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

5049

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. BALL -- 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, in relation to child custody when a parent is deployed on military active duty; and to amend the military law, in relation to extending certain benefits afforded with respect to judicial proceedings where the minor dependent of a military member is involved as a party

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

Section 1. Section 70 of the domestic relations law is amended by adding a new subdivision (c) to read as follows:

(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE COURT SHALL NOT CONSIDER THE PAST OR CURRENT DEPLOYMENT, OR POSSIBLE FUTURE DEPLOYMENT OF A PARENT IN ACTIVE SERVICE OF THE ARMED FORCES OF THE UNITED STATES OR OF THE ORGANIZED MILITIA OF THE STATE OF NEW YORK AS A DETRIMENTAL FACTOR TO THE AWARDING OF CUSTODY OF A CHILD WHERE A SUITABLE CHILD CARE PLAN HAS BEEN PRESENTED TO THE COURT BY THE PETITIONING PARENT.

S 2. Subdivision 3 of section 75-l of the domestic relations law, as amended by chapter 473 of the laws of 2009, is amended to read as follows:

3. Unless the parties have otherwise stipulated or agreed, if an order is issued under this section, the return of the parent from active military service, deployment or temporary assignment shall be considered a substantial change in circumstances, AND WITHIN THIRTY DAYS OF SUCH RETURN THE CHILD CUSTODY ORDER IN EFFECT IMMEDIATELY PRIOR TO ANY MODIFICATIONS THEREOF PURSUANT TO SUBDIVISIONS ONE AND TWO OF THIS SECTION SHALL BE REINSTATED AND BE IN FULL FORCE AND EFFECT. [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.]

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

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S 3. Paragraph (a) of subdivision 1 of section 240 of the domestic relations law, as amended by chapter 476 of the laws of 2009, is amended and a new subdivision 1-d is added to read as follows:

(a) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to visitation with any child of a marriage, the court shall require verification of the status of any child of the marriage with respect to such child's custody and support, including any prior orders, and shall enter orders for custody and support as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child and subject to the provisions of [subdivision] SUBDIVISIONS one-c AND ONE-D of this section. Where either party to an action concerning custody of or a right to visitation with a child alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other party has committed an act of domestic violence against the party making the allegation or a family or household member of either party, as such family or household member is defined in article eight of the family court act, and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making a direction pursuant to this section and state on the record how such findings, facts and circumstances factored into the direction. If a parent makes a good faith allegation based on a reasonable belief supported by facts that the child is the victim of child abuse, child neglect, or the effects of domestic violence, and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent shall not be deprived of custody, visitation or contact with the child, or restricted in custody, visitation or contact, based solely on that belief or the reasonable actions taken based on that belief. If an allegation that a child is abused is supported by a preponderance of the evidence, then the court shall consider such evidence of abuse in determining the visitation arrangement that is in the best interest of the child, and the court shall not place a child in the custody of a parent who presents a substantial risk of harm to that child, and shall state on the record how such findings were factored into the determination. An order directing the payment of child support shall contain the social security numbers of the named parties. In all cases there shall be no prima facie right to the custody of the child in either parent. Such direction shall make provision for child support out of the property of either or both parents. The court shall make its award for child support pursuant to subdivision one-b of this section. Such direction may provide for reasonable visitation rights to the maternal and/or paternal grandparents of any child of the parties. Such direction as it applies to rights of visitation with a child remanded or placed in the care of a person, official, agency or institution pursuant to article ten of the family court act, or pursuant to an instrument approved under section three hundred fifty-eight-a of the social services law, shall be enforceable pursuant to part eight of article ten of the family court act and sections three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and other applicable provisions of law against any person having care and custody, or temporary care and custo-

dy, of the child. Notwithstanding any other provision of law, any written application or motion to the court for the establishment, modification or enforcement of a child support obligation for persons not in receipt of public assistance and care must contain either a request for child support enforcement services which would authorize the collection of the support obligation by the immediate issuance of an income execution for support enforcement as provided for by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section fifty-two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of any such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date of birth of the child or children; and the name and address of the employers and income payors of the party from whom child support is sought or from the party ordered to pay child support to the other party. Such direction may require the payment of a sum or sums of money either directly to the custodial parent or to third persons for goods or services furnished for such child, or for both payments to the custodial parent and to such third persons; provided, however, that unless the party seeking or receiving child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law. Every order directing the payment of support shall require that if either parent currently, or at any time in the future, has health insurance benefits available that may be extended or obtained to cover the child, such parent is required to exercise the option of additional coverage in favor of such child and execute and deliver to such person any forms, notices, documents or instruments necessary to assure timely payment of any health insurance claims for such child.

1-D. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE COURT SHALL NOT CONSIDER THE PAST OR CURRENT DEPLOYMENT, OR POSSIBLE FUTURE DEPLOYMENT OF A PARENT IN ACTIVE SERVICE OF THE ARMED FORCES OF THE UNITED STATES OR OF THE ORGANIZED MILITIA OF THE STATE OF NEW YORK AS A DETRIMENTAL FACTOR TO THE AWARDING OF CUSTODY OF A CHILD TO A PETITIONING PARENT WHERE A SUITABLE CHILD CARE PLAN HAS BEEN PRESENTED TO THE COURT BY SUCH PARENT.

S 4. Section 304 of the military law, as amended by chapter 507 of the laws of 1991, is amended to read as follows:

S 304. Proceedings to be stayed unless interest unaffected by military service. At any stage thereof, any action or proceeding in any court or in any adjudicatory or licensing proceeding before any state agency, including any public benefit corporation or public authority, or any political subdivision of the state, in which a person in military service OR A MINOR DEPENDENT OF A MILITARY MEMBER is involved as a

party, during the period of such service or within sixty days thereafter may, in the discretion of the court or adjudicatory or licensing agency before which it is pending, on its own motion, and shall, on application to it by such person or some person on his OR HER behalf, be stayed as provided in this [act] ARTICLE, unless, in the opinion of the court or adjudicatory or licensing agency, the ability of plaintiff to prosecute the action, or the defendant to conduct his OR HER defense, or in any adjudicatory or licensing proceeding the ability of the party to represent his OR HER interest, is not materially affected by reason of his OR HER military service OR MILITARY SERVICE OF THE PARENT OR GUARDIAN OF SUCH MINOR DEPENDENT.

S 5. This act shall take effect immediately.