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

4104

2009-2010 Regular Sessions

I N S E N A T E

April 9, 2009

Introduced by Sen. AUBERTINE -- (at request of the Office of Court Administration) -- 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, the family court act and the military law, 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:

Section 1. Section 75-l of the domestic relations law, as added by chapter 576 of the laws of 2008, is amended to read as follows:

S 75-l. Military service by parent; effect on child custody orders PURSUANT TO THIS ARTICLE. 1. During the period of time that a parent is activated, deployed or temporarily assigned to military service, such that the parent's ability to continue as a joint caretaker or the primary caretaker of a minor child is materially affected by such military service, [a court shall be prohibited from issuing] any [permanent] orders, modifications or amendments ISSUED PURSUANT TO THIS ARTICLE, based on the fact that the parent is activated, deployed or temporarily assigned to military service, which would [in any way effect] MATERIALLY AFFECT or change a previous judgment or order regarding custody of that parent's child or children as such judgment or order existed on the date the parent was activated, deployed, or temporarily assigned to military service SHALL BE SUBJECT TO REVIEW PURSUANT TO SUBDIVISION THREE OF THIS SECTION. Any relevant provisions of the Service Member's Civil Relief Act shall apply to all proceedings governed by this section.

2. During such period the court may enter [a temporary] AN order to modify or amend custody if there is clear and convincing evidence that the [temporary] modification or amendment is in the best interests of the child. An attorney for the child shall be appointed in all cases where a [temporary] modification is sought during such military service. SUCH ORDER SHALL BE SUBJECT TO REVIEW PURSUANT TO SUBDIVISION THREE OF

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

LBD10161-01-9

THIS SECTION. When entering [a temporary] AN order under this section, the court shall consider and provide for, if feasible and if in the best [interest] INTERESTS of the child, contact between the military service member and his or her child including, but not limited to, electronic communication by E-MAIL, webcam, telephone, or other available means. During the period of the parent's leave from military service, the court shall consider the best [interest] INTERESTS of the child when establishing a parenting schedule, INCLUDING VISITING AND OTHER CONTACT. For such purpose, a "leave from service" shall be a period of not more than three months.

3. [If a temporary] UNLESS THE PARTIES HAVE OTHERWISE STIPULATED OR AGREED, IF AN order is issued under this section, [upon] the return of the parent from active military service, deployment or temporary assignment [and upon] SHALL BE CONSIDERED A SUBSTANTIAL CHANGE IN CIRCUMSTANCES. UPON the request of either parent, [there shall be held a hearing at which] the court shall determine [whether there has been a change of circumstances such that] ON THE BASIS OF THE CHILD'S BEST INTERESTS WHETHER the custody judgment or order previously in effect should be changed, amended or modified.

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

S 2. Subdivision 1 of section 240 of the domestic relation law is amended by adding a new paragraph (a-2) to read as follows:

(A-2) MILITARY SERVICE BY PARENT; EFFECT ON CHILD CUSTODY ORDERS. (1) DURING THE PERIOD OF TIME THAT A PARENT IS ACTIVATED, DEPLOYED OR TEMPORARILY ASSIGNED TO MILITARY SERVICE, SUCH THAT THE PARENT'S ABILITY TO CONTINUE AS A JOINT CARETAKER OR THE PRIMARY CARETAKER OF A MINOR CHILD IS MATERIALLY AFFECTED BY SUCH MILITARY SERVICE, ANY ORDERS, MODIFICATIONS OR AMENDMENTS ISSUED PURSUANT TO THIS SECTION, BASED ON THE FACT THAT THE PARENT IS ACTIVATED, DEPLOYED OR TEMPORARILY ASSIGNED TO MILITARY SERVICE, WHICH WOULD MATERIALLY AFFECT OR CHANGE A PREVIOUS JUDGMENT OR ORDER REGARDING CUSTODY OF THAT PARENT'S CHILD OR CHILDREN AS SUCH JUDGMENT OR ORDER EXISTED ON THE DATE THE PARENT WAS ACTIVATED, DEPLOYED, OR TEMPORARILY ASSIGNED TO MILITARY SERVICE, SHALL BE SUBJECT TO REVIEW PURSUANT TO SUBPARAGRAPH THREE OF THIS PARAGRAPH. ANY RELEVANT PROVISIONS OF THE SERVICE MEMBER'S CIVIL RELIEF ACT SHALL APPLY TO ALL PROCEEDINGS GOVERNED BY THIS SECTION.

