

1 SB159
2 147857-1
3 By Senators Taylor, Holtzclaw and Whatley
4 RFD: Veterans and Military Affairs
5 First Read: 07-FEB-13

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8 SYNOPSIS: Under existing law, many service members
9 have custody of or visitation rights with a child.

10 This bill would prohibit a court from
11 entering a final order altering an existing custody
12 arrangement while the custodial parent is
13 unavailable due to military service.

14 This bill would provide that past, current,
15 or future absences due to military service shall
16 not serve as the sole basis for altering a custody
17 order in place prior to the absence.

18 This bill would provide that the custody
19 order in place before the absence of a military
20 parent due to military service must be reinstated
21 within a set time upon the return of the military
22 parent, absent proof that reinstatement would not
23 be in the best interests of the child. This bill
24 would provide that the non-absent parent would bear
25 the burden of proof.

26 This bill would provide that a service
27 member with visitation rights may petition the

1 court to delegate those visitation rights to a
2 third person during the absence of the service
3 member due to military service.

4 This bill would authorize expedited and
5 electronic hearings for certain parents deployed
6 for military service.

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8 A BILL
9 TO BE ENTITLED
10 AN ACT

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12 To prohibit a final custody order altering an
13 existing custody arrangement from being entered while the
14 custodial parent is unavailable due to military service; to
15 provide that past, current, or future absence due to military
16 service may not serve as the sole basis for altering a final
17 custody order in place prior to an absence due to military
18 service; to provide that military deployment shall not be the
19 sole factor in making a custody determination; to provide that
20 a service member may ask the court to delegate his or her
21 guardianship or visitation rights during the service member's
22 absence due to military service; to authorize expedited
23 hearing for service members soon to be deployed; and to
24 provide for electronic hearings for service members.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. This act shall be known and may be cited
27 as the "Military Custody and Visitation Act."

1 Section 2. The Legislature recognizes and finds all
2 of the following:

3 (1) Military parents are important to the
4 well-being, safety, security, and development of their
5 children. Absences due to military service can undermine and
6 disrupt existing custodial arrangements, creating stress on
7 parents and children. The welfare of the child is paramount,
8 but it is also important that absence due to military service
9 should never be the sole basis for a loss of custody or
10 diminished visitation rights.

11 (2) Alabama has a large population of persons who
12 serve in the military, a majority of whom serve a traditional
13 part-time role. Many of these service members are parents to
14 children under the age of 18.

15 (3) The mobilization of these military parents, with
16 sometimes little advance notice, can have a disruptive effect
17 on custody or visitation arrangements involving minor
18 children.

19 (4) It is in the best interests of these children to
20 minimize the loss of parental contact and disruption of the
21 family that results from the service member's absence pursuant
22 to military orders due to temporary duty performed outside the
23 state, deployment, or mobilization.

24 (5) It is important to maintain parent-child contact
25 as much as feasible when the parent of a child is absent due
26 to military orders.

1 (6) It is in the best interests of these children
2 for the courts to address the military membership of one or
3 both parents at the time of the initial custodial order or
4 anytime thereafter, regardless of whether the service member
5 has temporary duty orders or a deployment or mobilization
6 order.

7 (7) The regular scheduling of hearings may be
8 harmful to the interests of service members who, due to
9 military orders, may need an expedited hearing or may need to
10 use electronic means to give testimony when they cannot appear
11 in person in court.

12 (8) The use of expedited hearing and testimony by
13 electronic means, at the request of the service member who is
14 absent or about to depart, would aid and promote fair,
15 efficient, and prompt judicial processes for the resolution of
16 family law matters.

17 Section 3. For purposes of this act, the following
18 terms shall have the following meanings:

19 (1) CUSTODY ORDER. A judgment, decree, or other
20 order of a court providing for legal custody, physical
21 custody, or visitation with respect to a child. The term
22 refers to a permanent, temporary, or modification order.

23 (2) DEPLOY or DEPLOYMENT. Military service in
24 compliance with military orders received by a member of the
25 United States Armed Forces, including any reserve component
26 thereof to report for combat operations, contingency
27 operations, peacekeeping operations, a remote tour of duty, or

1 other active service for which the deploying parent is
2 required to report unaccompanied by any family member.
3 Deployment includes a period during which a military parent
4 remains subject to deployment orders and remains deployed on
5 account of sickness, wounds, leave, or other lawful cause.

6 (3) DEPLOYING PARENT. A military parent who has been
7 notified by military leadership that he or she will deploy or
8 mobilize with the United States Armed Forces, including any
9 reserve component thereof, or who is currently deployed or
10 mobilized with the United States Armed Forces, including any
11 reserve component thereof.

12 (4) MILITARY PARENT. A natural parent, adoptive
13 parent, or legal parent of a child under the age of 18 whose
14 parental rights have not been terminated or transferred to the
15 state or another person through a juvenile proceeding or
16 guardianship proceeding by a court of competent jurisdiction,
17 and who is a member of the United States Armed Forces,
18 including any reserve component thereof, or the National
19 Guard.

