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 21, 2009

Introduced by M. of A. KOLB, BURLING, WALKER, ERRIGO, P. LOPEZ -- Multi-Sponsored by -- M. of A. BACALLES, CALHOUN, CORWIN, CROUCH, GIGLIO, HAWLEY, THIELE -- read once and referred to the Committee on Social Services

AN ACT to amend the social services law, in relation to enacting the "New York state national guard and reserves child support modification act of 2009"

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

Section 1. This act shall be known and may be cited as the "New York state national guard and reserves child support modification act of 2009".

S 2. Legislative findings and intent. Since 2001, men and women who make up New York state's national guard and reserves have been called up to active duty in both Iraq and Afghanistan. Often, such active duty results in the loss of salary or a portion of a salary for the individual due to the difference in pay between their civilian employment and the military pay based on their rank. In cases where the member called up to active duty is a non-custodial parent, the difference in pay may make it difficult for the individual to meet his or her child support obligations. Unfortunately, the non-custodial parent may find himself or herself in arrears which can lead to penalties, such as the loss of driving privileges. In order to avoid situations such as this, the legislature seeks to create a program that will address and alleviate these problems.

S 3. The social services law is amended by adding a new section 106-d to read as follows:

S 106-D. CHILD SUPPORT MILITARY MODIFICATION PROGRAM. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE COMMISSIONER OF THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, IN CONJUNCTION WITH THE DIVISION OF MILITARY AND NAVAL AFFAIRS, SHALL ESTABLISH A CHILD

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

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SUPPORT MILITARY MODIFICATION PROGRAM (CSMM) UNDER THE AUSPICES OF THE DISTRICT CHILD SUPPORT ENFORCEMENT UNITS. THE COMMISSIONER OF THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE SHALL ESTABLISH A PROGRAM TO MODIFY THE CHILD SUPPORT PAID BY ANY MEMBER OF THE NEW YORK STATE ORGANIZED MILITIA OR RESERVES OF THE UNITED STATES ARMED FORCES CALLED UP TO ACTIVE DUTY FOR MORE THAN THIRTY CONTINUOUS DAYS IN SUPPORT OF MILITARY OPERATIONS OVERSEAS OR IN THE CONUS (CONTINENTAL UNITED STATES). THIS SHALL NOT INCLUDE SERVICE DURING TRAINING EXERCISES OR MOBILIZATION FOR FEDERAL OR STATE DISASTER RELIEF PROJECTS.

2. THE COMMISSIONER OF THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE SHALL ESTABLISH FOR USE BY THE DISTRICT CHILD SUPPORT ENFORCEMENT UNITS AN APPLICATION FORM FOR MEMBERS OF THE NEW YORK STATE ORGANIZED MILITIA AND RESERVES WHO WISH TO PARTICIPATE IN THE CSMM PROGRAM AND WHO MEET THE DEPLOYMENT CRITERIA. SUCH APPLICATION SHALL INCLUDE A FORM THAT THE APPLICANT MUST COMPLETE AND SIGN AUTHORIZING THE CHILD SUPPORT ENFORCEMENT UNIT TO OBTAIN INCOME INFORMATION FROM THE APPLICANT'S MILITARY EMPLOYER. THIS APPLICATION SHALL BE MADE AVAILABLE ON THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE'S WEBSITE AND AT ALL MILITARY MOBILIZATION CENTERS. APPLICATIONS FOR SUCH PROGRAM SHALL BE SUBMITTED BY THE APPLICANT TO THE CHILD SUPPORT ENFORCEMENT UNIT OR AT HIS OR HER MOBILIZATION CENTER TO THE OFFICER-IN-CHARGE, WHO THEN SHALL FORWARD THE APPLICATION TO THE CHILD SUPPORT ENFORCEMENT UNIT.

3. IF THE CHILD SUPPORT ENFORCEMENT UNIT DETERMINES THAT THE APPLICANT'S MILITARY INCOME WILL VARY SIGNIFICANTLY FROM THE APPLICANT'S CIVILIAN INCOME AND THE APPLICANT IS PAYING COURT-ORDERED CHILD SUPPORT, THE UNIT SHALL SEEK A TEMPORARY MODIFICATION IN THE CHILD SUPPORT PAID BY THE APPLICANT DURING HIS OR HER MILITARY ACTIVE DUTY BY FILING A MOTION ON BEHALF OF THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE IN THE COURT IN WHICH THE CHILD SUPPORT WAS ENTERED. THE MOTION SHALL SEEK TO MODIFY THE CHILD SUPPORT PAID BY THE APPLICANT BY THE SAME PROPORTION THAT THE APPLICANT'S MILITARY PAY VARIES FROM HIS OR HER CIVILIAN PAY. IF THE MOTION TO MODIFY IS GRANTED, THE CHILD SUPPORT SHALL BE ADJUSTED APPROPRIATELY AND BE DEEMED TO BE IN FULL FORCE AND EFFECT. THE TEMPORARY MODIFICATION PERIOD SHALL APPLY TO THE SUPPORT OBLIGATIONS OF THE NON-CUSTODIAL PARENT ON THE DATE OF THEIR ACTIVATION AND SHALL CONTINUE AT SUCH LEVEL FOR THE DURATION OF THEIR ACTIVE DUTY DEPLOYMENT AND FOR SIXTY DAYS THEREAFTER FOLLOWING THEIR DEACTIVATION. UPON EXPIRATION OF THE TEMPORARY SUPPORT ORDER THE CHILD SUPPORT COURT-ORDER PRIOR TO DEPLOYMENT SHALL BE DEEMED TO BE IN FULL FORCE AND EFFECT.

4. THE COMMISSIONER OF THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE SHALL PROMULGATE ANY RULES AND REGULATIONS NECESSARY TO ENABLE THE CHILD SUPPORT ENFORCEMENT UNIT TO CARRY OUT THE CHILD SUPPORT MILITARY MODIFICATION PROGRAM.

S 4. This act shall take effect immediately.