S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. PAULIN, GOTTFRIED, HEVESI, GALEF, PHEFFER, EDDINGTON, KELLNER -- Multi-Sponsored by -- M. of A. GABRYSZAK, MAISEL, SCHIMEL, SWEENEY, WEISENBERG, WRIGHT -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to allowing a person acting as de facto parent to apply to the supreme court for a writ of habeas corpus

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

Section 1. Subdivision (a) of section 70 of the domestic relations law, as amended by chapter 457 of the laws of 1988, is amended and a new subdivision (c) is added to read as follows:

(a) Where a minor child is residing within this state, either parent OR DE FACTO PARENT may apply to the supreme court for a writ of habeas corpus to have such minor child brought before such court; and on the return thereof, the court, on due consideration, may award the natural guardianship, charge and custody of such child to either parent OR DE FACTO PARENT for such time, under such regulations and restrictions, and with such provisions and directions, as the case may require, and may at any time thereafter vacate or modify such order. In all cases there shall be no prima facie right to the custody of the child in either parent OR DE FACTO PARENT, but the court shall determine solely what is for the best interest of the child, and what will best promote [its] HIS OR HER welfare and happiness, and make award accordingly.

(C) FOR PURPOSES OF THIS SECTION, DE FACTO PARENT SHALL MEAN A PERSON WHO (I) HAS A RELATIONSHIP WITH SUCH MINOR CHILD THAT WAS FORMED WITH THE CONSENT OF THE LEGAL PARENT AND FOSTERED BY SUCH LEGAL PARENT; (II) LIVED WITH SUCH MINOR CHILD; (III) PERFORMED PARENTAL FUNCTIONS FOR SUCH MINOR CHILD TO A SIGNIFICANT DEGREE; AND (IV) FORMED A PARENT-CHILD BOND WITH SUCH MINOR CHILD. A RELATIONSHIP BASED UPON PAYMENT BY THE LEGAL PARENT SHALL PRECLUDE A PERSON FROM ESTABLISHING DE FACTO PARENT STATUS.

S 2. This act shall take effect immediately.

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

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