

4518

2013-2014 Regular Sessions

I N S E N A T E

April 5, 2013

Introduced by Sen. FELDER -- (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 the 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 is
5 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

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

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1 section.] When entering [an] A TEMPORARY order under this section, the
2 court shall consider and provide for, if feasible and if in the best
3 interests of the child, contact between the military service member and
4 his or her child including, but not limited to, electronic communication
5 by e-mail, webcam, telephone, or other available means. During the
6 period of the parent's leave from military service, the court shall
7 consider the best interests of the child when establishing a parenting
8 schedule, including visiting and other contact. For such purpose, a
9 "leave from service" shall be a period of not more than three months.

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

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

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

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

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

53 (3) [Unless the parties have otherwise stipulated or agreed, if an] IF
54 A TEMPORARY order is issued pursuant to this paragraph, IT SHALL EXPIRE
55 WITHIN TEN DAYS AFTER the return of the parent from active military
56 service, deployment or temporary assignment [shall be considered a

1 substantial change in circumstances. Upon the request of either parent,
2 the court shall determine on the basis of the child's best interests
3 whether the custody judgment or order previously in effect should be
4 modified].

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

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

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

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

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

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

50 S 4. This act shall take effect on the thirtieth day after it shall
51 have become a law.