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HOUSE BILL NO. 326

House Amendments in [] — February 16, 2004

A BILL to amend and reenact §§ 20-74, 20-108, 20-109, and 20-112 of the Code of Virginia, relating to child and spousal support.

Patron Prior to Engrossment—Delegate Griffith

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-74, 20-108, 20-109, and 20-112 of the Code of Virginia are amended and reenacted as follows:

§ 20-74. Support orders to remain in effect until annulled; modification, exception for retroactive application.

A. Any order of support or amendment thereof entered under the provisions of this chapter shall remain in full force and effect until annulled by the court of original jurisdiction, or the court to which an appeal may be taken; however, such order of support or terms of probation shall be subject to change or modification by the court from time to time, as circumstances may require, but no such change or modification shall affect or relieve the surety of his or her obligation under such recognizance, provided notice thereof be forthwith given to such surety. No support order may be retroactively modified *except as provided in subsection B*, 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.

B. *Upon proof that either party has committed fraud upon the court, including but not limited to giving false testimony regarding assets and income, the court may issue a new support order, nunc pro tunc to the original date of the hearing at which the fraud was committed [; which shall be applied retroactively to increase or decrease the amount of support paid up to the date of the new order.]*

§ 20-108. Revision and alteration of such decrees, exception for retroactive application.

A. The court may, from time to time after decreeing as provided in § 20-107.2, on petition of either of the parents, or on its own motion or upon petition of any probation officer or the Department of Social Services, which petition shall set forth the reasons for the relief sought, revise and alter such decree concerning the care, custody, and maintenance of the children and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require. The intentional withholding of visitation of a child from the other parent without just cause may constitute a material change of circumstances justifying a change of custody in the discretion of the court.

B. No support order may be retroactively modified *except as provided in subsection C*, 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.

C. *Upon proof that either party has committed fraud upon the court, including but not limited to giving false testimony regarding assets and income, the court may issue a new support order, nunc pro tunc to the original date of the hearing at which the fraud was committed [; which shall be applied retroactively to increase or decrease the amount of support paid up to the date of the new order.]*

§ 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; exception for retroactive application.

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, *or that previously accrued, on the grounds specified in subsection E*, 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 shall 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 be unconscionable. The provisions of this subsection shall apply to all orders and decrees for spousal support, regardless of the date of the suit for initial setting of support, the date of entry of any such order or decree, or the date of any petition for modification of support.

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

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59 terminate the amount or duration of the award upon finding that (i) there has been a material change in
60 the circumstances of the parties, not reasonably in the contemplation of the parties when the award was
61 made or (ii) an event which the court anticipated would occur during the duration of the award and
62 which was significant in the making of the award, does not in fact occur through no fault of the party
63 seeking the modification. The provisions of this subsection shall apply only to suits for initial spousal
64 support orders filed on or after July 1, 1998, and suits for modification of spousal support orders arising
65 from suits for initial support orders filed on or after July 1, 1998.

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

74 D. Unless otherwise provided by stipulation or contract, spousal support and maintenance shall
75 terminate upon the death of either party or remarriage of the spouse receiving support. The spouse
76 entitled to support shall have an affirmative duty to notify the payor spouse immediately of remarriage
77 at the last known address of the payor spouse.

78 E. *Upon proof that either party has committed fraud upon the court, including but not limited to*
79 *giving false testimony regarding assets and income, the court may issue a new support order, nunc pro*
80 *tunc to the original date of the hearing at which the fraud was committed [; which shall be applied*
81 *retroactively to increase or decrease the amount of support paid up to the date of the new order. .]*

82 § 20-112. Notice when proceedings reopened.

83 When the proceedings are reopened to increase, decrease or terminate maintenance and support for a
84 spouse or for a child, or to request additional orders to effectuate previous orders entered pursuant to
85 § 20-107.3, the petitioning party shall give such notice to the other party by service of process or by
86 order of publication as is required by law. Except as provided by §§ 20-74, 20-108, 20-109, or § 20-110,
87 no support order may be retroactively modified, but may be modified with respect to any period during
88 which there is a pending petition for modification, but only from the date that notice of such petition
89 has been given to the responding party.