

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:

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

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

10 S 2. Subdivision 3 of section 75-1 of the domestic relations law, as  
11 amended by chapter 473 of the laws of 2009, is amended to read as  
12 follows:

13 3. Unless the parties have otherwise stipulated or agreed, if an order  
14 is issued under this section, the return of the parent from active mili-  
15 tary service, deployment or temporary assignment shall be considered a  
16 substantial change in circumstances, AND WITHIN THIRTY DAYS OF SUCH  
17 RETURN THE CHILD CUSTODY ORDER IN EFFECT IMMEDIATELY PRIOR TO ANY  
18 MODIFICATIONS THEREOF PURSUANT TO SUBDIVISIONS ONE AND TWO OF THIS  
19 SECTION SHALL BE REINSTATED AND BE IN FULL FORCE AND EFFECT. [Upon the  
20 request of either parent, the court shall determine on the basis of the  
21 child's best interests whether the custody judgment or order previously  
22 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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1 S 3. Paragraph (a) of subdivision 1 of section 240 of the domestic  
2 relations law, as amended by chapter 476 of the laws of 2009, is amended  
3 and a new subdivision 1-d is added to read as follows:

4 (a) In any action or proceeding brought (1) to annul a marriage or to  
5 declare the nullity of a void marriage, or (2) for a separation, or (3)  
6 for a divorce, or (4) to obtain, by a writ of habeas corpus or by peti-  
7 tion and order to show cause, the custody of or right to visitation with  
8 any child of a marriage, the court shall require verification of the  
9 status of any child of the marriage with respect to such child's custody  
10 and support, including any prior orders, and shall enter orders for  
11 custody and support as, in the court's discretion, justice requires,  
12 having regard to the circumstances of the case and of the respective  
13 parties and to the best interests of the child and subject to the  
14 provisions of [subdivision] SUBDIVISIONS one-c AND ONE-D of this  
15 section. Where either party to an action concerning custody of or a  
16 right to visitation with a child alleges in a sworn petition or  
17 complaint or sworn answer, cross-petition, counterclaim or other sworn  
18 responsive pleading that the other party has committed an act of domes-  
19 tic violence against the party making the allegation or a family or  
20 household member of either party, as such family or household member is  
21 defined in article eight of the family court act, and such allegations  
22 are proven by a preponderance of the evidence, the court must consider  
23 the effect of such domestic violence upon the best interests of the  
24 child, together with such other facts and circumstances as the court  
25 deems relevant in making a direction pursuant to this section and state  
26 on the record how such findings, facts and circumstances factored into  
27 the direction. If a parent makes a good faith allegation based on a  
28 reasonable belief supported by facts that the child is the victim of  
29 child abuse, child neglect, or the effects of domestic violence, and if  
30 that parent acts lawfully and in good faith in response to that reason-  
31 able belief to protect the child or seek treatment for the child, then  
32 that parent shall not be deprived of custody, visitation or contact with  
33 the child, or restricted in custody, visitation or contact, based solely  
34 on that belief or the reasonable actions taken based on that belief. If  
35 an allegation that a child is abused is supported by a preponderance of  
36 the evidence, then the court shall consider such evidence of abuse in  
37 determining the visitation arrangement that is in the best interest of  
38 the child, and the court shall not place a child in the custody of a  
39 parent who presents a substantial risk of harm to that child, and shall  
40 state on the record how such findings were factored into the determi-  
41 nation. An order directing the payment of child support shall contain  
42 the social security numbers of the named parties. In all cases there  
43 shall be no prima facie right to the custody of the child in either  
44 parent. Such direction shall make provision for child support out of the  
45 property of either or both parents. The court shall make its award for  
46 child support pursuant to subdivision one-b of this section. Such direc-  
47 tion may provide for reasonable visitation rights to the maternal and/or  
48 paternal grandparents of any child of the parties. Such direction as it  
49 applies to rights of visitation with a child remanded or placed in the  
50 care of a person, official, agency or institution pursuant to article  
51 ten of the family court act, or pursuant to an instrument approved under  
52 section three hundred fifty-eight-a of the social services law, shall be  
53 enforceable pursuant to part eight of article ten of the family court  
54 act and sections three hundred fifty-eight-a and three hundred eighty-  
55 four-a of the social services law and other applicable provisions of law  
56 against any person having care and custody, or temporary care and custo-

1 dy, of the child. Notwithstanding any other provision of law, any writ-  
2 ten application or motion to the court for the establishment, modifica-  
3 tion or enforcement of a child support obligation for persons not in  
4 receipt of public assistance and care must contain either a request for  
5 child support enforcement services which would authorize the collection  
6 of the support obligation by the immediate issuance of an income  
7 execution for support enforcement as provided for by this chapter,  
8 completed in the manner specified in section one hundred eleven-g of the  
9 social services law; or a statement that the applicant has applied for  
10 or is in receipt of such services; or a statement that the applicant  
11 knows of the availability of such services, has declined them at this  
12 time and where support enforcement services pursuant to section one  
13 hundred eleven-g of the social services law have been declined that the  
14 applicant understands that an income deduction order may be issued  
15 pursuant to subdivision (c) of section fifty-two hundred forty-two of  
16 the civil practice law and rules without other child support enforcement  
17 services and that payment of an administrative fee may be required. The  
18 court shall provide a copy of any such request for child support  
19 enforcement services to the support collection unit of the appropriate  
20 social services district any time it directs payments to be made to such  
21 support collection unit. Additionally, the copy of any such request  
22 shall be accompanied by the name, address and social security number of  
23 the parties; the date and place of the parties' marriage; the name and  
24 date of birth of the child or children; and the name and address of the  
25 employers and income payors of the party from whom child support is  
26 sought or from the party ordered to pay child support to the other  
27 party. Such direction may require the payment of a sum or sums of money  
28 either directly to the custodial parent or to third persons for goods or  
29 services furnished for such child, or for both payments to the custodial  
30 parent and to such third persons; provided, however, that unless the  
31 party seeking or receiving child support has applied for or is receiving  
32 such services, the court shall not direct such payments to be made to  
33 the support collection unit, as established in section one hundred  
34 eleven-h of the social services law. Every order directing the payment  
35 of support shall require that if either parent currently, or at any time  
36 in the future, has health insurance benefits available that may be  
37 extended or obtained to cover the child, such parent is required to  
38 exercise the option of additional coverage in favor of such child and  
39 execute and deliver to such person any forms, notices, documents or  
40 instruments necessary to assure timely payment of any health insurance  
41 claims for such child.

42 1-D. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE  
43 COURT SHALL NOT CONSIDER THE PAST OR CURRENT DEPLOYMENT, OR POSSIBLE  
44 FUTURE DEPLOYMENT OF A PARENT IN ACTIVE SERVICE OF THE ARMED FORCES OF  
45 THE UNITED STATES OR OF THE ORGANIZED MILITIA OF THE STATE OF NEW YORK  
46 AS A DETRIMENTAL FACTOR TO THE AWARDING OF CUSTODY OF A CHILD TO A PETI-  
47 TIONING PARENT WHERE A SUITABLE CHILD CARE PLAN HAS BEEN PRESENTED TO  
48 THE COURT BY SUCH PARENT.

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

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

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

12 S 5. This act shall take effect immediately.