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I N   S E N A T E

May 31, 2012

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Introduced by Sen. RANZENHOFER -- (at request of the Division of Military & Naval Affairs) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the domestic relations law and the family court act, in relation to orders of custody involving a parent activated, deployed or temporarily assigned to military service

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 75-1 of the domestic relations law, as amended by  
2 chapter 473 of the laws of 2009, is amended to read as follows.  
3     S 75-1. Military service by parent; effect on child custody orders  
4 [pursuant to this article]. 1. During the period of time that a parent  
5 is activated, deployed or temporarily assigned to military service, such  
6 that the parent's ability to continue as a joint caretaker or the primary  
7 caretaker of a minor child is materially affected by such military  
8 service, A COURT SHALL BE PROHIBITED FROM ISSUING any PERMANENT orders,  
9 [issued pursuant to this article] MODIFICATIONS OR AMENDMENTS based on  
10 the fact that the parent is activated, deployed or temporarily assigned  
11 to military service, which would [materially] IN ANY WAY affect or  
12 change a previous judgment or order regarding custody of that parent's  
13 child or children as such judgment or order existed on the date the  
14 parent was activated, deployed, or temporarily assigned to military  
15 service [shall be subject to review pursuant to subdivision three of  
16 this section]. Any relevant provisions of the Service Member's Civil  
17 Relief Act shall apply to all proceedings governed by this section.  
18     2. During such period the court may enter [an] A TEMPORARY order to  
19 modify OR AMEND custody if there is clear and convincing evidence that  
20 the TEMPORARY modification OR AMENDMENT is in the best interests of the  
21 child. An attorney for the child shall be appointed in all cases where a  
22 TEMPORARY modification is sought during such military service. [Such  
23 order shall be subject to review pursuant to subdivision three of this  
24 section.] When entering [an] A TEMPORARY order under this section, the  
25 court shall consider and provide for, if feasible and if in the best  
26 interests of the child, contact between the military service member and

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 his or her child including, but not limited to, electronic communication  
2 by e-mail, webcam, telephone, or other available means. During the  
3 period of the parent's leave from military service, the court shall  
4 consider the best interests of the child when establishing a parenting  
5 schedule, including visiting and other contact. For such purpose, a  
6 "leave from service" shall be a period of not more than three months.

7 3. [Unless the parties have otherwise stipulated or agreed, if an] IF  
8 A TEMPORARY order is issued under this section, IT SHALL EXPIRE WITHIN  
9 TEN DAYS AFTER the return of the parent from active military service,  
10 deployment or temporary assignment [shall be considered a substantial  
11 change in circumstances. Upon the request of either parent, the court  
12 shall determine on the basis of the child's best interests whether the  
13 custody judgment or order previously in effect should be modified].

14 4. This section shall not apply to assignments to permanent duty  
15 stations or permanent changes of station.

16 S 2. Paragraph (a-2) of subdivision 1 of section 240 of the domestic  
17 relations law, as added by chapter 473 of the laws of 2009, is amended  
18 to read as follows:

19 (a-2) Military service by parent; effect on child custody orders. (1)  
20 During the period of time that a parent is activated, deployed or tempo-  
21 rarily assigned to military service, such that the parent's ability to  
22 continue as a joint caretaker or the primary caretaker of a minor child  
23 is materially affected by such military service, A COURT SHALL BE  
24 PROHIBITED FROM ISSUING any PERMANENT orders, [issued pursuant to this  
25 section] MODIFICATIONS OR AMENDMENTS based on the fact that the parent  
26 is activated, deployed or temporarily assigned to military service,  
27 which would [materially] IN ANY WAY affect or change a previous judgment  
28 or order regarding custody of that parent's child or children as such  
29 judgment or order existed on the date the parent was activated,  
30 deployed, or temporarily assigned to military service[, shall be subject  
31 to review pursuant to subparagraph three of this paragraph]. Any rele-  
32 vant provisions of the Service Member's Civil Relief Act shall apply to  
33 all proceedings governed by this section.

