~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 22, 2017

**S. 92**

Introduced by Senators Gregory, Bennett, Fanning and Shealy

S. Printed 3/22/17--S.

Read the first time January 10, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 92) to amend Section 20-3-130(c), Code of Laws of South Carolina, 1976, relating to the award of alimony and other allowances, so as to, 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 therein the following:

/ SECTION 1. Section 20-3-120 of the 1976 Code is amended to read:

“Section 20‑3‑120. In every divorce action from the bonds of matrimony and in every action for separate maintenance and support, either party may in his or her complaint or answer or by petition pray for the allowance to him or her of alimony or separate maintenance and support and suit money and for the allowance of such alimony or separate maintenance and support and suit money pendente lite. If such claim shall appear well‑founded the court shall allow a reasonable sum therefor.”

SECTION 2. Section 20-3-130 of the 1976 Code is amended to read:

“Section 20-3-130. (A) For purposes of this section:

1. ‘Terminate, Terminable, and Terminating’ means to put an end to and conclude the obligation to make any further payments.

2. ‘Modify, Modifiable, Modifying’ means to allow the amount or term of alimony or separate maintenance and support to be decreased or increased.

3. ‘Suspend, Suspendable, Suspending’ means either (a) to postpone the payment of alimony while the obligation to pay continues, or (b) to defer both the payment and the obligation to pay.

(B) In proceedings for divorce from the bonds of matrimony~~,~~ and in actions for separate maintenance and support, the court may grant alimony or separate maintenance and support in such amounts and for such term as the court considers appropriate as from the circumstances of the parties and the nature of case may be just, pendente lite, and permanently and as otherwise allowed by this section. No alimony or separate maintenance and support may be awarded a spouse who commits adultery before the earliest of these two events: (1) the formal signing of a written property or marital settlement agreement or (2) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties.

~~(B)~~(C) Alimony and separate maintenance and support awards may be granted pendente lite and permanently and as otherwise allowed by this section, 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)~~(E)~~)~~, and terminable, suspendable, ~~and~~ or modifiable based upon the substantially 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, suspendable, or modifiable based upon remarriage by the supported spouse, continued cohabitation by the supported spouse, or substantially 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)~~(E)~~)~~, or the occurrence of a specific event to occur in the future, or modifiable, terminable, or suspendable based upon substantially changed circumstances or 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)~~(E)~~)~~, but not terminable, suspendable, or modifiable based upon substantially 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) Transitional alimony to be paid periodically or in a finite total sum, but terminating upon remarriage of the supported spouse, upon the continued cohabitation of the supported spouse, upon the death of either spouse, except as secured in subsection (E), or upon a date certain. Transitional alimony is modifiable, suspendable, or terminable based upon substantially changed circumstances occurring in the future. The purpose of this form of support is to assist with the transition of the supported spouse to new financial circumstances, a new adjusted lifestyle, a new location, or any other consequences of divorce when other forms of alimony would not be appropriate.

(6) Fixed term alimony is the finite periodic payment of support to a recipient spouse, who is economically dependent, but terminating upon remarriage of the supported spouse, upon continued cohabitation of the supported spouse, upon expiration of the fixed term, or upon the death of either spouse, except as secured in subsection (E). Fixed term alimony is modifiable, suspendable, or terminable based upon substantially changed circumstances occurring in the future. The purpose of this form of support is to allow a finite award where the court finds it appropriate and desirable to make a current determination and requirement for a fixed term of support for a spouse.

~~(5)~~(7) 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)~~(E)~~)~~, and terminable, suspendable, 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~~ while the parties are living separate and apart but not divorced.

~~(6)~~(8) 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.

(9) 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. 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~~ involves a mutually supportive, intimate personal relationship in which the supported spouse and another person undertake duties and privileges commonly associated with marriage, but who do not necessarily maintain a single common household.

