~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 23, 2016

**S. 1169**

Introduced by Senators Gregory and Shealy

S. Printed 3/23/16--S. [SEC 3/24/16 3:27 PM]

Read the first time March 15, 2016.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 1169) to amend Section 20‑3‑130(B), Code of Laws of South Carolina, 1976, relating to the award of alimony and other allowances, so as to provide, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

CHAUNCEY K. GREGORY for Committee.

**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 revises Section 20-3-130(B) to add two new types of alimony, transitional and fixed term alimony. Transitional alimony is to assist a supported spouse in transitioning to an adjusted lifestyle or new financial circumstances, and fixed term alimony is to allow a finite award to a supported spouse. It also revises the definition of cohabitation by specifying what factors the court will consider in making a cohabitation determination and applies this revised definition to Section 20-3-150 relating to the segregation of allowance between spouse and children.

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 20-3-130(B), CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE AWARD OF ALIMONY AND OTHER ALLOWANCES, SO AS TO PROVIDE FOR TWO NEW FORMS OF ALIMONY AND TO CHANGE THE DEFINITION OF COHABITATION; TO AMEND SECTION 20-3-150, RELATING TO SEGREGATION OF ALLOWANCE BETWEEN SPOUSE AND CHILDREN AND THE EFFECT OF REMARRIAGE OF A SPOUSE, SO AS TO CHANGE THE DEFINITION OF COHABITATION.

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

SECTION 1. Section 20-3-130(B) of the 1976 Code is 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) Transitional alimony to be paid periodically or in a finite total sum, but terminating upon remarriage, continued cohabitation of the supported spouse, upon the death of either spouse (except as secured in subsection (D)), or upon a date certain that is not longer than three years from the date of the divorce. Transitional alimony is modifiable based upon 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.

(7) Fixed term alimony is the finite periodic payment of support to a recipient spouse who is economically dependent but terminating upon remarriage, continued cohabitation of the supported spouse, expiration of the fixed term, or upon the death of either spouse (except as secured in subsection (D)). Fixed term alimony is modifiable based upon 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.

~~(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.~~ For the purposes of this subsection and unless otherwise agreed to in writing by the parties, ‘continued cohabitation’ involves a mutually supportive, intimate personal relationship in which the supported spouse and another person undertake duties and privileges commonly associated with marriage but do not necessarily maintain a single common household. In the determination of whether 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.”

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.~~ For the purposes of this subsection and unless otherwise agreed to in writing by the parties, ‘continued cohabitation’ involves a mutually supportive, intimate personal relationship in which the supported spouse and another person undertake duties and privileges commonly associated with marriage but do not necessarily maintain a single common household. In the determination of whether 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.”

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

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