

STATE OF NEW YORK

5882--A

2009-2010 Regular Sessions

IN ASSEMBLY

February 23, 2009

Introduced by M. of A. ESPAILLAT -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the domestic relations law and the military law, in relation to the creation of the short-term military service guardian

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

1 Section 1. The domestic relations law is amended by adding a new article 6-A to read as follows:

3 ARTICLE 6-A

4 SHORT-TERM MILITARY SERVICE GUARDIAN

5 SECTION 90. DEFINITIONS.

6 91. SHORT-TERM MILITARY SERVICE GUARDIAN.

7 92. DUTIES OF A SHORT-TERM MILITARY SERVICE GUARDIAN OF A MINOR.

8 S 90. DEFINITIONS. "SHORT-TERM MILITARY SERVICE GUARDIAN" MEANS A
9 GUARDIAN OF THE PERSON OF A MINOR, AS APPOINTED UNDER SECTION NINETY-ONE
10 OF THIS ARTICLE, EFFECTIVE ON THE DATE OF THE APPOINTMENT OR TO BECOME
11 EFFECTIVE AT A LATER DATE UNDER SECTION NINETY-ONE OF THIS ARTICLE,
12 EXCEPT THAT A SHORT-TERM MILITARY SERVICE GUARDIAN SHALL HAVE THE
13 AUTHORITY TO APPLY FOR AND RECEIVE ON BEHALF OF THE MINOR BENEFITS TO
14 WHICH THE CHILD MAY BE ENTITLED FROM OR UNDER FEDERAL, STATE, OR LOCAL
15 ORGANIZATIONS OR PROGRAMS.

16 S 91. SHORT-TERM MILITARY SERVICE GUARDIAN. 1. A PERSON WHO IS IN
17 ACTIVE MILITARY SERVICE AND WHO IS A PARENT, ADOPTIVE PARENT, OR ADJUDICATED
18 PARENT WHO HAS PHYSICAL CUSTODY OF A MINOR CHILD AND WHO DOES NOT
19 SHARE JOINT CUSTODY OF THE CHILD MAY APPOINT IN WRITING, WITH NOTICE TO
20 THE OTHER LIVING PARENT OF THE CHILD AND TO THE COURT AS DESCRIBED IN
21 SUBDIVISION TWO OF THIS SECTION, A SHORT-TERM MILITARY SERVICE GUARDIAN
22 OF THE MINOR CHILD. THE WRITTEN INSTRUMENT APPOINTING A SHORT-TERM MILI-

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

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1 TARY SERVICE GUARDIAN SHALL BE DATED AND SHALL IDENTIFY THE APPOINTING
2 PARENT, THE OTHER LIVING PARENT, THE MINOR, AND THE PERSON APPOINTED TO
3 BE THE SHORT-TERM MILITARY SERVICE GUARDIAN. THE WRITTEN INSTRUMENT
4 SHALL BE SIGNED BY, OR AT THE DIRECTION OF, THE APPOINTING PARENT IN THE
5 PRESENCE OF AT LEAST TWO CREDIBLE WITNESSES, AT LEAST EIGHTEEN YEARS OF
6 AGE, NEITHER OF WHOM IS RELATED TO THE PARENT NOR THE PERSON APPOINTED
7 AS THE SHORT-TERM MILITARY SERVICE GUARDIAN. THE PERSON APPOINTED AS THE
8 SHORT-TERM MILITARY SERVICE GUARDIAN SHALL ALSO SIGN THE WRITTEN INSTRUMENT,
9 BUT NEED NOT SIGN AT THE SAME TIME AS THE APPOINTING PARENT.

10 2. A PARENT SHALL NOT APPOINT A SHORT-TERM MILITARY SERVICE GUARDIAN
11 OF A MINOR CHILD IF THE CHILD HAS ANOTHER LIVING PARENT, ADOPTIVE PARENT
12 OR ADJUDICATED PARENT:

13 (A) WHO HAS JOINT CUSTODY OF THE CHILD,
14 (B) WHOSE PARENTAL RIGHTS HAVE NOT BEEN TERMINATED,
15 (C) WHOSE WHEREABOUTS ARE KNOWN, AND
16 (D) WHO IS WILLING AND ABLE TO MAKE AND CARRY OUT DAY-TO-DAY CHILD
17 CARE DECISIONS CONCERNING THE MINOR, UNLESS THE NON-APPOINTING PARENT
18 CONSENTS TO THE APPOINTMENT BY SIGNING THE WRITTEN INSTRUMENT OF
19 APPOINTMENT.