In the determination of whether continued cohabitation exists, the court shall consider the following factors:

(a) intertwined finances;

(b) sharing or joint responsibility for living expenses;

(c) recognition of the relationship in the couple’s social circle, family circle, or community;

(d) living together, the frequency of contact, the duration of the relationship, and other indicia of a mutually supportive intimate personal relationship; and

(e) such other factors the court considers relevant.

~~(C)~~(D) In making an award of alimony or separate maintenance and support, the court must consider and give weight in such proportion as it finds appropriate to all of the following factors:

(1) the duration of the marriage together with the ages of the parties at the time of the marriage and at the time of the divorce or separate maintenance action between the parties;

(2) the physical and emotional condition of each spouse;

(3) the educational background of each spouse, together with need of each spouse for additional training or education in order to achieve that spouse’s income potential;

(4) the employment history and earning potential of each spouse;

(5) the standard of living established during the marriage;

(6) the current and reasonably anticipated earnings of both spouses, not to include the past, present, or anticipated earnings of a subsequent spouse of the payor in the event of the payor’s remarriage;

(7) the current and reasonably anticipated expenses and needs of both spouses;

(8) the marital and nonmarital properties of the parties, including those apportioned to him or her in the divorce or separate maintenance action;

(9) custody of the children, particularly where conditions or circumstances render it appropriate that the custodian not be required to seek employment outside the home, or where the employment must be of a limited nature;

(10) marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce or separate maintenance decree if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage, except that no evidence of personal conduct which may otherwise be relevant and material for the purpose of this subsection may be considered with regard to this subsection if the conduct took place subsequent to the happening of the earliest of (a) the formal signing of a written property or marital settlement agreement or (b) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

(11) the tax consequences to each party as a result of the particular form of support awarded;

(12) the existence and extent of any support obligation from a prior marriage or for any other reason of either party; and

(13) such other factors the court considers relevant.

~~(D)~~(E) In making an award of alimony or separate maintenance and support, the court may make provision for security for the payment of the support including, but not limited to, requiring the posting of money, property, and bonds and may require a spouse, with due consideration of the cost of premiums, insurance plans carried by the parties during marriage, insurability of the payor spouse, the probable economic condition of the supported spouse upon the death of the payor spouse, and any other factors the court may ~~deem~~ consider relevant, to carry and maintain life insurance so as to assure support of a spouse beyond the death of the payor spouse without the need to establish special circumstances, compelling reasons, or extraordinary circumstances.

~~(E)~~(F) In making an award of alimony or separate maintenance and support, the court may order the direct payment to the supported spouse or may require that the payments be made through the Family Court and allocate responsibility for the service fee in connection with the award. The court may require the payment of debts, obligations, and other matters on behalf of the supported spouse.

~~(F)~~(G) The court may elect and determine the intended tax effect of the alimony and separate maintenance and support as provided by the Internal Revenue Code and any corresponding state tax provisions. The Family Court may allocate the right to claim dependency exemptions pursuant to the Internal Revenue Code and under corresponding state tax provisions and to require the execution and delivery of all necessary documents and tax filings in connection with the exemption.

~~(G)~~(H) The Family Court may review and approve all agreements which bear on the issue of alimony or separate maintenance and support, whether brought before the court in actions for divorce from the bonds of matrimony, separate maintenance and support actions, or in actions to approve agreement where the parties are living separate and apart. The failure to seek a divorce~~,~~ or separate maintenance~~,~~ ~~or a legal separation~~ does not deprive the court of its authority and jurisdiction to approve and enforce the agreements. The parties may agree in writing if properly approved by the court to make the payment of alimony as set forth in items (1) through ~~(6)~~(8) of subsection ~~(B)~~(C) nonmodifiable and not subject to subsequent modification by the court.

