

080271308

SENATE BILL NO. 328

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 30, 2008)

(Patron Prior to Substitute—Senator Quayle)

A BILL to amend and reenact § 20-104 of the Code of Virginia, relating to nonresident defendants; divorce.

Be it enacted by the General Assembly of Virginia:

1. That § 20-104 of the Code of Virginia is amended and reenacted as follows:

§ 20-104. Order of publication against nonresident defendant.

In any suit for annulment, for divorce, either a vinculo matrimonii or a mensa et thoro, or for affirmance 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 mailed to the defendant at his last known address and 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 depositions in the suit shall be commenced until at least ~~ten~~ 10 days shall have elapsed after the order of publication has been duly published *or mailed and 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 of mailing and posting* which required the defendant to appear within ~~ten~~ 10 days after due publication *or mailing and posting* thereof, and in which depositions were taken less than ~~fifteen~~ 15 days, but not less than ~~ten~~ 10 days, after such due publication *or mailing and posting* and in suits in which the defendant was proceeded against by an order of publication *or of mailing and 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 of mailing and 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 *or of such mailing and posting* shall be paid by the petitioner or applicant.