20 3. THE APPOINTING PARENT SHALL ATTACH TO THE WRITTEN INSTRUMENT HIS OR
21 HER SWORN STATEMENT OF MAILING THAT STATES HE OR SHE SENT, NO LATER THAN
22 TWO DAYS AFTER THE WRITTEN INSTRUMENT WAS COMPLETED, COPIES OF HIS OR
23 HER SWORN STATEMENT OF MAILING AND THE WRITTEN INSTRUMENT CONTAINING ALL
24 REQUIRED SIGNATURES AND DATES BY CERTIFIED OR REGISTERED MAIL, RETURN
25 RECEIPT REQUESTED TO:

26 (A) THE LAST KNOWN ADDRESS OF THE OTHER LIVING PARENT,
27 (B) THE COURT WHICH ISSUED THE ORDER THAT AWARDED PHYSICAL CUSTODY OF
28 THE CHILD TO THE APPOINTING PARENT,
29 (C) THE COURT (IF DIFFERENT FROM THE COURT THAT AWARDED PHYSICAL
30 CUSTODY OF THE CHILD TO THE APPOINTING PARENT) WHICH ISSUED THE LAST
31 ORDER THAT CONCERNS THE CHILD, THE CHILD'S SUPPORT, OR CUSTODY OF OR
32 VISITATION WITH THE CHILD, AND
33 (D) IF THERE IS NO COURT ORDER, THEN TO THE COURT CLERK IN THE COUNTY
34 IN WHICH THE CHILD RESIDES.

35 4. THE APPOINTMENT OF THE SHORT-TERM MILITARY SERVICE GUARDIAN IS
36 EFFECTIVE IMMEDIATELY UPON THE DATE THE WRITTEN INSTRUMENT IS EXECUTED,
37 UNLESS THE WRITTEN INSTRUMENT PROVIDES FOR THE APPOINTMENT TO BECOME
38 EFFECTIVE UPON A LATER SPECIFIED DATE OR EVENT. THE APPOINTMENT IS
39 EFFECTIVE WITHOUT COURT APPROVAL. THE SHORT-TERM MILITARY SERVICE GUARDIAN
40 SHALL HAVE AUTHORITY TO ACT AS GUARDIAN OF THE MINOR AS PROVIDED IN
41 ARTICLE SIX OF THIS CHAPTER FOR A PERIOD OF ONE HUNDRED EIGHTY DAYS FROM
42 THE DATE THE APPOINTMENT IS EFFECTIVE UNLESS THE WRITTEN INSTRUMENT
43 PROVIDES FOR THE APPOINTMENT TO TERMINATE UPON AN EARLIER SPECIFIED DATE
44 OR EVENT. ONLY ONE WRITTEN INSTRUMENT APPOINTING A SHORT-TERM MILITARY
45 SERVICE GUARDIAN MAY BE IN FORCE AT ANY GIVEN TIME, BUT A WRITTEN
46 INSTRUMENT PREPARED IN ACCORDANCE WITH THE SAME REQUIREMENTS OF THIS
47 SECTION MAY REAPPOINT THE SHORT-TERM MILITARY SERVICE GUARDIAN OR NAME A
48 DIFFERENT SUCCESSOR SHORT-TERM MILITARY SERVICE GUARDIAN FOR AN ADDITIONAL
49 PERIOD OF ONE HUNDRED EIGHTY DAYS. A REAPPOINTMENT OR THE
50 APPOINTMENT OF A SUCCESSOR SHORT-TERM MILITARY SERVICE GUARDIAN MAY BE
51 ACCOMPLISHED BY A WRITTEN INSTRUMENT COMPLETED BEFORE THE EXPIRATION OF
52 THE FIRST WRITTEN INSTRUMENT.

53 5. EVERY APPOINTMENT OF A SHORT-TERM MILITARY SERVICE GUARDIAN MAY BE
54 AMENDED OR REVOKED BY THE APPOINTING PARENT OF THE MINOR AT ANY TIME AND
55 IN ANY MANNER COMMUNICATED TO THE SHORT-TERM MILITARY SERVICE GUARDIAN
56 OR TO ANY OTHER PERSON. ANY PERSON OTHER THAN THE SHORT-TERM MILITARY

SERVICE GUARDIAN TO WHOM A REVOCATION OR AMENDMENT IS COMMUNICATED OR DELIVERED SHALL MAKE ALL REASONABLE EFFORTS TO INFORM THE SHORT-TERM MILITARY SERVICE GUARDIAN OF THAT FACT AS PROMPTLY AS POSSIBLE.