~~(H)~~(I) The court, from time to time after considering the financial resources and marital fault of both parties, may order one party to pay a reasonable amount to the other for attorney fees, expert fees, investigation fees, costs, and suit money incurred in maintaining an action for divorce from the bonds of matrimony, as well as in actions for separate maintenance and support, including sums for services rendered and costs incurred before the commencement of the proceeding and after entry of judgment, pendente lite and permanently and as otherwise allowed by this section.”

SECTION 3. Section 20-3-150 of the 1976 Code is amended to read:

“Section 20-3-150. If the court awards the custody of the children to the spouse receiving alimony or separate maintenance and support, 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 or separate maintenance and support payments designated for the benefit of the supported spouse may be required from the supporting spouse.

For purposes of this section 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. 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~~ is defined as set forth in Section 20-3-130(C)(9).”

SECTION 4. Section 20-3-160 of the 1976 Code of laws is amended to read:

“Section 20-3-160. In any action for divorce from the bonds of matrimony or separate maintenance and support, the court may at any stage of the cause, or from time to time after final judgment, make such orders touching the care, custody and maintenance of the children of the marriage and what, if any, security shall be given for the same as from the circumstances of the parties and the nature of the case and the best spiritual as well as other interests of the children may be fit, equitable and just.”

SECTION 5. Section 20-3-170 of the 1976 Code of laws is amended to read:

“Section 20-3-170. (A) For purposes of this section:

1. ‘Terminate, Terminable, and Terminating’ means to put an end to and conclude the obligation to make any further payments.

2. ‘Modify, Modifiable, Modifying’ means to allow the amount or term of alimony or separate maintenance and support to be decreased or increased.

3. ‘Suspend, Suspendable, Suspending’ means either (a) to postpone the payment of alimony while the obligation to pay continues, or (b) to defer both the payment and the obligation to pay.

(B) Whenever any husband or wife, pursuant to a judgment of divorce from the bonds of matrimony or separate decree of separate maintenance and support, has been required to make his or her spouse any periodic payments of alimony or separate maintenance and support and the circumstances of the parties or the financial ability of the spouse making the periodic payments shall have substantially 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 or separate maintenance and support payments or terminating, modifying, or suspending 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 substantially changed circumstances and the financial ability of the supporting spouse, decreasing or increasing or confirming the amount of alimony or separate maintenance and support provided for in such original judgment or suspending, modifying, or terminating such payments. Thereafter the supporting spouse shall pay and be liable to pay the amount of alimony or separate maintenance and support 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~~ considered 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.

(C) In the determination of the existence of substantially changed circumstances since the commencement of any alimony or separate maintenance and support payments, the court may consider the factors in Section 20-3-130(D) and shall consider the following factors:

(1) the reason for and amount of any substantial change in passive or active income of either spouse, not to include the past, present, or anticipated earnings of a subsequent spouse in the event of remarriage;

(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) the reason for and 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)~~(D) 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~~ the alimony or separate maintenance and support should be modified, suspended, or terminated in amount or term. The court may consider the factors in Section 20-3-130(D) and shall consider the following factors:

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

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

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

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

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

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

SECTION 6. SECTIONS 1 and 4 of this act take effect upon approval by the Governor. SECTIONS 2, 3, and 5 of this act take effect upon approval by the Governor and apply to any actions filed with a court after that effective date.

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Renumber sections to conform.

Amend title to conform.

SCOTT F. TALLEY for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Amended by Senate Subcommittee on Alimony March 2, 2017**

**State Expenditure**

This bill as amended allows either party in an action for separate maintenance and support to request an allowance and suit money during litigation. No separate maintenance and support may be awarded to a spouse who commits adultery before the earliest of either the formal signing of a settlement agreement or the entry of a permanent order. The bill also amends actions that a family court may take when revisiting a previous award of separate maintenance and support or alimony and it requires, when a specific reason is not otherwise applicable, that the circumstances warranting such action be substantial. Further, the amended bill adds two new forms of alimony, transitional and fixed term, and specific circumstances under which these awards may be terminated, suspended, or modified. The amended bill also redefines continued cohabitation for purposes of revisiting awards of alimony and separate maintenance and support, and it prescribes factors the family court must consider in determining if it exists.