(2) DURING SUCH PERIOD, THE COURT MAY ENTER AN ORDER TO MODIFY OR AMEND CUSTODY IF THERE IS CLEAR AND CONVINCING EVIDENCE THAT THE MODIFICATION OR AMENDMENT IS IN THE BEST INTERESTS OF THE CHILD. AN ATTORNEY FOR THE CHILD SHALL BE APPOINTED IN ALL CASES WHERE A MODIFICATION IS SOUGHT DURING SUCH MILITARY SERVICE. SUCH ORDER SHALL BE SUBJECT TO REVIEW PURSUANT TO SUBPARAGRAPH THREE OF THIS PARAGRAPH. WHEN ENTERING AN ORDER PURSUANT TO THIS SECTION, THE COURT SHALL CONSIDER AND PROVIDE FOR, IF FEASIBLE AND IF IN THE BEST INTERESTS OF THE CHILD, CONTACT BETWEEN THE MILITARY SERVICE MEMBER AND HIS OR HER CHILD, INCLUDING, BUT NOT LIMITED TO, ELECTRONIC COMMUNICATION BY E-MAIL, WEBCAM, TELEPHONE, OR OTHER AVAILABLE MEANS. DURING THE PERIOD OF THE PARENT'S LEAVE FROM MILITARY SERVICE, THE COURT SHALL CONSIDER THE BEST INTERESTS OF THE CHILD WHEN ESTABLISHING A PARENTING SCHEDULE, INCLUDING VISITING AND OTHER CONTACT. FOR SUCH PURPOSES, A "LEAVE FROM MILITARY SERVICE" SHALL BE A PERIOD OF NOT MORE THAN THREE MONTHS.

(3) UNLESS THE PARTIES HAVE OTHERWISE STIPULATED OR AGREED, IF AN ORDER IS ISSUED PURSUANT TO THIS PARAGRAPH, THE RETURN OF THE PARENT FROM ACTIVE MILITARY SERVICE, DEPLOYMENT OR TEMPORARY ASSIGNMENT SHALL BE CONSIDERED A SUBSTANTIAL CHANGE IN CIRCUMSTANCES. UPON THE REQUEST OF

EITHER PARENT, THE COURT SHALL DETERMINE ON THE BASIS OF THE CHILD'S BEST INTERESTS WHETHER THE CUSTODY JUDGMENT OR ORDER PREVIOUSLY IN EFFECT SHOULD BE CHANGED, AMENDED OR MODIFIED.

(4) THIS PARAGRAPH SHALL NOT APPLY TO ASSIGNMENTS TO PERMANENT DUTY STATIONS OR PERMANENT CHANGES OF STATION.

S 3. Section 651 of the family court act is amended by adding a new subdivision (f) to read as follows:

(F) MILITARY SERVICE BY PARENT; EFFECT ON CHILD CUSTODY ORDERS. 1. DURING THE PERIOD OF TIME THAT A PARENT IS ACTIVATED, DEPLOYED OR TEMPORARILY ASSIGNED TO MILITARY SERVICE, SUCH THAT THE PARENT'S ABILITY TO CONTINUE AS A JOINT CARETAKER OR THE PRIMARY CARETAKER OF A MINOR CHILD IS MATERIALLY AFFECTED BY SUCH MILITARY SERVICE, ANY ORDERS, MODIFICATIONS OR AMENDMENTS ISSUED PURSUANT TO THIS SECTION, BASED ON THE FACT THAT THE PARENT IS ACTIVATED, DEPLOYED OR TEMPORARILY ASSIGNED TO MILITARY SERVICE, WHICH WOULD MATERIALLY AFFECT OR CHANGE A PREVIOUS JUDGMENT OR ORDER REGARDING CUSTODY OF THAT PARENT'S CHILD OR CHILDREN AS SUCH JUDGMENT OR ORDER EXISTED ON THE DATE THE PARENT WAS ACTIVATED, DEPLOYED, OR TEMPORARILY ASSIGNED TO MILITARY SERVICE, SHALL BE SUBJECT TO REVIEW PURSUANT TO PARAGRAPH THREE OF THIS SUBDIVISION. ANY RELEVANT PROVISIONS OF THE SERVICE MEMBER'S CIVIL RELIEF ACT SHALL APPLY TO ALL PROCEEDINGS GOVERNED BY THIS SECTION.

