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HOUSE BILL NO. 2289

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice on February 15, 2017)

(Patron Prior to Substitute—Delegate Leftwich)

A BILL to amend and reenact § 20-107.3 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 20-107.1:1, relating to award of life insurance upon divorce or dissolution of marriage.

Be it enacted by the General Assembly of Virginia:

1. That § 20-107.3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 20-107.1:1 as follows:

§ 20-107.1:1. Court may decree as to maintenance of life insurance policy.

A. Upon entry of a decree providing for (i) the dissolution of a marriage, (ii) a divorce, whether from the bond of matrimony or from bed and board, or (iii) separate maintenance, where an order for spousal support or separate maintenance has been entered by the court, the court may order a party to (a) maintain any existing life insurance policy on the insured party's life that was purchased during the marriage, is issued through the insured's employment, or is within effective control of the insured, provided that the party so ordered has the right to designate a beneficiary and that the payee has been designated as a beneficiary of such policy during the marriage and the payee is a party with an insurable interest pursuant to subsection B of § 38.2-301; (b) designate the other party as beneficiary of all or a portion of the death benefit of such life insurance for so long as the insured party so ordered has an obligation to pay spousal support to the other party, provided that the party so ordered has the right to designate a beneficiary and that the payee has been designated as a beneficiary of such policy during the marriage and the payee is a party with an insurable interest pursuant to subsection B of § 38.2-301 in accordance with the terms of the policy; (c) allocate the premium cost of such life insurance between the parties, provided that all premiums shall be billed to the policyholder; and (d) order the insured party to execute all appropriate forms or written consents to require the insurer to provide information to the party beneficiary as to the good standing of the policy and the maintenance of that party as beneficiary to the extent required by the order entered pursuant to this section. The obligation to maintain such life insurance so ordered shall cease upon the termination of the party's obligation to pay spousal support or separate maintenance.

B. In making a determination under subsection A, the court shall consider:

1. The age, health, and insurability of the insured party;
2. The age and health of the payee spouse;
3. The cost of the life insurance policy;
4. The amount and term of the award of spousal support or separate maintenance;
5. The prevailing insurance rates at the time of the order;
6. The ability of either spouse to pay the premium cost of the life insurance; and
7. Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair order.

C. Upon motion of either party, any order entered pursuant to this section may be modified or the obligation to maintain life insurance terminated upon a material change of circumstances in consideration of the factors set forth in subsection B.

D. Nothing in this section shall be construed to create an independent cause of action on the part of any beneficiary against the insurer or to require an insurer to provide information relating to such policy to any person other than the policyholder without the written consent of the policyholder or unless ordered by the court.

E. Nothing in this section shall be construed to require an insurance company to renew or reinstate any insurance policy other than as provided in such insurance policy.

F. In the event a group policy issued by an employer that is subject to a court order pursuant to this section is terminated or canceled by the employer or there is an involuntary change in employment by the payor causing the policy to no longer be in effect, such circumstances shall not be the basis of any finding of contempt against the payor arising out of an order entered pursuant to this section.

G. This section shall not apply to any second to die insurance policies on the lives of the payor and payee.

H. In the case of a term life insurance policy that has the ability to convert to a permanent policy, the court shall not impose an obligation to pay for such a conversion.

§ 20-107.3. Court may decree as to property and debts of the parties.

A. Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce from the bond of

60 matrimony, or upon the filing with the court as provided in subsection J of a certified copy of a final  
61 divorce decree obtained without the Commonwealth, the court, upon request of either party, (i) shall  
62 determine the legal title as between the parties, and the ownership and value of all property, real or  
63 personal, tangible or intangible, of the parties and shall consider which of such property is separate  
64 property, which is marital property, and which is part separate and part marital property in accordance  
65 with subdivision A 3 and (ii) shall determine the nature of all debts of the parties, or either of them, and  
66 shall consider which of such debts is separate debt and which is marital debt. The court shall determine  
67 the value of any such property as of the date of the evidentiary hearing on the evaluation issue. The  
68 court shall determine the amount of any such debt as of the date of the last separation of the parties, if  
69 at such time or thereafter at least one of the parties intends that the separation be permanent, and the  
70 extent to which such debt has increased or decreased from the date of separation until the date of the  
71 evidentiary hearing. Upon motion of either party made no less than 21 days before the evidentiary  
72 hearing the court may, for good cause shown, in order to attain the ends of justice, order that a different  
73 valuation date be used. The court, on the motion of either party, may retain jurisdiction in the final  
74 decree of divorce to adjudicate the remedy provided by this section when the court determines that such  
75 action is clearly necessary, and all decrees heretofore entered retaining such jurisdiction are validated.

76 1. Separate property is (i) all property, real and personal, acquired by either party before the  
77 marriage; (ii) all property acquired during the marriage by bequest, devise, descent, survivorship or gift  
78 from a source other than the other party; (iii) all property acquired during the marriage in exchange for  
79 or from the proceeds of sale of separate property, provided that such property acquired during the  
80 marriage is maintained as separate property; and (iv) that part of any property classified as separate  
81 pursuant to subdivision A 3. Income received from separate property during the marriage is separate  
82 property if not attributable to the personal effort of either party. The increase in value of separate  
83 property during the marriage is separate property, unless marital property or the personal efforts of either  
84 party have contributed to such increases and then only to the extent of the increases in value attributable  
85 to such contributions. The personal efforts of either party must be significant and result in substantial  
86 appreciation of the separate property if any increase in value attributable thereto is to be considered  
87 marital property.

88 2. Marital property is (i) all property titled in the names of both parties, whether as joint tenants,  
89 tenants by the entirety or otherwise, except as provided by subdivision A 3, (ii) that part of any property  
90 classified as marital pursuant to subdivision A 3, or (iii) all other property acquired by each party during  
91 the marriage which is not separate property as defined above. All property including that portion of  
92 pensions, profit-sharing or deferred compensation or retirement plans of whatever nature, acquired by  
93 either spouse during the marriage, and before the last separation of the parties, if at such time or  
94 thereafter at least one of the parties intends that the separation be permanent, is presumed to be marital  
95 property in the absence of satisfactory evidence that it is separate property. For purposes of this section  
96 marital property is presumed to be jointly owned unless there is a deed, title or other clear indicia that it  
97 is not jointly owned.

98 3. The court shall classify property as part marital property and part separate property as follows:

99 a. In the case of income received from separate property during the marriage, such income shall be  
100 marital property only to the extent it is attributable to the personal efforts of either party. In the case of  
101 the increase in value of separate property during the marriage, such increase in value shall be marital  
102 property only to the extent that marital property or the personal efforts of either party have contributed  
103 to such increases, provided that any such personal efforts must be significant and result in substantial  
104 appreciation of the separate property.

105 For purposes of this subdivision, the nonowning spouse shall bear the burden of proving that (i)  
106 contributions of marital property or personal effort were made and (ii) the separate property increased in  
107 value. Once this burden of proof is met, the owning spouse shall bear the burden of proving that the  
108 increase in value or some portion thereof was not caused by contributions of marital property or  
109 personal effort.

110 "Personal effort" of a party shall be deemed to be labor, effort, inventiveness, physical or intellectual  
111 skill, creativity, or managerial, promotional or marketing activity applied directly to the separate property  
112 of either party.

113 b. In the case of any pension, profit-sharing, or deferred compensation plan or retirement benefit, the  
114 marital share as defined in subsection G shall be marital property.

115 c. In the case of any personal injury or workers' compensation recovery of either party, the marital  
116 share as defined in subsection H shall be marital property.

