~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 13, 2016

**S. 1087**

Introduced by Senators Gregory, Rankin and Shealy

S. Printed 4/13/16--S.

Read the first time February 17, 2016.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 1087) to amend Section 20-3-170, Code of Laws of South Carolina, 1976, relating to modification, confirmation, or termination of alimony, so as to provide, 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, page 2, by striking lines 29 through 42, and inserting the following:

/ ~~(B)~~(C) 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~~ alimony should be modified or terminated in amount or term. The court shall consider the following factors:

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

~~(2)~~(1) whether the ~~age of the~~ supporting spouse has reached full retirement age, which is the age at which a person becomes eligible for full social security benefits;

~~(3)~~(2) the health of the supporting spouse;

~~(4)~~(3) the reason for retirement, including whether the retirement is mandatory or voluntary; /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

CHAUNCEY K. GREGORY GERALD MALLOY

For Majority. For Minority.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill would have no expenditure impact on the general fund, federal funds, or other funds.

**Explanation of Fiscal Impact**

**State Expenditure**

This bill provides factors for the Family Court to consider when determining the existence of changed circumstances related to modification, confirmation, or termination of alimony. The bill also creates a rebuttable presumption that alimony terminates upon the supporting spouse attaining full retirement age. Finally, the bill requires the court to consider the payment of alimony for a period that exceeds the duration of marriage constitutes sufficient grounds for the court to modify, terminate, or establish a fixed duration of time for any further payment obligation.

The Judicial Department reports that this bill would have no expenditure impact on the general fund, federal funds, or other funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 20-3-170, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MODIFICATION, CONFIRMATION, OR TERMINATION OF ALIMONY, SO AS TO PROVIDE FACTORS FOR THE COURT TO CONSIDER WHEN DETERMINING THE EXISTENCE OF CHANGED CIRCUMSTANCES; TO CREATE A REBUTTABLE PRESUMPTION THAT ALIMONY TERMINATES UPON THE SUPPORTING SPOUSE ATTAINING FULL RETIREMENT AGE; AND TO PROVIDE THAT PAYMENT OF ALIMONY FOR A PERIOD THAT EXCEEDS THE DURATION OF MARRIAGE CONSTITUTES SUFFICIENT GROUNDS FOR THE COURT TO MODIFY, TERMINATE, OR ESTABLISH A FIXED DURATION OF TIME FOR ANY FURTHER PAYMENT OBLIGATION, IF SUPPORTED BY THE EVIDENCE PRESENTED.

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

SECTION 1. Section 20-3-170 of the 1976 Code of laws 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) In the determination of the existence of changed circumstances since the commencement of any alimony or spousal support payments, the court shall consider the following factors:

(1) the reason for and amount of any substantial change in passive or active income of either spouse;

(2) modification of any child support obligations since the rendition of a judgment of divorce;

(3) the reason for and amount of any substantial change in net worth of either spouse;

(4) any substantial change in earning potential of either spouse;

(5) any substantial change in expenses of either spouse;

(6) impact of the supporting spouse’s health on ability to pay;

(7) retirement; and

(8) any other factors the court sees fit.

~~(B)~~(C) ~~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~~. There shall be a rebuttable presumption that alimony terminates upon the supporting spouse attaining full retirement age. The full retirement age is defined as the age at which a person becomes eligible for full social security benefits. The court shall consider the following factors:

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

~~(2)~~(1) the age of the supporting spouse;

~~(3)~~(2) the health of the supporting spouse;

~~(4)~~(3) ~~whether the retirement is mandatory or voluntary~~ the reason for retirement;

~~(5)~~(4) whether retirement would result in a decrease in the supporting spouse’s income; ~~and~~

~~(6)~~(5) the income and assets of either spouse; and

(6) any other factors the court sees fit, including the factors set forth in Section 20-3-130.

(D) Payment of alimony for a period that exceeds the duration of the marriage constitutes sufficient grounds for the court to modify, terminate, or establish a fixed duration of time for any further payment obligation, if supported by the evidence presented.

(E) If the court determines the existence of changed circumstances, the court shall apply the factors set forth in Section 20-3-130.

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

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