~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 10, 2016

**H. 4029**

Introduced by Reps. Norman, Govan, King, Corley, Hixon, Simrill and Thayer

S. Printed 3/10/16--H.

Read the first time April 21, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4029) to amend Section 20‑3‑130, Code of Laws of South Carolina, 1976, relating to alimony awards, so as to create a presumption for the award of lump‑sum, 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:

/ SECTION 1. Section 20‑3‑130(A), (B), and (H) of the 1976 Code is amended to read:

“(A) 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~~ as otherwise allowed by statute. No alimony 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) Alimony and separate maintenance and support awards may be granted pendente lite and ~~permanently~~ as otherwise allowed by statute in such amounts and for periods of time subject to conditions as the court considers just including, but not limited to:

(1) Transitional alimony, payable by one party to the other party for a determinable period of time. Transitional alimony is awarded when the court finds that rehabilitation is not required, but that the economically disadvantaged spouse needs financial assistance in adjusting to the economic consequences of the divorce. Transitional alimony is designed to aid a spouse who already possesses the capacity for self‑sufficiency but needs financial assistance in adjusting to the economic consequences of establishing and maintaining a household without the benefit of the other spouse’s income. As such, transitional alimony is a form of short‑term support. Transitional alimony may be modified only when:

(a) the parties agree that it may be modified;

(b) the court provides for modification in the divorce decree; or

(c) the supported spouse commits continued cohabitation as defined by law.

(2) 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)~~(3) 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)~~(4) 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)~~(5) 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)~~(6) 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)~~(7) 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. 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~~. If a marriage lasts less than ten years, the court must first consider alternate forms of alimony before awarding periodic alimony and make findings as to why alternate forms are not awarded when periodic alimony is awarded.

(H) 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~~ as otherwise allowed by statute.”

SECTION 2. 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 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.

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~~.”

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, the supported spouse’s efforts to become self‑sufficient, or the supported spouse’s retention or diminution of assets received through equitable distribution through Article 5, Chapter 3, Title 20, 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; and

(7) social security received by the supported spouse as a result of the supporting spouse’s social security benefit.”

SECTION 4. Section 63‑3‑530(A)(38) of the 1976 Code is amended to read:

“(38) to hear and determine an action where either party in his or her complaint, answer, counterclaim, or motion for pendente lite relief prays for the allowance of suit money pendente lite and ~~permanently~~ for a judicially determined period of time. In this action the court shall allow a reasonable sum for the claim if it appears well‑founded. Suit money, including attorney’s fees, may be assessed for or against a party to an action brought in or subject to the jurisdiction of the family court. An award of temporary attorney’s fees or suit costs must not be stayed by an appeal of the award;”

SECTION 5. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 20‑3‑130, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ALIMONY AWARDS, SO AS TO CREATE A PRESUMPTION FOR THE AWARD OF LUMP‑SUM OR REIMBURSEMENT ALIMONY AND AGAINST THE AWARD OF PERIODIC OR REHABILITATIVE ALIMONY, TO ESTABLISH GUIDELINES FOR AWARDING ALIMONY BASED ON THE DURATION OF THE MARRIAGE, TO PROVIDE THAT THE COURT MAY FIND COHABITATION EVEN IF A PARTY MAINTAINS A RESIDENCE OR DWELLING IN ADDITION TO THE RESIDENCE OR DWELLING WHERE THE PARTY IS COHABITING, TO PROHIBIT THE COURT FROM TAKING INTO CONSIDERATION CERTAIN EARNINGS OR PROPERTIES WHEN DETERMINING A SUPPORTING SPOUSE’S ABILITY TO PAY, TO ALLOW THE COURT TO CONSIDER THE EXTENT TO WHICH ALIMONY PAID TO A PARTY WHO IS COHABITING IS USED TO CONTINUE OR SUPPORT THE COHABITATION, TO REQUIRE THE COURT TO CONSIDER SOCIAL SECURITY SPOUSAL RETIREMENT BENEFITS AND OTHER RETIREMENT INCOME TO WHICH A SUPPORTED SPOUSE IS ENTITLED WHEN MAKING OR MODIFYING AN ALIMONY AWARD, TO PROHIBIT THE COURT FROM TAKING INTO CONSIDERATION INCOME OR BENEFITS RELATED TO AN INJURY OR DISABILITY OF THE SUPPORTING SPOUSE WHEN DETERMINING THE SUPPORTING SPOUSE’S ABILITY TO PAY; AND TO AMEND SECTION 20‑3‑170, RELATING TO MODIFICATION, CONFIRMATION, AND TERMINATION OF ALIMONY, SO AS TO CREATE A PRESUMPTION THAT RETIREMENT IS A CHANGE OF CIRCUMSTANCE JUSTIFYING TERMINATION OF ALIMONY WHEN THE SUPPORTING SPOUSE IS ELIGIBLE TO RECEIVE SOCIAL SECURITY RETIREMENT BENEFITS, TO PROVIDE THAT THE COURT SHOULD DECREASE AN ALIMONY AWARD IF A SUPPORTED SPOUSE IS ENTITLED TO RECEIVE CERTAIN SPOUSAL SOCIAL SECURITY RETIREMENT BENEFITS, AND TO PROVIDE THAT THE COURT HAS THE DISCRETION TO MODIFY AN ALIMONY AWARD AT WHATEVER AGE THE SUPPORTING SPOUSE RETIRES.

