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

1081

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. CASTELLI -- read once and referred to the Committee on Judiciary

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:

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

ARTICLE 6-A

SHORT-TERM MILITARY SERVICE GUARDIAN

SECTION 90. DEFINITIONS.

91. SHORT-TERM MILITARY SERVICE GUARDIAN.

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

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

S 91. SHORT-TERM MILITARY SERVICE GUARDIAN. 1. A PERSON WHO IS IN ACTIVE MILITARY SERVICE AND WHO IS A PARENT, ADOPTIVE PARENT, OR ADJUDICATED PARENT WHO HAS PHYSICAL CUSTODY OF A MINOR CHILD AND WHO DOES NOT SHARE JOINT CUSTODY OF THE CHILD MAY APPOINT IN WRITING, WITH NOTICE TO THE OTHER LIVING PARENT OF THE CHILD AND TO THE COURT AS DESCRIBED IN SUBDIVISION TWO OF THIS SECTION, A SHORT-TERM MILITARY SERVICE GUARDIAN OF THE MINOR CHILD. THE WRITTEN INSTRUMENT APPOINTING A SHORT-TERM MILITARY SERVICE GUARDIAN SHALL BE DATED AND SHALL IDENTIFY THE APPOINTING PARENT, THE OTHER LIVING PARENT, THE MINOR, AND THE PERSON APPOINTED TO

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

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BE THE SHORT-TERM MILITARY SERVICE GUARDIAN. THE WRITTEN INSTRUMENT SHALL BE SIGNED BY, OR AT THE DIRECTION OF, THE APPOINTING PARENT IN THE PRESENCE OF AT LEAST TWO CREDIBLE WITNESSES, AT LEAST EIGHTEEN YEARS OF AGE, NEITHER OF WHOM IS RELATED TO THE PARENT NOR THE PERSON APPOINTED AS THE SHORT-TERM MILITARY SERVICE GUARDIAN. THE PERSON APPOINTED AS THE SHORT-TERM MILITARY SERVICE GUARDIAN SHALL ALSO SIGN THE WRITTEN INSTRUMENT, BUT NEED NOT SIGN AT THE SAME TIME AS THE APPOINTING PARENT.

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

(A) WHO HAS JOINT CUSTODY OF THE CHILD,

(B) WHOSE PARENTAL RIGHTS HAVE NOT BEEN TERMINATED,

(C) WHOSE WHEREABOUTS ARE KNOWN, AND

(D) WHO IS WILLING AND ABLE TO MAKE AND CARRY OUT DAY-TO-DAY CHILD CARE DECISIONS CONCERNING THE MINOR, UNLESS THE NON-APPOINTING PARENT CONSENTS TO THE APPOINTMENT BY SIGNING THE WRITTEN INSTRUMENT OF APPOINTMENT.

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

(A) THE LAST KNOWN ADDRESS OF THE OTHER LIVING PARENT,

(B) THE COURT WHICH ISSUED THE ORDER THAT AWARDED PHYSICAL CUSTODY OF THE CHILD TO THE APPOINTING PARENT,

(C) THE COURT (IF DIFFERENT FROM THE COURT THAT AWARDED PHYSICAL CUSTODY OF THE CHILD TO THE APPOINTING PARENT) WHICH ISSUED THE LAST ORDER THAT CONCERNS THE CHILD, THE CHILD'S SUPPORT, OR CUSTODY OF OR VISITATION WITH THE CHILD, AND

(D) IF THERE IS NO COURT ORDER, THEN TO THE COURT CLERK IN THE COUNTY IN WHICH THE CHILD RESIDES.

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

5. EVERY APPOINTMENT OF A SHORT-TERM MILITARY SERVICE GUARDIAN MAY BE AMENDED OR REVOKED BY THE APPOINTING PARENT OF THE MINOR AT ANY TIME AND IN ANY MANNER COMMUNICATED TO THE SHORT-TERM MILITARY SERVICE GUARDIAN 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 PARENT. I AM NOT APPOINTED IN THIS INSTRUMENT TO ACT AS THE SHORT-TERM

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

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

SIGNED: (SHORT-TERM MILITARY SERVICE GUARDIAN)

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

SIGNED: (CONSENTING PARENT)

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

SWORN STATEMENT OF MAILING

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

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

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

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

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

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

SIGNED: (DESIGNATING PARENT OR GUARDIAN)

COUNTY OF _____

STATE OF _____

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

(SEAL)

SIGNED (NAME OF NOTARY PUBLIC)

(PRINTED NAME OF NOTARY PUBLIC)

S 92. DUTIES OF A SHORT-TERM MILITARY SERVICE GUARDIAN OF A MINOR. 1. IMMEDIATELY UPON THE EFFECTIVE DATE OR THE APPOINTMENT OF A SHORT-TERM MILITARY SERVICE GUARDIAN, THE SHORT-TERM MILITARY SERVICE GUARDIAN SHALL ASSUME ALL DUTIES AS SHORT-TERM MILITARY SERVICE GUARDIAN OF THE

MINOR AS PROVIDED IN THIS SECTION. THE SHORT-TERM MILITARY SERVICE GUARDIAN OF THE PERSON SHALL HAVE AUTHORITY TO ACT AS SHORT-TERM MILITARY SERVICE GUARDIAN WITHOUT DIRECTION OF COURT, FOR THE DURATION OF THE APPOINTMENT WHICH IN NO CASE SHALL EXCEED A PERIOD OF ONE HUNDRED EIGHTY DAYS. THE AUTHORITY OF THE SHORT-TERM MILITARY SERVICE GUARDIAN MAY BE LIMITED OR TERMINATED BY A COURT OF COMPETENT JURISDICTION.

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

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

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

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