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## SENATE BILL NO. 432

Offered January 8, 2020

Prefiled January 7, 2020

A *BILL to amend and reenact § 20-107.1 of the Code of Virginia, relating to spousal support; reservation of right to seek; material change of circumstances.*

\_\_\_\_\_  
Patron—Surovell

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Referred to Committee on the Judiciary

**Be it enacted by the General Assembly of Virginia:****1. That § 20-107.1 of the Code of Virginia is 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. *Unless otherwise provided by stipulation or contract executed on or after July 1, 2020, or unless otherwise ordered by the court on or after July 1, 2020, a party seeking to exercise his right to support so reserved shall be required to prove a material change of circumstances as a prerequisite for the court to consider exercise of such reservation.*

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

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59 ability;

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

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

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

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

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

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

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

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

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

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

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

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