse any periodic payments of alimony and the circumstances of the parties or the financial ability of the spouse making the periodic payments shall have changed since the rendition of such judgment, either party may apply to the court which rendered the judgment for an order and judgment decreasing or increasing the amount of such alimony payments or terminating such payments and the court, after giving both parties an opportunity to be heard and to introduce evidence relevant to the issue, shall make such order and judgment as justice and equity shall require, with due regard to the changed circumstances and the financial ability of the supporting spouse, decreasing or increasing or confirming the amount of alimony provided for in such original judgment or terminating such payments. Thereafter the supporting spouse shall pay and be liable to pay the amount of alimony payments directed in such order and judgment and no other or further amount and such original judgment, for the purpose of all actions or proceedings of every nature and wherever instituted, whether within or without this State, shall be deemed to be and shall be modified accordingly, subject in every case to a further proceeding or proceedings under the provisions of this section in relation to such modified judgment.

(B) Retirement by the supporting spouse is sufficient grounds to warrant a hearing, if so moved by a party, to evaluate whether there has been a change of circumstances for alimony. The court shall consider the following factors:

(1) whether retirement was contemplated when alimony was awarded;

(2) the age of the supporting spouse;

(3) the health of the supporting spouse;

(4) whether the retirement is mandatory or voluntary;

(5) whether retirement would result in a decrease in the supporting spouse’s income; and

(6) any other factors the court sees fit.”

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

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND SECTION 20‑3‑130, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE AWARD OF ALIMONY IN DIVORCE AND SEPARATE MAINTENANCE AND SUPPORT ACTIONS, SO AS TO PROVIDE THAT ALIMONY IS TERMINABLE ON “COHABITATION”, RATHER THAN ON “CONTINUED COHABITATION” OF THE SUPPORTED SPOUSE; TO DEFINE “COHABITATION” AS A COMMITTED, EXCLUSIVE RELATIONSHIP FOR AN AGGREGATE OF NINETY DAYS; AND TO PROVIDE FACTORS THAT THE COURT MAY CONSIDER IN DETERMINING WHETHER COHABITATION EXISTS; TO AMEND SECTION 20‑3‑150, AS AMENDED, RELATING TO ALLOCATING ALIMONY TO THE SUPPORTED SPOUSE AND CHILD SUPPORT TO THE CHILDREN SUCH THAT ONLY ALIMONY IS TERMINATED UPON REMARRIAGE OR CONTINUED COHABITATION OF THE SUPPORTED SPOUSE, SO AS TO PROVIDE THAT ALIMONY IS TERMINABLE ON “COHABITATION”, RATHER THAN ON “CONTINUED COHABITATION” OF THE SUPPORTED SPOUSE; TO DEFINE “COHABITATION” AS A COMMITTED, EXCLUSIVE RELATIONSHIP FOR AN AGGREGATE OF NINETY DAYS; AND TO PROVIDE FACTORS THAT THE COURT MAY CONSIDER IN DETERMINING WHETHER COHABITATION EXISTS; AND TO AMEND SECTION 20‑3‑170, RELATING TO THE MODIFICATION, CONFIRMATION, OR TERMINATION OF ALIMONY, SO AS TO PROVIDE THAT UPON THE MOTION OF A PARTY TO A JUDGMENT OF DIVORCE, THE COURT SHALL CONDUCT A HEARING TO DETERMINE IF THE RETIREMENT OF THE SUPPORTING SPOUSE CONSTITUTES A CHANGE OF CIRCUMSTANCES FOR THE PURPOSE OF ALIMONY PAYMENTS AND TO PROVIDE FACTORS FOR THE COURT TO CONSIDER IN MAKING THIS DETERMINATION.

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

SECTION 1. Section 20‑3‑130(B) of 1976 Code, as last amended by Act 328 of 2002 is further amended to read:

“(B) Alimony and separate maintenance and support awards may be granted pendente lite and permanently in such amounts and for periods of time subject to conditions as the court considers just including, but not limited to:

(1) Periodic alimony to be paid but terminating on the remarriage or ~~continued~~ cohabitation of the supported spouse or upon the death of either spouse (except as secured in subsection (D)) and terminable and modifiable based upon changed circumstances occurring in the future. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it appropriate to order the payment of alimony on an ongoing basis where it is desirable to make a current determination and requirement for the ongoing support of a spouse to be reviewed and revised as circumstances may dictate in the future.

(2) Lump‑sum alimony in a finite total sum to be paid in one installment, or periodically over a period of time, terminating only upon the death of the supported spouse, but not terminable or modifiable based upon remarriage or changed circumstances in the future. The purpose of this form of support may include, but not be limited to, circumstances where the court finds alimony appropriate but determines that such an award be of a finite and nonmodifiable nature.

(3) Rehabilitative alimony in a finite sum to be paid in one installment or periodically, terminable upon the remarriage or ~~continued~~ cohabitation of the supported spouse, the death of either spouse (except as secured in subsection (D)) or the occurrence of a specific event to occur in the future, or modifiable based upon unforeseen events frustrating the good faith efforts of the supported spouse to become self‑supporting or the ability of the supporting spouse to pay the rehabilitative alimony. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it appropriate to provide for the rehabilitation of the supported spouse, but to provide modifiable ending dates coinciding with events considered appropriate by the court such as the completion of job training or education and the like, and to require rehabilitative efforts by the supported spouse.

