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SENATE BILL NO. 41

Offered January 11, 2006

Prefiled December 27, 2005

A BILL to amend and reenact §§ 20-91 and 20-121 of the Code of Virginia, relating to divorce.

Patron—Puller

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 20-91 and 20-121 of the Code of Virginia are amended and reenacted as follows:**

§ 20-91. Grounds for divorce from bond of matrimony; contents of decree.

A. A divorce from the bond of matrimony may be decreed:

(1) For adultery; or for sodomy or buggery committed outside the marriage;

(2) [Repealed.]

(3) Where either of the parties subsequent to the marriage has been convicted of a felony, sentenced to confinement for more than one year and confined for such felony subsequent to such conviction, and cohabitation has not been resumed after knowledge of such confinement (in which case no pardon granted to the party so sentenced shall restore such party to his or her conjugal rights);

(4), (5) [Repealed.]

(6) Where either party has been guilty of cruelty, caused reasonable apprehension of bodily hurt, or willfully deserted or abandoned the other, such divorce may be decreed to the innocent party after a period of one year from the date of such act; or

(7), (8) [Repealed.]

(9) (a) On the application of either party if and when the husband and wife have lived separate and apart without any cohabitation and without interruption for one year. In any case where the parties have entered into a separation agreement, *either written or oral*, and there are no minor children either born of the parties, born of either party and adopted by the other or adopted by both parties, a divorce may be decreed on application if and when the husband and wife have lived separately and apart without cohabitation and without interruption for six months. A plea of res adjudicata or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground; nor shall it be a bar that either party has been adjudged insane, either before or after such separation has commenced, but at the expiration of one year or six months, whichever is applicable, from the commencement of such separation, the grounds for divorce shall be deemed to be complete, and the committee of the insane defendant, if there be one, shall be made a party to the cause, or if there be no committee, then the court shall appoint a guardian ad litem to represent the insane defendant.

(b) This subdivision (9) shall apply whether the separation commenced prior to its enactment or shall commence thereafter. Where otherwise valid, any decree of divorce hereinbefore entered by any court having equity jurisdiction pursuant to this subdivision (9), not appealed to the Supreme Court of Virginia, is hereby declared valid according to the terms of said decree notwithstanding the insanity of a party thereto.

(c) A decree of divorce granted pursuant to this subdivision (9) shall in no way lessen any obligation any party may otherwise have to support the spouse unless such party shall prove that there exists in the favor of such party some other ground of divorce under this section or § 20-95.

B. A decree of divorce shall include each party's social security number, or other control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.

§ 20-121. Merger of decree for divorce from bed and board with decree for divorce from bond of matrimony.

In any case where a decree of divorce from bed and board has been granted, and the court shall determine that one year has elapsed since the event which gave rise to such divorce or, in any case where the parties have entered into a separation agreement, *either written or oral*, and there are no minor children either born of the parties, born of either party and adopted by the other or adopted by both parties, that six months has elapsed since such event, and the parties have been separated without interruption since such divorce was granted and no reconciliation is probable, it may merge such decree into a decree for divorce from the bond of matrimony upon application of either party. The injured party need not give the guilty party notice of his application to the court if such application is limited to such merger nor of the taking of depositions in support thereof, but shall give due notice if he raises new matters. If the guilty party initiates proceedings for such merger he shall give the other party ten days'

59 notice thereof. No final decree for divorce entered in such a case shall terminate or otherwise affect any
60 restraining order, or order for the payment of costs, counsel fees, support and maintenance for a spouse
61 or child or children except as specifically provided in such decree. The provisions of this section shall
62 apply to the divorces from bed and board, which have been heretofore granted.