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SENATE BILL NO. 859

Offered January 11, 2017

Prefiled December 5, 2016

A *BILL to amend and reenact §§ 20-107.1 and 20-109 of the Code of Virginia, relating to spousal support; termination upon retirement.*

Patron—Hanger

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 20-107.1 and 20-109 of the Code of Virginia are amended and reenacted as follows:****§ 20-107.1. Court may decree as to maintenance and support of spouses.**

A. Pursuant to any proceeding arising under subsection L of § 16.1-241 or upon the entry of a decree providing (i) for the dissolution of a marriage, (ii) for a divorce, whether from the bond of matrimony or from bed and board, (iii) that neither party is entitled to a divorce, or (iv) for separate maintenance, the court may make such further decree as it shall deem expedient concerning the maintenance and support of the spouses, notwithstanding a party's failure to prove his grounds for divorce, provided that a claim for support has been properly pled by the party seeking support. However, the court shall have no authority to decree maintenance and support payable by the estate of a deceased spouse.

B. Any maintenance and support shall be subject to the provisions of § 20-109, and no permanent maintenance and support shall be awarded from a spouse if there exists in such spouse's favor a ground of divorce under the provisions of subdivision A (1) of § 20-91. However, the court may make such an award notwithstanding the existence of such ground if the court determines from clear and convincing evidence, that a denial of support and maintenance would constitute a manifest injustice, based upon the respective degrees of fault during the marriage and the relative economic circumstances of the parties.

C. The court, in its discretion, may decree that maintenance and support of a spouse be made in periodic payments for a defined duration, or in periodic payments for an undefined duration, or in a lump sum award, or in any combination thereof.

For initial spousal support orders, or for requests for support made pursuant to subsection D, filed on or after July 1, 2017, the court in its discretion may decree that maintenance and support of a spouse be made in periodic payments or in a lump sum award, or in any combination thereof. However, if the court decrees that maintenance and support of a spouse be made in periodic payments, such payments shall terminate no later than upon the payor spouse's attainment of full retirement age, provided that when the court enters a support order for periodic payments to be made, the court may, for good cause shown, set a termination date later than the date on which the payor spouse would attain full retirement age. The payor spouse's ability to work beyond full retirement age shall not be a reason to extend a termination date. If the parties stipulate or sign a contract agreeing to a different termination date, the court shall enter the support order in accordance with such stipulation or contract.

For the purposes of this subsection, "full retirement age" means the normal retirement age at which a person is able to receive full retirement benefits under the federal Social Security Act but does not mean "early retirement age," as defined under the federal Social Security Act in 42 U.S.C. § 416, as amended.

D. In addition to or in lieu of an award pursuant to subsection C, the court may reserve the right of a party to receive support in the future. In any case in which the right to support is so reserved, there shall be a rebuttable presumption that the reservation will continue for a period equal to 50 percent of the length of time between the date of the marriage and the date of separation. Once granted, the duration of such a reservation shall not be subject to modification.

E. The court, in determining whether to award support and maintenance for a spouse, shall consider the circumstances and factors which contributed to the dissolution of the marriage, specifically including adultery and any other ground for divorce under the provisions of subdivision A (3) or (6) of § 20-91 or § 20-95. In determining the nature, amount and duration of an award pursuant to this section, the court shall consider the following:

1. The obligations, needs and financial resources of the parties, including but not limited to income from all pension, profit sharing or retirement plans, of whatever nature;
2. The standard of living established during the marriage;
3. The duration of the marriage;
4. The age and physical and mental condition of the parties and any special circumstances of the

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59 family;

60 5. The extent to which the age, physical or mental condition or special circumstances of any child of
61 the parties would make it appropriate that a party not seek employment outside of the home;

62 6. The contributions, monetary and nonmonetary, of each party to the well-being of the family;

63 7. The property interests of the parties, both real and personal, tangible and intangible;

64 8. The provisions made with regard to the marital property under § 20-107.3;

65 9. The earning capacity, including the skills, education and training of the parties and the present
66 employment opportunities for persons possessing such earning capacity;

67 10. The opportunity for, ability of, and the time and costs involved for a party to acquire the
68 appropriate education, training and employment to obtain the skills needed to enhance his or her earning
69 ability;

70 11. The decisions regarding employment, career, economics, education and parenting arrangements
71 made by the parties during the marriage and their effect on present and future earning potential,
72 including the length of time one or both of the parties have been absent from the job market;

73 12. The extent to which either party has contributed to the attainment of education, training, career
74 position or profession of the other party; and

75 13. Such other factors, including the tax consequences to each party and the circumstances and
76 factors that contributed to the dissolution, specifically including any ground for divorce, as are necessary
77 to consider the equities between the parties.

78 F. In contested cases in the circuit courts, any order granting, reserving or denying a request for
79 spousal support shall be accompanied by written findings and conclusions of the court identifying the
80 factors in subsection E which support the court's order. If the court awards periodic support for a
81 defined duration, such findings shall identify the basis for the nature, amount and duration of the award
82 and, if appropriate, a specification of the events and circumstances reasonably contemplated by the court
83 which support the award. *If such defined duration is extended beyond the attainment of a payor spouse's*
84 *full retirement age pursuant to subsection C, such findings shall identify (i) the basis for such deviation*
85 *and (ii) the factors in subsection E that support the court's order.*

86 G. For purposes of this section and § 20-109, "date of separation" means the earliest date at which
87 the parties are physically separated and at least one party intends such separation to be permanent
88 provided the separation is continuous thereafter and "defined duration" means a period of time (i) with a
89 specific beginning and ending date or (ii) specified in relation to the occurrence or cessation of an event
90 or condition other than death or termination pursuant to § 20-110.