117 d. When marital property and separate property are commingled by contributing one category of  
118 property to another, resulting in the loss of identity of the contributed property, the classification of the  
119 contributed property shall be transmuted to the category of property receiving the contribution. However,  
120 to the extent the contributed property is retraceable by a preponderance of the evidence and was not a  
121 gift, such contributed property shall retain its original classification.

122 e. When marital property and separate property are commingled into newly acquired property  
123 resulting in the loss of identity of the contributing properties, the commingled property shall be deemed  
124 transmuted to marital property. However, to the extent the contributed property is retraceable by a  
125 preponderance of the evidence and was not a gift, the contributed property shall retain its original  
126 classification.

127 f. When separate property is retitled in the joint names of the parties, the retitled property shall be  
128 deemed transmuted to marital property. However, to the extent the property is retraceable by a  
129 preponderance of the evidence and was not a gift, the retitled property shall retain its original  
130 classification.

131 g. When the separate property of one party is commingled into the separate property of the other  
132 party, or the separate property of each party is commingled into newly acquired property, to the extent  
133 the contributed property is retraceable by a preponderance of the evidence and was not a gift, each party  
134 shall be reimbursed the value of the contributed property in any award made pursuant to this section.

135 h. Subdivisions A 3 d, e and f shall apply to jointly owned property. No presumption of gift shall  
136 arise under this section where (i) separate property is commingled with jointly owned property; (ii)  
137 newly acquired property is conveyed into joint ownership; or (iii) existing property is conveyed or  
138 retitled into joint ownership. For purposes of this subdivision A 3, property is jointly owned when it is  
139 titled in the name of both parties, whether as joint tenants, tenants by the entireties, or otherwise.

140 4. Separate debt is (i) all debt incurred by either party before the marriage, (ii) all debt incurred by  
141 either party after the date of the last separation of the parties, if at such time or thereafter at least one of  
142 the parties intends that the separation be permanent, and (iii) that part of any debt classified as separate  
143 pursuant to subdivision A 5. However, to the extent that a party can show by a preponderance of the  
144 evidence that the debt was incurred for the benefit of the marriage or family, the court may designate  
145 the debt as marital.

146 5. Marital debt is (i) all debt incurred in the joint names of the parties before the date of the last  
147 separation of the parties, if at such time or thereafter at least one of the parties intends that the  
148 separation be permanent, whether incurred before or after the date of the marriage, and (ii) all debt  
149 incurred in either party's name after the date of the marriage and before the date of the last separation of  
150 the parties, if at such time or thereafter at least one of the parties intends that the separation be  
151 permanent. However, to the extent that a party can show by a preponderance of the evidence that the  
152 debt, or a portion thereof, was incurred, or the proceeds secured by incurring the debt were used, in  
153 whole or in part, for a nonmarital purpose, the court may designate the entire debt as separate or a  
154 portion of the debt as marital and a portion of the debt as separate.

155 B. For the purposes of this section only, both parties shall be deemed to have rights and interests in  
156 the marital property. However, such interests and rights shall not attach to the legal title of such  
157 property and are only to be used as a consideration in determining a monetary award, if any, as  
158 provided in this section.

159 C. Except as provided in subsection G, the court shall have no authority to order the division or  
160 transfer of separate property or marital property, or separate or marital debt, which is not jointly owned  
161 or owed. However, upon a finding that separate property of one party is in the possession or control of  
162 the other party, the court may order that the property be transferred to the party whose separate property  
163 it is. The court may, based upon the factors listed in subsection E, divide or transfer or order the  
164 division or transfer, or both, of jointly owned marital property, jointly owed marital debt, or any part  
165 thereof. The court shall also have the authority to apportion and order the payment of the debts of the  
166 parties, or either of them, that are incurred prior to the dissolution of the marriage, based upon the  
167 factors listed in subsection E.