6. THE APPOINTMENT OF A SHORT-TERM MILITARY SERVICE GUARDIAN OR SUCCESSOR SHORT-TERM MILITARY SERVICE GUARDIAN DOES NOT AFFECT THE RIGHTS OF THE OTHER PARENT IN THE MINOR.

7. THE WRITTEN INSTRUMENT APPOINTING A SHORT-TERM MILITARY SERVICE GUARDIAN MAY, BUT NEED NOT, BE IN THE FOLLOWING FORM:

APPOINTMENT OF SHORT-TERM MILITARY SERVICE GUARDIAN

IT IS IMPORTANT TO READ THE FOLLOWING INSTRUCTIONS

BY PROPERLY COMPLETING THIS FORM, A PARENT OF THE MINOR CHILD IS APPOINTING A SHORT-TERM MILITARY SERVICE GUARDIAN OF A CHILD OF THE PARENT FOR A PERIOD OF UP TO ONE HUNDRED EIGHTY (180) DAYS. A SEPARATE FORM SHOULD BE COMPLETED FOR EACH CHILD. THE PERSON APPOINTED AS THE SHORT-TERM MILITARY SERVICE GUARDIAN MUST SIGN THE FORM, BUT NEED NOT DO SO AT THE SAME TIME AS THE PARENT OR PARENTS. THIS FORM MAY BE USED TO REAPPOINT A SHORT-TERM MILITARY SERVICE GUARDIAN OR TO APPOINT A SUCCESSOR SHORT-TERM MILITARY SERVICE GUARDIAN SO AS TO EXTEND THE ENTIRE TIME OF THE GUARDIANSHIP TO A PERIOD OF THREE HUNDRED SIXTY (360) DAYS. BOTH LIVING PARENTS OF A CHILD MAY TOGETHER APPOINT A SHORT-TERM MILITARY SERVICE GUARDIAN OF THE CHILD FOR A PERIOD OF UP TO THREE HUNDRED SIXTY (360) DAYS THROUGH THE USE OF THIS FORM. IF THE SHORT-TERM MILITARY SERVICE GUARDIAN IS APPOINTED BY BOTH LIVING PARENTS OF THE CHILD, THE PARENTS NEED NOT SIGN THE FORM AT THE SAME TIME.

1. PARENT AND CHILD. I (INSERT NAME OF APPOINTING PARENT), CURRENTLY RESIDING AT (INSERT ADDRESS OF APPOINTING PARENT), AM A PARENT OF THE FOLLOWING CHILD: (INSERT NAME AND DATE OF BIRTH OF CHILD).

2. GUARDIAN. I HEREBY APPOINT THE FOLLOWING PERSON AS THE SHORT-TERM MILITARY SERVICE GUARDIAN FOR THE CHILD: (INSERT NAME AND ADDRESS OF APPOINTED PERSON).

3. EFFECTIVE DATE. THIS APPOINTMENT BECOMES EFFECTIVE: (CHECK ONE IF YOU WISH IT TO BE APPLICABLE)

() ON THE DATE THAT I STATE IN WRITING THAT I AM NO LONGER ABLE TO MAKE AND CARRY OUT DAY-TO-DAY CHILD CARE DECISIONS CONCERNING THE CHILD BECAUSE OF MY ACTIVE DUTY STATUS IN THE MILITARY.

() ON THE FOLLOWING DATE: (INSERT DATE).

() OTHER (INSERT OTHER).

(NOTE: IF THIS ITEM IS NOT COMPLETED, THE APPOINTMENT IS EFFECTIVE IMMEDIATELY UPON THE DATE THE FORM IS SIGNED AND DATED BELOW.)

4. TERMINATION. THIS APPOINTMENT SHALL TERMINATE ONE HUNDRED EIGHTY (180) DAYS AFTER THE EFFECTIVE DATE, UNLESS IT TERMINATES SOONER AS DETERMINED BY THE EVENT OR DATE I HAVE INDICATED BELOW: (CHECK ONE IF YOU WISH IT TO BE APPLICABLE)

() ON THE DATE THAT I STATE IN WRITING THAT I AM WILLING AND ABLE TO MAKE AND CARRY OUT DAY-TO-DAY CHILD CARE DECISIONS CONCERNING THE CHILD.

() ON THE DATE WHICH IS (STATE A NUMBER OF DAYS, BUT NO MORE THAN ONE HUNDRED EIGHTY (180) DAYS) DAYS AFTER THE EFFECTIVE DATE.

