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HOUSE BILL NO. 47

Offered January 12, 2000

Prefiled December 21, 1999

A BILL to amend and reenact §§ 20-109, 20-110 and 20-112 of the Code of Virginia, relating to changing maintenance and support for a spouse; effect of remarriage.

Patron—Jones, J.C.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-109, 20-110 and 20-112 of the Code of Virginia are amended and reenacted as follows:

§ 20-109. Changing maintenance and support for a spouse; effect of stipulations as to maintenance and support for a spouse; cessation upon cohabitation, remarriage or death.

A. Upon petition of either party the court may increase, decrease, or terminate the amount or duration of any spousal support and maintenance that may thereafter accrue, whether previously or hereafter awarded, as the circumstances may make proper. Upon order of the court based upon clear and convincing evidence that the spouse receiving support has been habitually cohabiting with another person in a relationship analogous to a marriage for one year or more commencing on or after July 1, 1997, the court may decrease or terminate spousal support and maintenance unless (i) otherwise provided by stipulation or contract or (ii) the spouse receiving support proves by a preponderance of the evidence that termination of such support would constitute a manifest injustice.

B. The court may consider a modification of an award of spousal support for a defined duration upon petition of either party filed within the time covered by the duration of the award. Upon consideration of the factors set forth in subsection E of § 20-107.1, the court may increase, decrease or terminate the amount or duration of the award upon finding that (i) there has been a material change in the circumstances of the parties, not reasonably in the contemplation of the parties when the award was made or (ii) an event which the court anticipated would occur during the duration of the award and which was significant in the making of the award, does not in fact occur through no fault of the party seeking the modification.

C. In suits for divorce, annulment and separate maintenance, and in proceedings arising under subdivision A 3 or subsection L of § 16.1-241, if a stipulation or contract signed by the party to whom such relief might otherwise be awarded is filed before entry of a final decree, no decree or order directing the payment of support and maintenance for the spouse, suit money, or counsel fee or establishing or imposing any other condition or consideration, monetary or nonmonetary, shall be entered except in accordance with that stipulation or contract. If such a stipulation or contract is filed after entry of a final decree and if any party so moves, the court shall modify its decree to conform to such stipulation or contract.

D. Unless otherwise provided by stipulation or contract, spousal support and maintenance shall terminate upon the death of either party or remarriage of the spouse receiving support. *The spouse receiving support shall have an affirmative duty to notify the payor spouse immediately of remarriage.*

§ 20-110. Maintenance and support for a spouse to cease on remarriage.

If any former spouse to whom support and maintenance has been awarded shall thereafter marry, such support and maintenance shall cease as of the date of such marriage. *The spouse receiving support shall have an affirmative duty to notify the payor spouse immediately of such remarriage. Failure of such spouse to notify the payor shall entitle the payor to restitution equal to the amount of any support and maintenance paid after the date of the remarriage, together with interest from the date of the remarriage and reasonable attorney's fees and costs.*

§ 20-112. Notice when proceedings reopened.

When the proceedings are reopened to increase, decrease or terminate maintenance and support for a spouse or for a child, or to request additional orders to effectuate previous orders entered pursuant to § 20-107.3, the petitioning party shall give such notice to the other party by service of process or by order of publication as is required by law. *Except as provided by § 20-110, no support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for modification, but only from the date that notice of such petition has been given to the responding party.*

INTRODUCED

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