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**SENATE BILL NO. 540**

Offered January 10, 2018

Prefiled January 9, 2018

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

Patrons—Hanger; Delegate: Peace

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.

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 family;

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

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

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

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

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

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

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

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

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

F. In contested cases in the circuit courts, any order granting, reserving or denying a request for spousal support shall be accompanied by written findings and conclusions of the court identifying the factors in subsection E which support the court's order. *Any order granting or reserving any request for spousal support shall state whether the retirement of either party was contemplated by the court and specifically considered by the court in making its award, and, if so, the order shall state the facts the court contemplated and specifically considered as to the retirement of the party.* If the court awards periodic support for a defined duration, such findings shall identify the basis for the nature, amount and duration of the award and, if appropriate, a specification of the events and circumstances reasonably contemplated by the court which support the award.

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

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

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

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

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

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

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

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

**§ 20-109. Changing maintenance and support for a spouse; effect of stipulations as to maintenance and support for a spouse; cessation upon cohabitation, remarriage, or death; effect of retirement.**

A. Upon petition of either party the court may increase, decrease, or terminate the amount or duration of any spousal support and maintenance that may thereafter accrue, whether previously or hereafter awarded, as the circumstances may make proper. Upon order of the court based upon clear and convincing evidence that the spouse receiving support has been habitually cohabiting with another person in a relationship analogous to a marriage for one year or more commencing on or after July 1, 1997, the court shall terminate spousal support and maintenance unless (i) otherwise provided by stipulation or contract or (ii) the spouse receiving support proves by a preponderance of the evidence that termination of such support would be unconscionable. The provisions of this subsection shall apply to all orders and decrees for spousal support, regardless of the date of the suit for initial setting of support, the date of entry of any such order or decree, or the date of any petition for modification of support.

B. The court may consider a modification of an award of spousal support for a defined duration upon petition of either party filed within the time covered by the duration of the award. Upon consideration of the factors set forth in subsection E of § 20-107.1, the court may increase, decrease or terminate the amount or duration of the award upon finding that (i) there has been a material change in the circumstances of the parties, not reasonably in the contemplation of the parties when the award was made or (ii) an event which the court anticipated would occur during the duration of the award and

which was significant in the making of the award, does not in fact occur through no fault of the party seeking the modification. The provisions of this subsection shall apply only to suits for initial spousal support orders filed on or after July 1, 1998, and suits for modification of spousal support orders arising from suits for initial support orders filed on or after July 1, 1998.

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

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

E. *For purposes of the modification of an award of spousal support, and without precluding the ability of a party to otherwise file for a modification of spousal support based upon any other material change in circumstances, the payor spouse's attainment of full retirement age shall be considered a material change in circumstances. For the purposes of this subsection, "full retirement age" means the normal retirement age at which a person is eligible to receive full retirement benefits under the federal Social Security Act, but "full retirement age" does not mean "early retirement age" as defined under the federal Social Security Act (42 U.S.C. § 416, as amended).*

F. *In an action for the increase, decrease, or termination of spousal support based on the retirement of the payor spouse pursuant to subsection E, where the court finds that there has been a material change in circumstances, the court shall determine whether any modification or termination of such spousal support should be granted. In making such determination, the court may consider the factors set forth in subsection E of § 20-107.1 and shall consider the following factors:*

1. *Whether retirement was contemplated by the court and specifically considered by the court when the spousal support was awarded;*

2. *Whether the retirement is mandatory or voluntary, and the terms and conditions related to such retirement;*

3. *Whether the retirement would result in a change in the income of either the payor or the payee spouse;*

4. *The age and health of the parties;*

5. *The duration and amount of spousal support already paid; and*

6. *The assets or property interest of each of the parties during the period from the date of the support order and up to the date of the hearing on modification or termination;*

*The provisions of this subsection (i) shall be subject to the provisions regarding stipulations or contracts as set forth in subsection C, and (ii) shall not apply to a contract or stipulation that is non-modifiable.*

*The provisions of this subsection and subsection E shall apply to suits for modification or termination of spousal support orders regardless of the date of the suit for initial setting of support or the date of entry of any such order or decree.*

G. *In any action for the increase, decrease, or termination of spousal support, if the court finds that there has been a material change in circumstances, the court may consider the factors set forth in subsection E of § 20-107.1 and subsection F of this section in making its determination as to whether any modification or termination of such support should be granted. The court shall further consider the assets or property interest of each of the parties from the date of the support order and up to the time of the hearing on modification or termination, and any income generated from the asset or property interest. Any order granting or denying a request for the modification or termination of spousal support shall be accompanied by written findings and conclusions of the court identifying the factors set forth in subsection E of § 20-107.1 and subsection F of this section that support the court's order.*