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## HOUSE BILL NO. 781

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 20-109 and 20-110 of the Code of Virginia, relating to spousal support.

Patron—McDougle

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 20-109 and 20-110 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; remarriage to include cohabitation.

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 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 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. The provisions of this subsection shall apply only to suits for initial spousal support orders filed on or after July 1, 1998, and suits for modification of spousal support orders arising from suits for initial support orders filed on or after July 1, 1998.

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 entitled to support shall have an affirmative duty to notify the payor spouse immediately of remarriage at the last known address of the payor spouse. *For the purposes of this section, the term "remarriage" shall include habitually cohabiting with another person in a relationship analogous to a marriage for one year or more 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.*

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

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 entitled to current 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 current support and maintenance paid after the date of the remarriage, together with interest from

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59 the date of the remarriage and reasonable attorney's fees and costs. *For the purposes of this section,*  
60 *"marriage" and "remarriage" shall include habitually cohabiting with another person in a relationship*  
61 *analogous to a marriage for one year or more unless (i) otherwise provided by stipulation or contract*  
62 *or (ii) the spouse receiving support proves by a preponderance of the evidence that termination of such*  
63 *support would be unconscionable.*