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## SENATE BILL NO. 328

Offered January 9, 2008

Prefiled January 8, 2008

A *BILL to amend and reenact §§ 20-99, 20-104, and 20-106 of the Code of Virginia, relating to evidence required for no-fault divorce.*

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Patron—Quayle

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Referred to Committee for Courts of Justice

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

**1. That §§ 20-99, 20-104, and 20-106 of the Code of Virginia are amended and reenacted as follows:**

§ 20-99. How such suits instituted and conducted; costs.

Such suit shall be instituted and conducted as other suits in equity, except as otherwise provided in this section:

1. No divorce, annulment, or affirmation of a marriage shall be granted on the uncorroborated testimony of the parties or either of them, except in accordance with subsection B of § 20-106.

2. Whether the defendant answers or not, the cause shall be heard independently of the admissions of either party in the pleadings or otherwise, except in accordance with subsection B of § 20-106.

3. Process or notice in such proceedings shall be served in this Commonwealth by any of the methods prescribed in § 8.01-296 by any person authorized to serve process under § 8.01-293. Service may be made on a nonresident by any of the methods prescribed in § 8.01-296 by any person authorized to serve process under § 8.01-320.

4. In cases where such suits have been commenced and an appearance has been made on behalf of the defendant by counsel, then notices to take depositions and of hearings, motions, and other proceedings except contempt proceedings, may be served by delivering or mailing a copy to counsel for opposing party, the foot of such notices bearing either acceptance of service or a certificate of counsel in compliance with the Rules of the Supreme Court of Virginia. "Counsel for opposing party" shall include a pro se party who (i) has entered a general appearance in person or by filing a pleading or endorsing an order of withdrawal of that party's counsel, or (ii) has signed a pleading in the case or who has notified the other parties and the clerk that he appears in the case.

5. Costs may be awarded to either party as equity and justice may require.

§ 20-104. Order of publication or posting against nonresident defendant or defendant whose whereabouts are unascertainable.

In any suit for annulment, for divorce, either a vinculo matrimonii or a mensa et thoro, or for affirmation of a marriage, an affidavit shall be filed that the defendant is not a resident of the Commonwealth of Virginia, or that diligence has been used by or on behalf of the plaintiff to ascertain in what county or city such defendant is, without effect, an order of publication shall be entered against such defendant by the court, or by the clerk of the court wherein such suit is pending, either in term time or vacation, which order shall state the object of the suit and the grounds thereof, and the order of publication shall be published as required by law. If the plaintiff in the suit has been determined to be indigent by the court, the order stating the object of the suit and the grounds thereof shall be posted on the main entrance to the circuit courthouse of the city or county wherein the suit is filed, and no order of publication shall be required. No further order shall be entered, nor depositions in the suit commenced, until at least 10 days shall have elapsed after the order has been duly published or posted as required by law.

All annulments or divorces heretofore granted in suits in which the defendant was proceeded against by an order of publication or posting which required the defendant to appear within 10 days after due publication or posting thereof, and in which depositions were taken less than 15 days, but not less than 10 days, after such due publication or posting and in suits in which the defendant was proceeded against by an order of publication or posting issued on an affidavit that diligence had been used by or on behalf of the plaintiff to ascertain in what county or city such defendant was, without effect, or wherein the order of publication or posting was entered by the court, are hereby validated and declared to be binding upon the parties to such suit, when the other proceedings therein were regular and the annulment or divorce otherwise valid.

The cost of such publication shall be paid by the petitioner or applicant.

§ 20-106. How evidence is given in suits for divorce.

A. In any suit for divorce except those meeting the requirements of subsection B, the trial court may

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59 require the whole or any part of the testimony to be given orally in open court, and if either party  
60 desires it, such testimony and the rulings of the court on the exceptions thereto, if any, shall be reduced  
61 to writing, and the judge shall certify that such evidence was given before him and such rulings made.  
62 When so certified the same shall stand on the same footing as a deposition regularly taken in the cause;  
63 provided, however, that no such oral evidence shall be given or heard unless and until after such notice  
64 to the adverse party as is required by law to be given of the taking of depositions, or when there has  
65 been no service of process within this Commonwealth upon, or appearance by the defendant against  
66 whom such testimony is sought to be introduced.

67 B. In a suit for divorce based on subdivision A (9) of § 20-91, a decree may be entered on a motion  
68 supported by the sworn affidavit of either or both parties to the marriage, provided that:

69 1. There are no minor children of the parties born before or during the marriage or adopted by the  
70 parties or by either party during the marriage, and the wife, to the affiant's knowledge, is not pregnant;  
71 and

72 2. Both parties have executed affidavits waiving any right to spousal support and distribution of  
73 property pursuant to § 20-107.3, or the parties have executed an agreement that fully disposes of all  
74 issues regarding spousal support and property distribution pursuant to § 20-107.3.

75 C. In cases where the defendant has been served through an order of publication or posting in  
76 accordance with § 20-104, compliance with the provisions of subdivision B 2 is not required.  
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