COMMITTEE REPORT

March 11, 2009

**S. 170**

Introduced by Senators Cleary and Rose

S. Printed 3/11/09--S.

Read the first time January 13, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 170) to amend Title 63, as amended, Code of Laws of South Carolina, 1976, by adding Section 63‑17‑385 to authorize the family court to issue a rule to show cause, 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 language and inserting therein the following:

/ SECTION 1. Article 3, Chapter 17, Title 63 of the 1976 Code, as added by Act 361 of 2008, is further amended by adding:

“Section 63‑17‑385. (A) If a court order requires a parent to provide monetary support for a child, including, but not limited to, payment of health, medical, or educational expenses, but excluding periodic payment of funds for the support of the child, and the parent fails to do so, the other parent or the child’s custodial guardian may petition the court for relief using an authorized affidavit and supporting documents setting forth the existence of the expense and the failure of the parent to pay the required support.

(1) Within sixty days of approval by the Governor of this act, Court Administration shall prepare the authorized affidavit form and make it available to petitioners seeking relief under the provisions of this section. The authorized affidavit form must contain the following information:

(a) the names and addresses of the petitioner and the parent alleged to have failed to make the support payment;

(b) the amount and nature of the support payment the parent allegedly failed to make;

(c) the date and manner in which the petitioner notified the alleged non‑paying parent and requested payment;

(d) the response, if any, of the alleged non‑paying parent upon receiving the petitioner’s request for payment; and

(e) if the matter relates to an expense covered by an insurance policy, whether an insurance claim has been filed, and if so, the insurance carrier’s response.

(2) The authorized affidavit may be accompanied by the following documents:

(a) a copy of the court order requiring the parent to provide monetary support for a child excluding periodic payments of funds for support;

(b) a copy of any bill, invoice, or other written document, substantiating the expense the petitioner claims the parent is required to pay;

(c) a copy of any written request for payment of the support by the petitioner to the alleged non‑paying parent;

(d) a copy of any written reply from the alleged non‑paying parent to the parent responding to the petitioner’s request for payment;

(e) if the matter relates to an expense covered by an insurance policy, a copy of all correspondence to and from the insurance carrier pertaining to payment of the claim;

(f) proof that the petitioner has satisfied that portion of the expense he is required to pay pursuant to the court order; and

(g) the current mailing address of the alleged non‑paying parent.

(3) Upon receipt of a petition accompanied by an authorized affidavit, the court shall issue a rule to show cause to the alleged non‑paying parent for nonpayment of the required support. The parent must be served in accordance with the South Carolina Rules of Civil Procedure. The court also shall provide notice of the hearing to the petitioner.

(B)(1) At the hearing on the rule to show cause, once the petitioner has established his claim, the burden is on the alleged non-paying parent to establish a defense.

(2) The alleged non-paying parent may assert any defense allowed by law.

(3) The petitioner must be present at the hearing and may be called upon to testify.

(C) If the family court determines that the petitioner’s claim for support is frivolous, or that the petitioner knowingly or intentionally made or filed a false authorized affidavit, or knowingly or intentionally submitted false documents in support of the petition, the court may award the alleged non-paying parent attorney’s fees and other litigation costs reasonably incurred in the defense of the petition.”

SECTION 2. This act takes effect ninety days after approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

RAYMOND E. CLEARY III for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Judicial Department indicates that this bill will have no impact on the General Fund of the State or on federal and/or other funds.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND TITLE 63, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 63‑17‑385 TO AUTHORIZE THE FAMILY COURT TO ISSUE A RULE TO SHOW CAUSE UPON THE FILING OF AN AFFIDAVIT THAT A PARENT HAS FAILED TO PAY COURT‑ORDERED SUPPORT, OTHER THAN PERIODIC PAYMENT OF FUNDS FOR THE SUPPORT OF THE CHILD, TO PROVIDE FOR SERVICE BY REGULAR MAIL, TO PROVIDE THAT THE AFFIDAVIT AND CERTAIN OTHER DOCUMENTATION IS PRIMA FACIE EVIDENCE OF NONPAYMENT, SHIFTING THE BURDEN OF PROOF, AND TO PROVIDE A DEFENSE.

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

SECTION 1. Article 3, Chapter 17, Title 63 of the 1976 Code, as added by Act 361 of 2008, is further amended by adding:

“Section 63‑17‑385. (A) If a court order requires a parent to provide monetary support for a child, including, but not limited to, payment of health, medical, or educational expenses, but excluding periodic payment of funds for the support of the child, and the parent fails to do so, the other parent or the child’s custodial guardian may petition the court for relief using an authorized affidavit and supporting documents setting forth the existence of the expense and the failure of the parent to pay the required support.

(1) Within sixty days of approval by the Governor of this act, Court Administration shall prepare the authorized affidavit form and make it available to petitioners seeking relief under the provisions of this section. The authorized affidavit form must contain the following information:

(a) the names and addresses of the petitioner and the parent alleged to have failed to make the support payment;

(b) the amount and nature of the support payment the parent allegedly failed to make;

(c) the date and manner in which the petitioner notified the alleged non‑paying parent and requested payment;

(d) the response, if any, of the alleged non‑paying parent upon receiving the petitioner’s request for payment; and

(e) if the matter relates to an expense covered by an insurance policy, whether an insurance claim has been filed, and if so, the insurance carrier’s response.

(2) The authorized affidavit must be accompanied by the following documents:

(a) a copy of the court order requiring the parent to provide monetary support for a child excluding periodic payments of funds for support;

(b) a certified copy of any bill, invoice, or other written document, dated within sixty days of the filing of the petition, substantiating the expense the petitioner claims the parent is required to pay;

(c) a copy of any written request for payment of the support by the petitioner to the alleged non‑paying parent;

(d) a copy of any written reply from the alleged non‑paying parent to the parent responding to the petitioner’s request for payment;

(e) if the matter relates to an expense covered by an insurance policy, a copy of all correspondence to and from the insurance carrier pertaining to payment of the claim; and

(f) the current mailing address of the alleged non‑paying parent.

(3) Upon receipt of a petition accompanied by an authorized affidavit, the court shall issue a rule to show cause to the alleged non‑paying parent for nonpayment of the required support. The parent must be served in accordance with the South Carolina Rules of Civil Procedure. The court also shall provide notice of the hearing to the petitioner.

(B)(1) At the hearing on the rule to show cause, the order requiring the monetary support, the authorized affidavit, and the supporting documentation required in subsection (A)(2), constitute prima facie evidence, without further proof or foundation, that the parent is in violation of the court order requiring the support.

(2) Once a prima facie case is established, the burden is on the parent asserting a defense to establish the defense.

(3) The petitioner must be present at the hearing and may be called upon to testify.

(C) If the family court determines that the petitioner’s claim for support is frivolous, or that the petitioner knowingly or intentionally made or filed a false authorized affidavit, or knowingly or intentionally submitted false documents in support of the petition, the court may award the parent reasonable attorney’s fees and other litigation costs reasonably incurred in the defense of the petition.”

SECTION 2. This act takes effect ninety days after approval by the Governor.

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