The bill as amended prohibits the family court from considering the earnings of a subsequent spouse when awarding, modifying, suspending, or terminating an award of alimony or separate maintenance and support. The court may require a spouse to provide security for the payment of support and/or carry and maintain life insurance to assure spousal and child support without the need to establish special circumstances. The family court may approve all agreements involving child support whether brought to the court in actions for divorce, separate maintenance and support, or approval of an agreement where parties are living separate and apart. In cases where the court awards custody of children to the spouse receiving alimony or separate maintenance and support, the court shall modify, suspend, or terminate the supported spouse’s portion of the support award upon the remarriage or continued cohabitation.

The bill as amended also defines factors the court must consider when determining if substantially changed circumstances exist. In the event of substantially changed circumstances, either party in an action involving separate maintenance and support may apply to the court to have the payments terminated, modified, or suspended. Retirement of the supporting spouse is sufficient grounds for a hearing to evaluate modifying, suspending, or terminating separate maintenance and support.

**Judicial Department.**  The department reports that there is no data to determine the number of additional hearings that may be held in family court for awards of alimony and separate maintenance and support as a result of the bill. The department anticipates it can manage any expenditure impact from increased caseloads within current resources, though a significant number of additional hearings or trials may result in a backlog for family courts.

**Introduced on January 10, 2017**

**State Expenditure**

This bill prohibits the family court considering the earnings of a subsequent spouse when awarding, modifying, or terminating an award of alimony or separate maintenance and support.

**Judicial Department.** The department does not anticipate a change in the number of hearings held in family court, because a judge may not consider a specific factor when deciding alimony, or modification or termination of alimony. If a significant number of additional hearings should result, the affect will be to increase the court backlog, but not expenditures. Therefore, this bill will not have an expenditure impact on the general fund, other funds, or federal funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 20-3-130(C), CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE AWARD OF ALIMONY AND OTHER ALLOWANCES, SO AS TO PROVIDE THAT CERTAIN EARNINGS OF A SUBSEQUENT SPOUSE ARE NOT TO BE CONSIDERED BY THE COURT WHEN MAKING, MODIFYING, OR TERMINATING THE AWARD OF ALIMONY.

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

SECTION 1. Section 20-3-130(C) of the 1976 Code is amended to read:

“(C) In making, modifying, or terminating an award of alimony or separate maintenance and support, the court must consider and give weight in such proportion as it finds appropriate to all of the following factors:

(1) the duration of the marriage together with the ages of the parties at the time of the marriage and at the time of the divorce or separate maintenance action between the parties;

(2) the physical and emotional condition of each spouse;

(3) the educational background of each spouse, together with need of each spouse for additional training or education in order to achieve that spouse’s income potential;

(4) the employment history and earning potential of each spouse;

(5) the standard of living established during the marriage;

(6) the current and reasonably anticipated earnings of both spouses, not to include the past, present, or anticipated earnings of a subsequent spouse in the event of remarriage;

(7) the current and reasonably anticipated expenses and needs of both spouses;

(8) the marital and nonmarital properties of the parties, including those apportioned to him or her in the divorce or separate maintenance action;

(9) custody of the children, particularly where conditions or circumstances render it appropriate that the custodian not be required to seek employment outside the home, or where the employment must be of a limited nature;

(10) marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce or separate maintenance decree if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage, except that no evidence of personal conduct which may otherwise be relevant and material for the purpose of this subsection may be considered with regard to this subsection if the conduct took place subsequent to the happening of the earliest of (a) the formal signing of a written property or marital settlement agreement or (b) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

(11) the tax consequences to each party as a result of the particular form of support awarded;

(12) the existence and extent of any support obligation from a prior marriage or for any other reason of either party; and

(13) such other factors the court considers relevant.”

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

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