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HOUSE BILL NO. 1397

Offered January 14, 2015

Prefiled December 16, 2014

A *BILL to amend and reenact §§ 20-97 and 20-106 of the Code of Virginia, relating to divorce; evidence by affidavit.*

Patron—Leftwich

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 20-97 and 20-106 of the Code of Virginia are amended and reenacted as follows:****§ 20-97. Domicile and residential requirements for suits for annulment, affirmance, or divorce.**

No suit for annulling a marriage or for divorce shall be maintainable, unless one of the parties ~~is was~~ *at the time of the filing of the suit and has had been for at least six months preceding the filing of the suit* an actual bona fide resident and domiciliary of this Commonwealth ~~for at least six months preceding the commencement of the suit~~, nor shall any suit for affirming a marriage be maintainable, unless one of the parties be domiciled in, and is and has been an actual bona fide resident of this Commonwealth at the time of ~~bringing filing~~ such suit.

For the purposes of this section only:

1. If a member of the armed forces of the United States has been stationed or resided in this Commonwealth and has lived for a period of six months or more in this Commonwealth next preceding the ~~commencement~~ *filing* of the suit, then such person shall be presumed to be domiciled in and to have been a bona fide resident of this Commonwealth during such period of time.

2. Being stationed or residing in the Commonwealth includes, but is not limited to, a member of the armed forces being stationed or residing upon a ship having its home port in this Commonwealth or at an air, naval or military base located within this Commonwealth over which the United States enjoys exclusive federal jurisdiction.

3. Any member of the armed forces of the United States or any foreign service officer of the United States who (i) at the time the suit is ~~commenced~~ *filed* is, or immediately preceding such suit was, stationed in any territory or foreign country and (ii) was domiciled in the Commonwealth for the ~~six month~~ *six-month* period immediately preceding his being stationed in such territory or country, shall be deemed to have been domiciled in and to have been a bona fide resident of the Commonwealth during the six months preceding ~~commencement~~ *the filing* of a suit for annulment or divorce.

4. Upon separation of the husband and wife, the wife may establish her own and separate domicile, though the separation may have been caused under such circumstances as would entitle the wife to a divorce or annulment.

§ 20-106. Testimony may be required to be given orally; evidence by affidavit.

A. In any suit for divorce, the trial court may require the whole or any part of the testimony to be given orally in open court, and if either party desires it, such testimony and the rulings of the court on the exceptions thereto, if any, shall be reduced to writing, and the judge shall certify that such evidence was given before him and such rulings made. When so certified the same shall stand on the same footing as a deposition regularly taken in the cause, provided, however, that no such oral evidence shall be given or heard unless and until after such notice to the adverse party as is required by law to be given of the taking of depositions, or when there has been no service of process within this Commonwealth upon, or appearance by the defendant against whom such testimony is sought to be introduced. However, a party may proceed to take evidence in support of a divorce by deposition or affidavit without leave of court only in support of a divorce on the grounds set forth in subdivision A (9) of § 20-91, where (i) the parties have resolved all issues by a written settlement agreement, (ii) there are no issues other than the grounds of the divorce itself to be adjudicated, or (iii) the adverse party has been personally served with the complaint and has failed to file a responsive pleading or to make an appearance as required by law.

B. The affidavit of a party submitted as evidence shall be based on the personal knowledge of the affiant, contain only facts that would be admissible in court, give factual support to the grounds for divorce stated in the complaint or counterclaim, and establish that the affiant is competent to testify to the contents of the affidavit. If either party is incarcerated, neither party shall submit evidence by affidavit without leave of court or the consent in writing of the guardian ad litem for the incarcerated party, or of the incarcerated party if a guardian ad litem is not required pursuant to § 8.01-9. The affidavit shall:

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- 59 1. Give factual support to the grounds for divorce stated in the complaint or counterclaim, including
60 that the parties are over the age of 18 and not suffering from any condition that renders either party
61 legally incompetent;
- 62 2. Verify whether either party is incarcerated;
- 63 3. Verify the military status of the opposing party and advise whether the opposing party has filed an
64 answer or a waiver of his rights under the federal Servicemembers Civil Relief Act (50 U.S.C. App
65 § 501 et seq.);
- 66 4. Affirm that at least one party to the suit is *was at the time of the filing of the suit*, and ~~has had~~
67 been for a period in excess of six months immediately preceding the ~~commencement~~ *filing* of the suit, a
68 bona fide resident and domiciliary of the Commonwealth;
- 69 5. Affirm that the parties have lived separate and apart, continuously, without interruption and
70 without cohabitation, and with the intent to remain separate and apart permanently, for the statutory
71 period required by subdivision A (9) of § 20-91;
- 72 6. Affirm the affiant's desire to be awarded a divorce pursuant to subdivision A (9) of § 20-91;
- 73 7. State whether there were children born or adopted of the marriage and affirm that the wife is not
74 known to be pregnant from the marriage; and
- 75 8. Be accompanied by the affidavit of ~~a~~ *at least one* corroborating witness, which shall:
- 76 a. Verify that the affiant is over the age of 18 and not suffering from any condition that renders him
77 legally incompetent;
- 78 b. Verify whether either party is incarcerated;
- 79 c. Give factual support to the grounds for divorce stated in the complaint or counterclaim;
- 80 d. Verify that at least one of the parties to the suit is *was at the time of the filing of the suit*, and ~~has~~
81 *had* been for a period in excess of six months immediately preceding the ~~commencement~~ *filing* of the
82 suit, a bona fide resident and domiciliary of the Commonwealth;
- 83 e. Verify whether there were children born or adopted of the marriage and verify that the wife is not
84 known to be pregnant from the marriage; and
- 85 f. Verify the affiant's personal knowledge that the parties have not cohabitated since the date of
86 separation alleged in the complaint or counterclaim, and that it has been ~~the moving~~ *either party's*
87 intention since that date to remain separate and apart permanently.
- 88 C. *If a party moves for a divorce pursuant to § 20-121.02, any affidavit may be submitted in support*
89 *of the grounds for divorce set forth in subdivision A (9) of § 20-91.*
- 90 D. A verified complaint shall not be deemed an affidavit for purposes of this section.