(4) Reimbursement alimony to be paid in a finite sum, to be paid in one installment or periodically, terminable on the remarriage or ~~continued~~ cohabitation of the supported spouse, or upon the death of either spouse (except as secured in subsection (D)) but not terminable or modifiable based upon changed circumstances in the future. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it necessary and desirable to reimburse the supported spouse from the future earnings of the payor spouse based upon circumstances or events that occurred during the marriage.

(5) Separate maintenance and support to be paid periodically, but terminating upon the ~~continued~~ cohabitation of the supported spouse, upon the divorce of the parties, or upon the death of either spouse (except as secured in subsection (D)) and terminable and modifiable based upon changed circumstances in the future. The purpose of this form of support may include, but is not limited to, circumstances where a divorce is not sought, but it is necessary to provide for support of the supported spouse by way of separate maintenance and support when the parties are living separate and apart.

(6) Such other form of spousal support, under terms and conditions as the court may consider just, as appropriate under the circumstances without limitation to grant more than one form of support.

For purposes of this subsection and unless otherwise agreed to in writing by the parties, ‘~~continued~~ cohabitation’ means ~~the supported spouse resides with another person in a romantic relationship for a period of ninety or more consecutive days~~ a committed, exclusive relationship for an aggregate of ninety days. The court may determine that a ~~continued~~ cohabitation exists ~~if there is evidence that the supported spouse resides with another person in a romantic relationship for periods of less than ninety days and the two periodically separate in order to circumvent the ninety‑day requirement~~ by weighing the following factors, and any other factors the court considers appropriate:

(a) the sharing of income or expenses between the supported spouse and a third party;

(b) joint use of ownership and property by the supported spouse and a third party;

(c) joint use of ownership and property by the supported spouse and a third party;

(d) the continuity of the relationship;

(e) the length of the relationship;

(f) the intimacy of the relationship; and

(g) shared residence of an aggregate of ninety days.”

SECTION 2. Section 20‑3‑150 of the 1976 Code as last amended by Act 328 of 2002, is further amended to read:

“Section 20‑3‑150. (A) If the court awards the custody of the children to the spouse receiving alimony the court, by its decree, unless good cause to the contrary be shown, shall allocate any award for permanent alimony and support between the supported spouse and the children and upon the remarriage or ~~continued~~ cohabitation of the supported spouse the amount fixed in the decree for his or her support shall cease, and no further alimony payments may be required from the supporting spouse.

(B) For purposes of this subsection and unless otherwise agreed to in writing by the parties, ‘~~continued~~ cohabitation’ means ~~the supported spouse resides with another person in a romantic relationship for a period of ninety or more consecutive days~~ a committed, exclusive relationship for an aggregate of ninety days. The court may determine that a ~~continued~~ cohabitation exists ~~if there is evidence that the supported spouse resides with another person in a romantic relationship for periods of less than ninety days and the two periodically separate in order to circumvent the ninety‑day requirement~~ by weighing the following factors, and any other factors the court considers appropriate:

(1) the sharing of income or expenses between the supported spouse and a third party;

(2) joint use of ownership and property by the supported spouse and a third party;

(3) joint use of ownership and property by the supported spouse and a third party;

(4) the continuity of the relationship;

(5) the length of the relationship,;

(6) the intimacy of the relationship; and

(7) shared residence of an aggregate of ninety days.”

SECTION 3. Section 20‑3‑170 of the 1976 Code is amended to read:

“Section 20‑3‑170. (A) Whenever any husband or wife, pursuant to a judgment of divorce from the bonds of matrimony, has been required to make his or her spouse any periodic payments of alimony and the circumstances of the parties or the financial ability of the spouse making the periodic payments shall have changed since the rendition of such judgment, either party may apply to the court which rendered the judgment for an order and judgment decreasing or increasing the amount of such alimony payments or terminating such payments and the court, after giving both parties an opportunity to be heard and to introduce evidence relevant to the issue, shall make such order and judgment as justice and equity shall require, with due regard to the changed circumstances and the financial ability of the supporting spouse, decreasing or increasing or confirming the amount of alimony provided for in such original judgment or terminating such payments. Thereafter the supporting spouse shall pay and be liable to pay the amount of alimony payments directed in such order and judgment and no other or further amount and such original judgment, for the purpose of all actions or proceedings of every nature and wherever instituted, whether within or without this State, shall be deemed to be and shall be modified accordingly, subject in every case to a further proceeding or proceedings under the provisions of this section in relation to such modified judgment.

(B) Retirement by the supporting spouse is sufficient grounds to warrant a hearing, if so moved by a party, to evaluate whether there has been a change of circumstances for alimony. The court shall consider the following factors:

(1) whether retirement was contemplated when alimony was awarded;

(2) the age of the supporting spouse;

(3) the health of the supporting spouse;

(4) whether the retirement is mandatory or voluntary;

(5) whether retirement would result in a decrease in the supporting spouse’s income; and

(6) any other factors the court sees fit.”

SECTION 4. This act takes effect upon approval by the Governor.

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