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

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I N S E N A T E

May 31, 2012

Introduced by Sen. RANZENHOFER -- (at request of the Division of Military & Naval Affairs) -- 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 and the family court act, 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 amended by chapter 473 of the laws of 2009, 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, [issued pursuant to this article] MODIFICATIONS OR AMENDMENTS based on the fact that the parent is activated, deployed or temporarily assigned to military service, which would [materially] IN ANY WAY 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 [an] A TEMPORARY 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 this section.] When entering [an] A TEMPORARY order under 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

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

LBD14499-01-2

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 service" shall be a period of not more than three months.

3. [Unless the parties have otherwise stipulated or agreed, if an] IF A TEMPORARY order is issued under this section, IT SHALL EXPIRE WITHIN TEN DAYS AFTER 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 modified].

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

S 2. Paragraph (a-2) of subdivision 1 of section 240 of the domestic relations law, as added by chapter 473 of the laws of 2009, is amended 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, A COURT SHALL BE PROHIBITED FROM ISSUING any PERMANENT orders, [issued pursuant to this section] MODIFICATIONS OR AMENDMENTS based on the fact that the parent is activated, deployed or temporarily assigned to military service, which would [materially] IN ANY WAY 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] A TEMPORARY 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 subparagraph three of this paragraph.] When entering [an] A TEMPORARY 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] IF A TEMPORARY order is issued pursuant to this paragraph, IT SHALL EXPIRE WITHIN TEN DAYS AFTER 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 modified].

(4) This paragraph shall not apply to assignments to permanent duty stations or permanent changes of station.

S 3. Subdivision (f) of section 651 of the family court act, as added by chapter 473 of the laws of 2009, is amended 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, A COURT SHALL BE PROHIBITED FROM ISSUING any PERMANENT orders, [issued pursuant to this section] MODIFICATIONS OR AMENDMENTS based on the fact that the parent is activated, deployed or temporarily assigned to military service, which would [materially] IN ANY WAY 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] A TEMPORARY 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 paragraph three of this subdivision.] When entering [an] A TEMPORARY 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] IF A TEMPORARY order is issued pursuant to this subdivision, IT SHALL EXPIRE WITHIN TEN DAYS AFTER 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 modified].

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

S 4. This act shall take effect on the thirtieth day after it shall become law.