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HOUSE BILL NO. 517

Offered January 20, 1998

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

Patron—Cranwell

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.

~~Upon~~ A. Pursuant to any proceeding arising under subdivision 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. 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 ~~limitations set forth in~~ 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 (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 ~~both 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 fifty 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 subdivisions (3) or (6) of § 20-91 or § 20-95. If the court determines that an award should be made, it shall, in determining the amount, in determining the nature, amount and duration of an award pursuant to this section, the court shall consider the following:

1. The ~~earning capacity~~, 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 ~~education and training of the parties and the ability and opportunity of the parties to secure such education and training;~~

3. The standard of living established during the marriage;

4. The duration of the marriage;

5. The age and physical and mental condition of the parties and any special circumstances of the family;

6. 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;

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

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

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

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

11. 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;

12. 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,

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60 including the length of time one or both of the parties have been absent from the job market;

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

63 13. Such other factors, including the tax consequences to each party, as are necessary to consider the
64 equities between the parties.

65 F. Any order granting, reserving or denying a request for spousal support shall be accompanied by
66 written finding and conclusions of the court identifying the factors in subsection E which support the
67 court's order. If the court awards periodic support for a defined duration, such findings shall identify
68 the basis for the nature, amount and duration of the award.

69 G. The following presumptions shall arise based upon the duration of the marriage of the parties
70 measured from the date of the marriage to the date of separation:

71 1. If the duration is five years or fewer, there shall be a rebuttable presumption that an award of
72 spousal support, if any, shall be in the nature of periodic payments for a defined duration, a lump sum
73 award or any combination thereof.

74 2. If the duration is more than five but fewer than twenty years, there shall be no presumption of
75 periodic payments for a defined duration, periodic payments for an undefined duration or lump sum
76 award, if any spousal support should be awarded.

77 3. If the duration is twenty years or more, there shall be a rebuttable presumption that an award of
78 spousal support, if any, shall be in the nature of periodic payments for an undefined duration, a lump
79 sum award, or any combination thereof.

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

85 § 20-109. Changing maintenance and support for a spouse; effect of stipulations as to maintenance
86 and support for a spouse; cessation upon cohabitation, remarriage or death.

87 A. Upon petition of either party the court may increase, decrease, or terminate the amount or
88 duration of any spousal support and maintenance that may thereafter accrue, whether previously or
89 hereafter awarded, as the circumstances may make proper. Upon order of the court based upon clear and
90 convincing evidence that the spouse receiving support has been habitually cohabiting with another
91 person in a relationship analogous to a marriage for one year or more commencing on or after July 1,
92 1997, the court may decrease or terminate spousal support and maintenance unless (i) otherwise
93 provided by stipulation or contract or (ii) the spouse receiving support proves by a preponderance of the
94 evidence that termination of such support would constitute a manifest injustice.

95 B. The court may consider a modification of an award of spousal support for a defined duration
96 upon petition of either party filed within the time covered by the duration of the award. Upon
97 consideration of the factors set forth in subsection E of § 20-107.1, the court may increase, decrease or
98 terminate the amount or duration of the award upon finding that (i) there has been a material change in
99 the circumstances of the parties, not reasonably in the contemplation of the parties when the award was
100 made, or (ii) an event which the court anticipated would occur during the duration of the award and
101 which was significant in the making of the award, does not in fact occur through no fault of the party
102 seeking the modification. The presumptions set forth in subsection G of § 20-107.1 shall apply to
103 proceedings held pursuant to this subsection.

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

112 D. Unless otherwise provided by stipulation or contract, spousal support and maintenance shall
113 terminate upon the death of either party or remarriage of the spouse receiving support.

114 2. That the provisions of this act shall apply only to suits for initial spousal support orders filed
115 on or after July 1, 1998, and suits for modification of spousal support orders arising from suits for
116 initial support orders filed on or after July 1, 1998.