2. DURING SUCH PERIOD, THE COURT MAY ENTER AN ORDER TO MODIFY OR AMEND CUSTODY IF THERE IS CLEAR AND CONVINCING EVIDENCE THAT THE MODIFICATION OR AMENDMENT IS IN THE BEST INTERESTS OF THE CHILD. AN ATTORNEY FOR THE CHILD SHALL BE APPOINTED IN ALL CASES WHERE A MODIFICATION IS SOUGHT DURING SUCH MILITARY SERVICE. SUCH ORDER SHALL BE SUBJECT TO REVIEW PURSUANT TO PARAGRAPH THREE OF THIS SUBDIVISION. WHEN ENTERING AN ORDER PURSUANT TO THIS SECTION, THE COURT SHALL CONSIDER AND PROVIDE FOR, IF FEASIBLE AND IF IN THE BEST INTERESTS OF THE CHILD, CONTACT BETWEEN THE MILITARY SERVICE MEMBER AND HIS OR HER CHILD INCLUDING, BUT NOT LIMITED TO, ELECTRONIC COMMUNICATION BY E-MAIL, WEBCAM, TELEPHONE, OR OTHER AVAILABLE MEANS. DURING THE PERIOD OF THE PARENT'S LEAVE FROM MILITARY SERVICE, THE COURT SHALL CONSIDER THE BEST INTERESTS OF THE CHILD WHEN ESTABLISHING A PARENTING SCHEDULE, INCLUDING VISITING AND OTHER CONTACT. FOR SUCH PURPOSE, A "LEAVE FROM MILITARY SERVICE" SHALL BE A PERIOD OF NOT MORE THAN THREE MONTHS.

3. UNLESS THE PARTIES HAVE OTHERWISE STIPULATED OR AGREED, IF AN ORDER IS ISSUED PURSUANT TO THIS SUBDIVISION, THE RETURN OF THE PARENT FROM ACTIVE MILITARY SERVICE, DEPLOYMENT OR TEMPORARY ASSIGNMENT SHALL BE CONSIDERED A SUBSTANTIAL CHANGE IN CIRCUMSTANCES. UPON THE REQUEST OF EITHER PARENT, THE COURT SHALL DETERMINE ON THE BASIS OF THE CHILD'S BEST INTERESTS WHETHER THE CUSTODY JUDGMENT OR ORDER PREVIOUSLY IN EFFECT SHOULD BE CHANGED, AMENDED OR MODIFIED.

4. THIS SUBDIVISION SHALL NOT APPLY TO ASSIGNMENTS TO PERMANENT DUTY STATIONS OR PERMANENT CHANGES OF STATION.

S 4. Section 253 of the military law, as added by chapter 576 of the laws of 2008, is amended to read as follows:

S 253. Military service by parent; effect on child custody proceedings. Notwithstanding any law, rule or regulation to the contrary, child custody proceedings filed in a court of competent jurisdiction in this state, involving a parent who is activated, deployed, or temporarily assigned to military service shall be governed by SUBDIVISION (F) OF SECTION SIX HUNDRED FIFTY-ONE OF THE FAMILY COURT ACT, section seventy-five-l OR PARAGRAPH (A-2) OF SUBDIVISION ONE OF SECTION TWO HUNDRED FORTY of the domestic relations law.

S 5. This act shall take effect on the sixtieth day after it shall have become a law; provided, however, that sections one and four of this act shall take effect on the same date and in the same manner as sections one and two of chapter 576 of the laws of 2008, take effect.