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HOUSE BILL NO. 1911

Offered January 13, 2021

Prefiled January 10, 2021

A *BILL to amend and reenact §§ 20-99 and 20-106 of the Code of Virginia, relating to no-fault divorces; corroboration requirement.*

Patrons—Hope, Kory, Levine and Murphy

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-99 and 20-106 of the Code of Virginia are amended and reenacted as follows:

§ 20-99. How such suits instituted and conducted; costs.

Such suit shall be instituted and conducted as other suits in equity, except as otherwise provided in this section:

1. ~~No~~ Except for a divorce granted on the grounds set forth in subdivision A (9) of § 20-91, no divorce, annulment, or affirmation of a marriage shall be granted on the uncorroborated testimony of the parties or either of them.

2. Whether the defendant answers or not, the cause shall be heard independently of the admissions of either party in the pleadings or otherwise.

3. Process or notice in such proceedings shall be served in the Commonwealth by any of the methods prescribed in § 8.01-296 by any person authorized to serve process under § 8.01-293. Service may be made on a nonresident by any of the methods prescribed in § 8.01-296 by any person authorized to serve process under § 8.01-320.

4. In cases where such suits have been commenced and an appearance has been made on behalf of the defendant by counsel, then notices to take depositions and of hearings, motions, and other proceedings except contempt proceedings, may be served by delivering or mailing a copy to counsel for opposing party, the foot of such notices bearing either acceptance of service or a certificate of counsel in compliance with the Rules of Supreme Court of Virginia. "Counsel for opposing party" shall include a pro se party who (i) has entered a general appearance in person or by filing a pleading or endorsing an order of withdrawal of that party's counsel or (ii) has signed a pleading in the case or who has notified the other parties and the clerk that he appears in the case.

5. In cases where such suits have been commenced, the defendant has been served pursuant to the provisions of subdivision 1 of § 8.01-296, and the defendant has failed to file an answer to the suit or otherwise appear within the time allowed by law, no further notice to take depositions or conduct an ore tenus hearing is required to be served on the defendant and the court may enter any order or final decree without further notice to the defendant.

6. Costs may be awarded to either party as equity and justice may require.

§ 20-106. Testimony may be required to be given orally; evidence by affidavit.

A. In any suit for divorce, the trial court may require the whole or any part of the testimony to be given orally in open court, and if either party desires it, such testimony and the rulings of the court on the exceptions thereto, if any, shall be reduced to writing, and the judge shall certify that such evidence was given before him and such rulings made. When so certified the same shall stand on the same footing as a deposition regularly taken in the cause, provided, however, that no such oral evidence shall be given or heard unless and until after such notice to the adverse party as is required by law to be given of the taking of depositions, or when there has been no service of process within the Commonwealth upon, or appearance by the defendant against whom such testimony is sought to be introduced. However, a party may proceed to take evidence in support of a divorce by deposition or affidavit without leave of court only in support of a divorce on the grounds set forth in subdivision A (9) of § 20-91, where (i) the parties have resolved all issues by a written settlement agreement, (ii) there are no issues other than the grounds of the divorce itself to be adjudicated, or (iii) the adverse party has been personally served with the complaint and has failed to file a responsive pleading or to make an appearance as required by law.

B. The affidavit of a party submitted as evidence shall be based on the personal knowledge of the affiant, contain only facts that would be admissible in court, give factual support to the grounds for divorce stated in the complaint or counterclaim, and establish that the affiant is competent to testify to the contents of the affidavit. If either party is incarcerated, neither party shall submit evidence by affidavit without leave of court or the consent in writing of the guardian ad litem for the incarcerated party, or of the incarcerated party if a guardian ad litem is not required pursuant to § 8.01-9. The

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59 affidavit shall:

60 1. Give factual support to the grounds for divorce stated in the complaint or counterclaim, including
61 that the parties are over the age of 18 and not suffering from any condition that renders either party
62 legally incompetent;

63 2. Verify whether either party is incarcerated;

64 3. Verify the military status of the opposing party and advise whether the opposing party has filed an
65 answer or a waiver of his rights under the federal Servicemembers Civil Relief Act (50 U.S.C. § 3901 et
66 seq.);

67 4. Affirm that at least one party to the suit was at the time of the filing of the suit, and had been for
68 a period in excess of six months immediately preceding the filing of the suit, a bona fide resident and
69 domiciliary of the Commonwealth;

70 5. Affirm that the parties have lived separate and apart, continuously, without interruption and
71 without cohabitation, and with the intent to remain separate and apart permanently, for the statutory
72 period required by subdivision A (9) of § 20-91;

73 6. Affirm the affiant's desire to be awarded a divorce pursuant to subdivision A (9) of § 20-91; *and*

74 7. State whether there were children born or adopted of the marriage and affirm that neither party is
75 known to be pregnant from the marriage; *and*

76 8. Be accompanied by the affidavit of at least one corroborating witness, which shall:

77 a. Verify that the affiant is over the age of 18 and not suffering from any condition that renders him
78 legally incompetent;

79 b. Verify whether either party is incarcerated;

80 c. Give factual support to the grounds for divorce stated in the complaint or counterclaim;

81 d. Verify that at least one of the parties to the suit was at the time of the filing of the suit, and had
82 been for a period in excess of six months immediately preceding the filing of the suit, a bona fide
83 resident and domiciliary of the Commonwealth;

84 e. Verify whether there were children born or adopted of the marriage and verify that neither party is
85 known to be pregnant from the marriage; *and*

86 f. Verify the affiant's personal knowledge that the parties have not cohabitated since the date of
87 separation alleged in the complaint or counterclaim and that it has been either party's intention since that
88 date to remain separate and apart permanently.

89 C. If a party moves for a divorce pursuant to § 20-121.02, ~~any~~ *an* affidavit may be submitted in
90 support of the grounds for divorce set forth in subdivision A (9) of § 20-91.

91 D. A verified complaint shall not be deemed an affidavit for purposes of this section.

92 E. Either party may submit the ~~depositions~~ *deposition* or ~~affidavits~~ *affidavit* required by this section
93 in support of the grounds for divorce requested by either party pursuant to the terms of this section.

94 F. In contemplation of or in a suit for a no-fault divorce under subdivision A (9) of § 20-91, the
95 plaintiff or his attorney may take and file, as applicable, the complaint, the ~~affidavits~~ *affidavit* or
96 ~~depositions~~ *deposition*, any other associated documents, and the proposed decree contemporaneously, and
97 a divorce may be granted solely on those documents where the defendant has waived service and, where
98 applicable, notice.