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

SECTION 1. Section 20‑3‑130 of the 1976 Code is amended to read:

“Section 20‑3‑130. (A) 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. No alimony may be awarded a spouse who commits adultery before the ~~earliest~~ earlier 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)(1) 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)~~(a) 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)~~(b) 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 is not ~~be~~ limited to, circumstances where the court finds alimony appropriate but determines that such an award should be of a finite and nonmodifiable nature~~.~~;

~~(3)~~(c) 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)~~(d) 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~~ supporting spouse based upon circumstances or events that occurred during the marriage~~.~~;

~~(5)~~(e) 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~~.~~; or

~~(6)~~(f) 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.

(2) There is a presumption that the court should award reimbursement or lump‑sum alimony, instead of periodic or rehabilitative alimony, except for good cause shown.

(3)(a) When taking into consideration the duration of the marriage for purposes of the award of alimony, there is a presumption that:

(i) for a marriage lasting less than five years, neither party is entitled to alimony;

(ii) for a marriage lasting at least five years but less than ten years, the supported spouse is entitled to receive alimony for a period equal in duration to twenty percent of the length of time that the parties were married;

(iii) for a marriage lasting at least ten years but less than twenty years, the supported spouse is entitled to receive alimony for a period equal in duration to thirty percent of the length of time that the parties were married;

(iv) for a marriage lasting at least twenty years but less than thirty years, the supported spouse is entitled to receive alimony for a period equal in duration to forty percent of the length of time that the parties were married; and

(v) for a marriage lasting thirty years or longer, the supported spouse is entitled to receive alimony for a period equal in duration to fifty percent of the length of time that the parties were married.

(b) Notwithstanding item (3)(a), a court may not award alimony for a duration longer than the length of time the parties were married, unless there is clear and convincing evidence that extraordinary circumstances exist not within the control of the party seeking alimony to justify such an award.

(4)(a) For purposes of this ~~subsection~~ section and unless otherwise agreed to in writing by the parties~~,~~:

(i) ‘cohabitation’ means the supported spouse resides with another person in a romantic relationship; and

(ii) ‘continued cohabitation’ means the supported spouse resides with another person in a romantic relationship for a period of ninety or more consecutive days.

(b) 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.

(c) The court may determine that a supported spouse and another person are cohabiting even if the supported spouse maintains a residence or dwelling in addition to the residence or dwelling where the supported spouse and another person cohabit.

(C) In making an award of alimony or separate maintenance and support, the court ~~must~~ shall 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; however, the court must not take into consideration the earnings of a person other than the supporting spouse when making a determination of the supporting spouse’s ability to pay;

(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; however, the court must not take into consideration properties of a person other than the supporting spouse when making a determination of the supporting spouse’s ability to pay;

(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~~ earlier 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) whether a supported spouse and another person are cohabiting and the extent to which the supported spouse is using alimony to continue or support the cohabitation; and

~~(13)~~(14) such other factors the court considers relevant.

(D) 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~~ supporting spouse, the probable economic condition of the supported spouse upon the death of the ~~payor~~ supporting spouse, and any other factors the court may deem relevant, to carry and maintain life insurance so as to assure support of a spouse beyond the death of the ~~payor~~ supporting spouse.

(E) 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) 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) 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, 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) of subsection (B)~~ items (B)(1) through (B)(6) nonmodifiable and not subject to subsequent modification by the court.

(H) 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.

(I) In making an award of alimony or separate maintenance and support, the court shall decrease alimony awarded by the amount of social security, pension, or other passive retirement income to which the supported spouse would be entitled by virtue of the supporting spouse’s employment, except for good cause shown.

(J) In making an award of alimony or separate maintenance and support, the court must not take into consideration partial, permanent, or other disability benefits, worker’s compensation payments, or other income or benefits received by a supporting spouse related to an injury or disability when determining the supporting spouse’s ability to pay, except for good cause shown.”

SECTION 2. Section 20‑3‑170 of the 1976 Code is amended to read:

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

(C) There is a presumption that retirement is a change of circumstance that justifies termination of alimony when the supporting spouse who retires is eligible to receive social security retirement benefits. If the court does not terminate alimony pursuant to this subsection, the court shall modify the alimony obligation by decreasing the award in the amount of the social security benefit to which the supported spouse would be entitled based on the supporting spouse’s contributions, except for good cause shown.

(D) A court has the discretion to modify the alimony obligation whenever a supporting spouse retires, regardless of the supporting spouse’s age.”

SECTION 3. This act takes effect upon approval by the Governor.

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