

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:

1 Section 1. Section 75-1 of the domestic relations law, as added by
2 chapter 576 of the laws of 2008, 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 prima-
7 ry caretaker of a minor child is materially affected by such military
8 service, [a court shall be prohibited from issuing] any [permanent]
9 orders, modifications or amendments ISSUED PURSUANT TO THIS ARTICLE,
10 based on the fact that the parent is activated, deployed or temporarily
11 assigned to military service, which would [in any way effect] MATERIALLY
12 AFFECT or change a previous judgment or order regarding custody of that
13 parent's child or children as such judgment or order existed on the date
14 the parent was activated, deployed, or temporarily assigned to military
15 service SHALL BE SUBJECT TO REVIEW PURSUANT TO SUBDIVISION THREE OF THIS
16 SECTION. Any relevant provisions of the Service Member's Civil Relief
17 Act shall apply to all proceedings governed by this section.
18 2. During such period the court may enter [a temporary] AN 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
21 the child. An attorney for the child shall be appointed in all cases
22 where a [temporary] modification is sought during such military service.
23 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.

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

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

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

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

24 (A-2) MILITARY SERVICE BY PARENT; EFFECT ON CHILD CUSTODY ORDERS. (1)
25 DURING THE PERIOD OF TIME THAT A PARENT IS ACTIVATED, DEPLOYED OR TEMPO-
26 RARILY ASSIGNED TO MILITARY SERVICE, SUCH THAT THE PARENT'S ABILITY TO
27 CONTINUE AS A JOINT CARETAKER OR THE PRIMARY CARETAKER OF A MINOR CHILD
28 IS MATERIALLY AFFECTED BY SUCH MILITARY SERVICE, ANY ORDERS, MODIFICA-
29 TIONS OR AMENDMENTS ISSUED PURSUANT TO THIS SECTION, BASED ON THE FACT
30 THAT THE PARENT IS ACTIVATED, DEPLOYED OR TEMPORARILY ASSIGNED TO MILI-
31 TARY SERVICE, WHICH WOULD MATERIALLY AFFECT OR CHANGE A PREVIOUS JUDG-
32 MENT OR ORDER REGARDING CUSTODY OF THAT PARENT'S CHILD OR CHILDREN AS
33 SUCH JUDGMENT OR ORDER EXISTED ON THE DATE THE PARENT WAS ACTIVATED,
34 DEPLOYED, OR TEMPORARILY ASSIGNED TO MILITARY SERVICE, SHALL BE SUBJECT
35 TO REVIEW PURSUANT TO SUBPARAGRAPH THREE OF THIS PARAGRAPH. ANY RELEVANT
36 PROVISIONS OF THE SERVICE MEMBER'S CIVIL RELIEF ACT SHALL APPLY TO ALL
37 PROCEEDINGS GOVERNED BY THIS SECTION.

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

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

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

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

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

8 (F) MILITARY SERVICE BY PARENT; EFFECT ON CHILD CUSTODY ORDERS. 1.
9 DURING THE PERIOD OF TIME THAT A PARENT IS ACTIVATED, DEPLOYED OR TEMPO-
10 RARILY ASSIGNED TO MILITARY SERVICE, SUCH THAT THE PARENT'S ABILITY TO
11 CONTINUE AS A JOINT CARETAKER OR THE PRIMARY CARETAKER OF A MINOR CHILD
12 IS MATERIALLY AFFECTED BY SUCH MILITARY SERVICE, ANY ORDERS, MODIFICA-
13 TIONS OR AMENDMENTS ISSUED PURSUANT TO THIS SECTION, BASED ON THE FACT
14 THAT THE PARENT IS ACTIVATED, DEPLOYED OR TEMPORARILY ASSIGNED TO MILI-
15 TARY SERVICE, WHICH WOULD MATERIALLY AFFECT OR CHANGE A PREVIOUS JUDG-
16 MENT OR ORDER REGARDING CUSTODY OF THAT PARENT'S CHILD OR CHILDREN AS
17 SUCH JUDGMENT OR ORDER EXISTED ON THE DATE THE PARENT WAS ACTIVATED,
18 DEPLOYED, OR TEMPORARILY ASSIGNED TO MILITARY SERVICE, SHALL BE SUBJECT
19 TO REVIEW PURSUANT TO PARAGRAPH THREE OF THIS SUBDIVISION. ANY RELEVANT
20 PROVISIONS OF THE SERVICE MEMBER'S CIVIL RELIEF ACT SHALL APPLY TO ALL
21 PROCEEDINGS GOVERNED BY THIS SECTION.

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

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

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

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

48 S 253. Military service by parent; effect on child custody
49 proceedings. Notwithstanding any law, rule or regulation to the contra-
50 ry, child custody proceedings filed in a court of competent jurisdiction
51 in this state, involving a parent who is activated, deployed, or tempo-
52 rarily assigned to military service shall be governed by SUBDIVISION (F)
53 OF SECTION SIX HUNDRED FIFTY-ONE OF THE FAMILY COURT ACT, section seven-
54 ty-five-1 OR PARAGRAPH (A-2) OF SUBDIVISION ONE OF SECTION TWO HUNDRED
55 FORTY of the domestic relations law.

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