34 (2) During such period, the court may enter [an] A TEMPORARY order to  
35 modify OR AMEND custody if there is clear and convincing evidence that  
36 the TEMPORARY modification OR AMENDMENT is in the best interests of the  
37 child. An attorney for the child shall be appointed in all cases where a  
38 TEMPORARY modification is sought during such military service. [Such  
39 order shall be subject to review pursuant to subparagraph three of this  
40 paragraph.] When entering [an] A TEMPORARY order pursuant to this  
41 section, the court shall consider and provide for, if feasible and if in  
42 the best interests of the child, contact between the military service  
43 member and his or her child, including, but not limited to, electronic  
44 communication by e-mail, webcam, telephone, or other available means.  
45 During the period of the parent's leave from military service, the court  
46 shall consider the best interests of the child when establishing a  
47 parenting schedule, including visiting and other contact. For such  
48 purposes, a "leave from military service" shall be a period of not more  
49 than three months.

50 (3) [Unless the parties have otherwise stipulated or agreed, if an] IF  
51 A TEMPORARY order is issued pursuant to this paragraph, IT SHALL EXPIRE  
52 WITHIN TEN DAYS AFTER the return of the parent from active military  
53 service, deployment or temporary assignment [shall be considered a  
54 substantial change in circumstances. Upon the request of either parent,  
55 the court shall determine on the basis of the child's best interests

1 whether the custody judgment or order previously in effect should be  
2 modified].

3 (4) This paragraph shall not apply to assignments to permanent duty  
4 stations or permanent changes of station.

5 S 3. Subdivision (f) of section 651 of the family court act, as added  
6 by chapter 473 of the laws of 2009, is amended to read as follows:

7 (f) Military service by parent; effect on child custody orders. 1.  
8 During the period of time that a parent is activated, deployed or tempo-  
9 rarily assigned to military service, such that the parent's ability to  
10 continue as a joint caretaker or the primary caretaker of a minor child  
11 is materially affected by such military service, A COURT SHALL BE  
12 PROHIBITED FROM ISSUING any PERMANENT orders, [issued pursuant to this  
13 section] MODIFICATIONS OR AMENDMENTS based on the fact that the parent  
14 is activated, deployed or temporarily assigned to military service,  
15 which would [materially] IN ANY WAY affect or change a previous judgment  
16 or order regarding custody of that parent's child or children as such  
17 judgment or order existed on the date the parent was activated,  
18 deployed, or temporarily assigned to military service[, shall be subject  
19 to review pursuant to paragraph three of this subdivision]. Any relevant  
20 provisions of the Service Member's Civil Relief Act shall apply to all  
21 proceedings governed by this section.

22 2. During such period, the court may enter [an] A TEMPORARY order to  
23 modify OR AMEND custody if there is clear and convincing evidence that  
24 the TEMPORARY modification OR AMENDMENT is in the best interests of the  
25 child. An attorney for the child shall be appointed in all cases where a  
26 TEMPORARY modification is sought during such military service. [Such  
27 order shall be subject to review pursuant to paragraph three of this  
28 subdivision.] When entering [an] A TEMPORARY order pursuant to this  
29 section, the court shall consider and provide for, if feasible and if in  
30 the best interests of the child, contact between the military service  
31 member and his or her child including, but not limited to, electronic  
32 communication by e-mail, webcam, telephone, or other available means.  
33 During the period of the parent's leave from military service, the court  
34 shall consider the best interests of the child when establishing a  
35 parenting schedule, including visiting and other contact. For such  
36 purpose, a "leave from military service" shall be a period of not more  
37 than three months.

38 3. [Unless the parties have otherwise stipulated or agreed, if an] IF  
39 A TEMPORARY order is issued pursuant to this subdivision, IT SHALL  
40 EXPIRE WITHIN TEN DAYS AFTER the return of the parent from active mili-  
41 tary service, deployment or temporary assignment [shall be considered a  
42 substantial change in circumstances. Upon the request of either parent,  
43 the court shall determine on the basis of the child's best interests  
44 whether the custody judgment or order previously in effect should be  
45 modified].

46 4. This subdivision shall not apply to assignments to permanent duty  
47 stations or permanent changes of station.

48 S 4. This act shall take effect on the thirtieth day after it shall  
49 become law.