() OTHER: (INSERT OTHER). (NOTE: IF THIS ITEM IS NOT COMPLETED, THE APPOINTMENT WILL BE EFFECTIVE FOR A PERIOD OF ONE HUNDRED EIGHTY (180) DAYS, BEGINNING ON THE EFFECTIVE DATE.)

5. DATE AND SIGNATURE OF APPOINTING PARENT. THIS APPOINTMENT IS MADE THIS (INSERT DAY) DAY OF (INSERT MONTH AND YEAR).

SIGNED: (APPOINTING PARENT)

6. WITNESSES. I SAW THE APPOINTING PARENT SIGN THIS INSTRUMENT OR I SAW THE PARENT DIRECT SOMEONE TO SIGN THIS INSTRUMENT FOR THE PARENT. THEN I SIGNED THIS INSTRUMENT AS A WITNESS IN THE PRESENCE OF THE

1 PARENT. I AM NOT APPOINTED IN THIS INSTRUMENT TO ACT AS THE SHORT-TERM
2 MILITARY SERVICE GUARDIAN FOR THE CHILD. I AM NOT RELATED TO THE PARENT
3 OR TO THE PERSON APPOINTED AS THE SHORT-TERM MILITARY SERVICE GUARDIAN.
4 (INSERT SPACE FOR NAMES, ADDRESSES, AND SIGNATURES OF TWO (2) WITNESSES)

5 7. ACCEPTANCE OF SHORT-TERM MILITARY SERVICE GUARDIAN. I ACCEPT THIS
6 APPOINTMENT AS SHORT-TERM MILITARY SERVICE GUARDIAN ON THIS (INSERT DAY)
7 DAY OF (INSERT MONTH AND YEAR).

8 SIGNED: (SHORT-TERM MILITARY SERVICE GUARDIAN)

9 8. CONSENT OF CHILD'S OTHER PARENT-IF APPLICABLE. I (INSERT NAME OF
10 THE CHILD'S OTHER LIVING PARENT), CURRENTLY RESIDING AT (INSERT ADDRESS
11 OF CHILD'S OTHER LIVING PARENT), HEREBY CONSENT TO THIS APPOINTMENT ON
12 THIS (INSERT DAY) DAY OF (INSERT MONTH AND YEAR).

13 SIGNED: (CONSENTING PARENT)

14 (NOTE: THE SIGNATURE OF A CONSENTING PARENT IS NOT NECESSARY IF ONE OF
15 THE FOLLOWING APPLIES: (I) THE OTHER PARENT DOES NOT HAVE JOINT CUSTODY
16 OF THE CHILD; (II) THE CHILD'S OTHER PARENT HAS DIED; OR (III) THE
17 WHEREABOUTS OF THE CHILD'S OTHER PARENT ARE NOT KNOWN; OR (IV) THE
18 CHILD'S OTHER PARENT IS NOT WILLING OR ABLE TO MAKE AND CARRY OUT
19 DAY-TO-DAY CHILD CARE DECISIONS CONCERNING THE CHILD; (V) THE CHILD'S
20 PARENTS WERE NEVER MARRIED AND NO COURT HAS ISSUED AN ORDER ESTABLISHING
21 PARENTAGE; OR (VI) THE PARENTAL RIGHTS OF THE CHILD'S OTHER PARENT HAVE
22 BEEN TERMINATED BY A COURT ORDER.)

23 SWORN STATEMENT OF MAILING

24 I (INSERT NAME OF APPOINTING PARENT), CURRENTLY RESIDING AT (INSERT
25 ADDRESS OF APPOINTING PARENT), DELIVERED A SIGNED AND DATED COPY OF THE
26 ATTACHED APPOINTMENT OF SHORT-TERM MILITARY SERVICE GUARDIAN BY DEPOSIT-
27 ING IT IN A UNITED STATES POST OFFICE OR POST OFFICE BOX, ENCLOSED IN AN
28 ENVELOPE, PLAINLY ADDRESSED TO EACH PERSON OR OFFICE AT THE APPROPRIATE
29 ADDRESS LISTED BELOW, WITH POSTAGE FULLY PREPAID FOR DELIVERY BY CERTI-
30 FIED OR REGISTERED MAIL TO:

31 (1) (NAME OF OTHER LIVING PARENT) (INSERT ADDRESS OF OTHER LIVING
32 PARENT);

33 (2) NAME OF THE COURT WHICH ISSUED THE ORDER THAT AWARDED PHYSICAL
34 CUSTODY OF THE CHILD TO THE APPOINTING PARENT (INSERT ADDRESS OF COURT);

