

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 585

An Act to amend and reenact § 20-109 of the Code of Virginia, relating to modification of spousal support.

[H 1501]

Approved March 31, 2020

Be it enacted by the General Assembly of Virginia:

1. That § 20-109 of the Code of Virginia is amended and reenacted as follows:

§ 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. No request for modification of spousal support based on a material change in circumstances or the terms of stipulation or contract shall be denied solely on the basis of the terms of any stipulation or contract that is executed on or after July 1, 2018, unless such stipulation or contract contains the following language: "The amount or duration of spousal support contained in this [AGREEMENT] is not modifiable except as specifically set forth in this [AGREEMENT]." expressly states that the amount or duration of spousal support is non-modifiable.

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.