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HOUSE BILL NO. 352

Offered January 14, 2004

Prefiled January 12, 2004

A BILL to amend and reenact §§ 8.01-398 and 19.2-271.2 of the Code of Virginia, relating to privilege for marital communications.

Patron—Johnson

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-398 and 19.2-271.2 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-398. Competency of husband and wife to testify; privileged communications and exceptions thereto.

A. ~~Husband~~ *Except as provided in subsection B, husband and wife shall be competent witnesses to testify for or against each other in all civil actions; provided except that neither husband nor wife shall, without the consent of the other, be examined in any action as to disclose any communication privately made by one to the other while married, nor shall either be permitted, without such consent, to reveal in testimony disclose after the marriage relation ceases any such communication made while the marriage subsisted.*

B. ~~The proviso in subsection~~ *Subsection A of this section shall not apply in those instances where the law of this Commonwealth confers upon a spouse or the Commonwealth a right of action against the other spouse, including where one spouse is charged with a tort or crime against the other or against the child of either spouse.*

§ 19.2-271.2. Testimony of husband and wife in criminal cases.

In criminal cases husband and wife shall be allowed, and, subject to the rules of evidence governing other witnesses and subject to the exception stated in § 8.01-398, may be compelled to testify in behalf of each other, but neither shall be compelled to be called as a witness against the other, except (i) in the case of a prosecution for an offense committed by one against the other or against a minor child of either, (ii) in any case where either is charged with forgery of the name of the other or uttering or attempting to utter a writing bearing the allegedly forged signature of the other or (iii) in any proceeding relating to a violation of the laws pertaining to criminal sexual assault (§§ 18.2-61 through 18.2-67.10), crimes against nature (§ 18.2-361) involving a minor as a victim and provided the defendant and the victim are not married to each other, incest (§ 18.2-366), or abuse of children (§§ 18.2-370 through 18.2-371). The failure of either husband or wife to testify, however, shall create no presumption against the accused, nor be the subject of any comment before the court or jury by any attorney.

In the prosecution for a criminal offense as set forth in (i), (ii) or (iii) above, each shall be a competent witness ~~except~~ *including as to privileged communications as provided in § 8.01-398.*

INTRODUCED

HB352