91 H. Where there are no minor children whom the parties have a mutual duty to support, an order
92 directing the payment of spousal support, including those orders confirming separation agreements,
93 entered on or after October 1, 1985, whether they are original orders or modifications of existing orders,
94 shall contain the following:

95 1. If known, the name, date of birth and social security number of each party and, unless otherwise
96 ordered, each party's residential and, if different, mailing address, residential and employer telephone
97 number, driver's license number, and the name and address of his employer; however, when a protective
98 order has been issued or the court otherwise finds reason to believe that a party is at risk of physical or
99 emotional harm from the other party, information other than the name of the party at risk shall not be
100 included in the order;

101 2. The amount of periodic spousal support expressed in fixed sums, together with the payment
102 interval, the date payments are due, and the date the first payment is due;

103 3. A statement as to whether there is an order for health care coverage for a party;

104 4. If support arrearages exist, (i) to whom an arrearage is owed and the amount of the arrearage, (ii)
105 the period of time for which such arrearage is calculated, and (iii) a direction that all payments are to be
106 credited to current spousal support obligations first, with any payment in excess of the current obligation
107 applied to arrearages;

108 5. If spousal support payments are ordered to be paid directly to the obligee, and unless the court for
109 good cause shown orders otherwise, the parties shall give each other and the court at least 30 days'
110 written notice, in advance, of any change of address and any change of telephone number within 30
111 days after the change; and

112 6. Notice that in determination of a spousal support obligation, the support obligation as it becomes
113 due and unpaid creates a judgment by operation of law.

114 **§ 20-109. Changing maintenance and support for a spouse; effect of stipulations as to**
115 **maintenance and support for a spouse; cessation upon cohabitation, remarriage, death, or spouse's**
116 **full retirement age.**

117 A. Upon petition of either party the court may increase, decrease, or terminate the amount or
118 duration of any spousal support and maintenance that may thereafter accrue, whether previously or
119 hereafter awarded, as the circumstances may make proper. Upon order of the court based upon clear and
120 convincing evidence that the spouse receiving support has been habitually cohabiting with another

121 person in a relationship analogous to a marriage for one year or more commencing on or after July 1,
122 1997, the court shall terminate spousal support and maintenance unless (i) otherwise provided by
123 stipulation or contract or (ii) the spouse receiving support proves by a preponderance of the evidence
124 that termination of such support would be unconscionable. The provisions of this subsection shall apply
125 to all orders and decrees for spousal support, regardless of the date of the suit for initial setting of
126 support, the date of entry of any such order or decree, or the date of any petition for modification of
127 support.

128 B. The court may consider a modification of an award of spousal support for a defined duration
129 upon petition of either party filed within the time covered by the duration of the award. Upon
130 consideration of the factors set forth in subsection E of § 20-107.1, the court may increase, decrease or
131 terminate the amount or duration of the award upon finding that (i) there has been a material change in
132 the circumstances of the parties, not reasonably in the contemplation of the parties when the award was
133 made or (ii) an event which the court anticipated would occur during the duration of the award and
134 which was significant in the making of the award, does not in fact occur through no fault of the party
135 seeking the modification. The provisions of this subsection shall apply only to suits for initial spousal
136 support orders filed on or after July 1, 1998, and suits for modification of spousal support orders arising
137 from suits for initial support orders filed on or after July 1, 1998.

138 *Notwithstanding the requirements set forth in clause (i) or clause (ii), the court shall order a*
139 *modification of a spousal support order filed before July 1, 2017, if the modification requested is to*
140 *terminate support upon the payor spouse's full retirement age in accordance with subsection C of §*
141 *20-107.1, unless there is good cause shown to deny the petition. If the court denies the petition, it shall*
142 *enter written findings of the reasons for such denial. If the court grants the petition, the court shall*
143 *order that the payee spouse shall reimburse the payor spouse for any spousal support payments made*
144 *after the date of the filing of the petition.*

145 C. In suits for divorce, annulment and separate maintenance, and in proceedings arising under
146 subdivision A 3 or subsection L of § 16.1-241, if a stipulation or contract signed by the party to whom
147 such relief might otherwise be awarded is filed before entry of a final decree, no decree or order
148 directing the payment of support and maintenance for the spouse, suit money, or counsel fee or
149 establishing or imposing any other condition or consideration, monetary or nonmonetary, shall be
150 entered except in accordance with that stipulation or contract. If such a stipulation or contract is filed
151 after entry of a final decree and if any party so moves, the court shall modify its decree to conform to
152 such stipulation or contract.

153 D. Unless otherwise provided by stipulation or contract, spousal support and maintenance shall
154 terminate upon the death of either party or remarriage of the spouse receiving support. The spouse
155 entitled to support shall have an affirmative duty to notify the payor spouse immediately of remarriage
156 at the last known address of the payor spouse.