168 As a means of dividing or transferring the jointly owned marital property, the court may transfer or  
169 order the transfer of real or personal property or any interest therein to one of the parties, permit either  
170 party to purchase the interest of the other and direct the allocation of the proceeds, provided the party  
171 purchasing the interest of the other agrees to assume any indebtedness secured by the property, or order  
172 its sale by private sale by the parties, through such agent as the court shall direct, or by public sale as  
173 the court shall direct without the necessity for partition. All decrees entered prior to July 1, 1991, which  
174 are final and not subject to further proceedings on appeal as of that date, which divide or transfer or  
175 order the division or transfer of property directly between the parties are hereby validated and deemed  
176 self-executing. All orders or decrees which divide or transfer or order division or transfer of real  
177 property between the parties shall be recorded and indexed in the names of the parties in the appropriate  
178 grantor and grantee indexes in the land records in the clerk's office of the circuit court of the county or  
179 city in which the property is located.

180 D. In addition, based upon (i) the equities and the rights and interests of each party in the marital  
181 property, and (ii) the factors listed in subsection E, the court has the power to grant a monetary award,  
182 payable either in a lump sum or over a period of time in fixed amounts, to either party. The party

183 against whom a monetary award is made may satisfy the award, in whole or in part, by conveyance of  
184 property, subject to the approval of the court. An award entered pursuant to this subsection shall  
185 constitute a judgment within the meaning of § 8.01-426 and shall not be docketed by the clerk unless  
186 the decree so directs. An award entered pursuant to this subsection may be enforceable in the same  
187 manner as any other money judgment. The provisions of § 8.01-382, relating to interest on judgments,  
188 shall apply unless the court orders otherwise.

189 Any marital property, which has been considered or ordered transferred in granting the monetary  
190 award under this section, shall not thereafter be the subject of a suit between the same parties to transfer  
191 title or possession of such property.

192 E. The amount of any division or transfer of jointly owned marital property, and the amount of any  
193 monetary award, the apportionment of marital debts, and the method of payment shall be determined by  
194 the court after consideration of the following factors:

- 195 1. The contributions, monetary and nonmonetary, of each party to the well-being of the family;
- 196 2. The contributions, monetary and nonmonetary, of each party in the acquisition and care and  
197 maintenance of such marital property of the parties;
- 198 3. The duration of the marriage;
- 199 4. The ages and physical and mental condition of the parties;
- 200 5. The circumstances and factors which contributed to the dissolution of the marriage, specifically  
201 including any ground for divorce under the provisions of subdivision A (1), (3) or (6) of § 20-91 or  
202 § 20-95;
- 203 6. How and when specific items of such marital property were acquired;
- 204 7. The debts and liabilities of each spouse, the basis for such debts and liabilities, and the property  
205 which may serve as security for such debts and liabilities;
- 206 8. The liquid or nonliquid character of all marital property;
- 207 9. The tax consequences to each party;
- 208 10. The use or expenditure of marital property by either of the parties for a nonmarital separate  
209 purpose or the dissipation of such funds, when such was done in anticipation of divorce or separation or  
210 after the last separation of the parties; and
- 211 11. Such other factors as the court deems necessary or appropriate to consider in order to arrive at a  
212 fair and equitable monetary award.

213 F. The court shall determine the amount of any such monetary award without regard to maintenance  
214 and support awarded for either party or support for the minor children of both parties and shall, after or  
215 at the time of such determination and upon motion of either party, consider whether an order for support  
216 and maintenance of a spouse or children shall be entered or, if previously entered, whether such order  
217 shall be modified or vacated.

218 G. In addition to the monetary award made pursuant to subsection D, and upon consideration of the  
219 factors set forth in subsection E:

220 1. The court may direct payment of a percentage of the marital share of any pension, profit-sharing  
221 or deferred compensation plan or retirement benefits, whether vested or nonvested, which constitutes  
222 marital property and whether payable in a lump sum or over a period of time. The court may order  
223 direct payment of such percentage of the marital share by direct assignment to a party from the  
224 employer trustee, plan administrator or other holder of the benefits. However, the court shall only direct  
225 that payment be made as such benefits are payable. No such payment shall exceed 50 percent of the  
226 marital share of the cash benefits actually received by the party against whom such award is made.  
227 "Marital share" means that portion of the total interest, the right to which was earned during the  
228 marriage and before the last separation of the parties, if at such time or thereafter at least one of the  
229 parties intended that the separation be permanent.