35 (3) THE COURT WHICH ISSUED THE LAST ORDER THAT CONCERNS THE CHILD, THE
36 CHILD'S SUPPORT, CUSTODY OR VISITATION WITH THE CHILD (INSERT ADDRESS OF
37 COURT); AND

38 (4) IF THERE IS NO COURT ORDER, THEN TO THE COURT CLERK IN THE COUNTY
39 IN WHICH THE CHILD RESIDES (INSERT ADDRESS OF COURT CLERK)

40 DATE AND SIGNATURE. DATED THIS (INSERT DAY) DAY OF (INSERT MONTH AND
41 YEAR).

42 SIGNED: (DESIGNATING PARENT OR GUARDIAN)

43 COUNTY OF _____

44 STATE OF _____

45 ON THIS (INSERT DAY) OF (INSERT MONTH AND YEAR) AT (INSERT CITY AND
46 STATE), (INSERT NAME OF APPOINTING PARENT), APPEARED BEFORE ME, A NOTARY
47 PUBLIC OF AND FOR THE COUNTY AND STATE FIRST ABOVE WRITTEN AND IDENTI-
48 FIED HIMSELF OR HERSELF TO BE OR PERSONALLY KNOWN TO ME TO BE, (INSERT
49 NAME OF APPOINTING PARENT) AND BEING FIRST DULY SWORN, SIGNED HIS OR HER
50 SIGNATURE ABOVE.

51 (SEAL)

52 SIGNED (NAME OF NOTARY PUBLIC)

53 (PRINTED NAME OF NOTARY PUBLIC)

54 S 92. DUTIES OF A SHORT-TERM MILITARY SERVICE GUARDIAN OF A MINOR. 1.
55 IMMEDIATELY UPON THE EFFECTIVE DATE OR THE APPOINTMENT OF A SHORT-TERM
56 MILITARY SERVICE GUARDIAN, THE SHORT-TERM MILITARY SERVICE GUARDIAN

1 SHALL ASSUME ALL DUTIES AS SHORT-TERM MILITARY SERVICE GUARDIAN OF THE
2 MINOR AS PROVIDED IN THIS SECTION. THE SHORT-TERM MILITARY SERVICE GUAR-
3 DIAN OF THE PERSON SHALL HAVE AUTHORITY TO ACT AS SHORT-TERM MILITARY
4 SERVICE GUARDIAN WITHOUT DIRECTION OF COURT, FOR THE DURATION OF THE
5 APPOINTMENT WHICH IN NO CASE SHALL EXCEED A PERIOD OF ONE HUNDRED EIGHTY
6 DAYS. THE AUTHORITY OF THE SHORT-TERM MILITARY SERVICE GUARDIAN MAY BE
7 LIMITED OR TERMINATED BY A COURT OF COMPETENT JURISDICTION.

8 2. UNLESS FURTHER SPECIFICALLY LIMITED BY THE INSTRUMENT APPOINTING
9 THE SHORT-TERM MILITARY SERVICE GUARDIAN, A SHORT-TERM MILITARY SERVICE
10 GUARDIAN SHALL HAVE THE AUTHORITY TO ACT AS A GUARDIAN OF THE PERSON OF
11 A MINOR AS PRESCRIBED IN ARTICLE SIX OF THIS CHAPTER, BUT SHALL NOT HAVE
12 ANY AUTHORITY TO ACT AS GUARDIAN OF THE ESTATE OF A MINOR, EXCEPT THAT A
13 SHORT-TERM MILITARY SERVICE GUARDIAN SHALL HAVE THE AUTHORITY TO APPLY
14 FOR AND RECEIVE ON BEHALF OF THE MINOR BENEFITS TO WHICH THE CHILD MAY
15 BE ENTITLED FROM OR UNDER FEDERAL, STATE OR LOCAL ORGANIZATIONS OR
16 PROGRAMS.

17 S 2. The military law is amended by adding a new section 255 to read
18 as follows:

19 S 255. SHORT-TERM MILITARY SERVICE GUARDIAN. NOTWITHSTANDING ANY LAW,
20 RULE OR REGULATION TO THE CONTRARY, CHILD CUSTODY PROCEEDINGS FILED IN A
21 COURT OF COMPETENT JURISDICTION IN THIS STATE, INVOLVING A SHORT-TERM
22 MILITARY SERVICE GUARDIAN SHALL BE GOVERNED BY ARTICLE SIX-A OF THE
23 DOMESTIC RELATIONS LAW.

24 S 3. This act shall take effect on the one hundred twentieth day after
25 it shall have become a law.