230 2. To the extent permitted by federal or other applicable law, the court may order a party to  
231 designate a spouse or former spouse as irrevocable beneficiary during the lifetime of the beneficiary of  
232 all or a portion of any survivor benefit or annuity plan of whatsoever nature, but not to include a life  
233 insurance policy *except to the extent permitted by § 20-107.1:1*. The court, in its discretion, shall  
234 determine as between the parties, who shall bear the costs of maintaining such plan.

235 H. In addition to the monetary award made pursuant to subsection D, and upon consideration of the  
236 factors set forth in subsection E, the court may direct payment of a percentage of the marital share of  
237 any personal injury or workers' compensation recovery of either party, whether such recovery is payable  
238 in a lump sum or over a period of time. However, the court shall only direct that payment be made as  
239 such recovery is payable, whether by settlement, jury award, court award, or otherwise. "Marital share"  
240 means that part of the total personal injury or workers' compensation recovery attributable to lost wages  
241 or medical expenses to the extent not covered by health insurance accruing during the marriage and  
242 before the last separation of the parties, if at such time or thereafter at least one of the parties intended  
243 that the separation be permanent.

244 I. Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation

245 in a decree of an agreement between the parties pursuant to §§ 20-109 and 20-109.1. Agreements,  
246 otherwise valid as contracts, entered into between spouses prior to the marriage shall be recognized and  
247 enforceable.

248 J. A court of proper jurisdiction under § 20-96 may exercise the powers conferred by this section  
249 after a court of a foreign jurisdiction has decreed a dissolution of a marriage or a divorce from the bond  
250 of matrimony, if (i) one of the parties was domiciled in this Commonwealth when the foreign  
251 proceedings were commenced, (ii) the foreign court did not have personal jurisdiction over the party  
252 domiciled in the Commonwealth, (iii) the proceeding is initiated within two years of receipt of notice of  
253 the foreign decree by the party domiciled in the Commonwealth, and (iv) the court obtains personal  
254 jurisdiction over the parties pursuant to subdivision A 9 of § 8.01-328.1, or in any other manner  
255 permitted by law.

256 K. The court shall have the continuing authority and jurisdiction to make any additional orders  
257 necessary to effectuate and enforce any order entered pursuant to this section, including the authority to:

258 1. Order a date certain for transfer or division of any jointly owned property under subsection C or  
259 payment of any monetary award under subsection D;

260 2. Punish as contempt of court any willful failure of a party to comply with the provisions of any  
261 order made by the court under this section;

262 3. Appoint a special commissioner to transfer any property under subsection C where a party refuses  
263 to comply with the order of the court to transfer such property; and

264 4. Modify any order entered in a case filed on or after July 1, 1982, intended to affect or divide any  
265 pension, profit-sharing or deferred compensation plan or retirement benefits pursuant to the United States  
266 Internal Revenue Code or other applicable federal laws, only for the purpose of establishing or  
267 maintaining the order as a qualified domestic relations order or to revise or conform its terms so as to  
268 effectuate the expressed intent of the order.

269 L. If it appears upon or after the entry of a final decree of divorce from the bond of matrimony that  
270 neither party resides in the city or county of the circuit court that entered the decree, the court may, on  
271 the motion of any party or on its own motion, transfer to the circuit court for the city or county where  
272 either party resides the authority to make additional orders pursuant to subsection K or to carry out or  
273 enforce any stipulation, contract, or agreement between the parties that has been affirmed, ratified, and  
274 incorporated by reference pursuant to § 20-109.1.