20 (5) MOBILIZATION and MOBILIZE. The call-up of
21 National Guard or reserve service members to extended active
22 service. Mobilization does not include National Guard or
23 reserve annual training, inactive duty days, drill weekends,
24 temporary duty, or state active duty.

25 (6) NONDEPLOYING PARENT. A parent who is not a
26 military parent or is a military parent who is currently not a
27 deploying parent.

1 (7) STATE ACTIVE DUTY. The call-up by a Governor for
2 the performance of any military duty in state status.

3 (8) TEMPORARY DUTY. The transfer of a service member
4 to a geographic location outside Alabama for a limited period
5 of time to accomplish training or to assist in the performance
6 of a noncombat mission.

7 Section 4. (a) If a deploying parent is required to
8 be separated from a child as a result of deployment, a court
9 shall not enter a final order modifying the parental rights,
10 responsibilities, and parent-child contact provided in an
11 existing child custody or visitation order until 90 days after
12 the deployment ends, unless such modification is agreed to by
13 the deploying parent.

14 (b) Absence created by deployment or mobilization or
15 the potential for future deployment or mobilization shall not
16 be the sole factor supporting a final order modifying parental
17 rights and responsibilities and parent-child contact in any
18 existing order.

19 Section 5. (a) Upon motion of a deploying or
20 nondeploying parent, the court shall enter a temporary custody
21 order modifying the parental rights, responsibilities, or
22 parent-child contact during the period of deployment or
23 mobilization when both of the following occur:

24 (1) A military parent who has shared, sole, or
25 primary legal or physical parental rights and responsibilities
26 for a child or who has parent-child contact pursuant to an
27 existing court order has received notice from military

1 leadership that he or she will deploy or mobilize in the near
2 future.

3 (2) The deployment or mobilization would have a
4 material effect upon the ability of that parent to exercise
5 his or her parental rights and responsibilities or
6 parent-child contact.

7 (b) Motions for modification because of deployment
8 shall be heard by the court as expeditiously as possible, and
9 shall be a priority for this purpose.

10 (c) (1) All temporary modification orders shall
11 include a specific transition schedule to facilitate a return
12 to the pre-deployment order over the shortest reasonable time
13 period after the deployment ends, taking into consideration
14 the best interest of the child.

15 (2) The temporary order shall set a date certain for
16 the end of deployment and the start of the transition period.
17 If deployment is extended, the temporary order shall remain in
18 effect during the extended deployment, and the transition
19 schedule shall take effect at the end of the extended
20 deployment. In that case, the nondeployed parent shall notify
21 the court of the extended deployment. Failure of the
22 nondeployed parent to notify the court in accordance with this
23 subdivision shall not prejudice the deployed parent's right to
24 return to the prior order once the temporary order expires as
25 provided in subdivision (3).

26 (3) The temporary order shall expire upon the
27 completion of the transition, and the prior order for parental

1 rights and responsibilities and parent-child contact shall be
2 in effect.

3 (d) Upon motion of the deploying parent, the court
4 may delegate his or her parent-child contact rights, or a
5 portion of them, to a family member, a person with whom the
6 deploying parent cohabits, or another person with a close and
7 substantial relationship to the minor child or children for
8 duration of the deployment, upon a finding that it is in the
9 child's best interest. Such delegated contact does not create
10 separate rights to parent-child contact for a person other
11 than a parent once the temporary order is no longer in effect.

12 (e) A temporary modification order issued pursuant
13 to this section shall designate the deploying parent's
14 parental rights and responsibilities for and parent-child
15 contact with a child during a period of leave granted to the
16 deploying parent, in the best interests of the child.

17 (f) A temporary order issued under this section may
18 require any of the following if the court finds that it is in
19 the best interest of the child:

20 (1) The nondeploying parent shall make the child
21 reasonably available to the deploying parent when the
22 deploying parent has leave.

23 (2) The nondeploying parent shall facilitate
24 opportunities for telephonic, electronic mail, and other such
25 contact between the deploying parent and the child during the
26 deployment.

1 (3) The deploying parent shall provide timely
2 information regarding his or her leave schedule to the
3 nondeploying parent. Actual leave dates that are subject to
4 change with little notice due to military necessity shall not
5 be used by the nondeploying parent to prevent parent-child
6 contact.

7 (g) A court order modifying a previous order for
8 parental rights and responsibilities or parent-child contact
9 because of deployment shall specify that the deployment is the
10 basis for the order, and it shall be entered by the court as a
11 temporary order. The order shall require the nondeploying
12 parent to provide the court and the deploying parent with 30
13 days' advance written notice of any change of address and any
14 change of telephone number.

15 Section 6. (a) Upon the return of the deploying
16 parent, either parent may file a motion to modify the
17 temporary order on the grounds that compliance with the order
18 will result in immediate danger of irreparable harm to the
19 child, and may request that the court issue an ex parte order.
20 The deploying parent may file such a motion prior to his or
21 her return. The motion shall be accompanied by an affidavit in
22 support of the requested order. Upon a finding of irreparable
23 harm based on the facts set forth in the affidavit, the court
24 may issue an ex parte order modifying parental rights and
25 responsibilities and parent-child contact. If the court issues
26 an ex parte order, the court shall set the matter for hearing
27 within 10 days from the issuance of the order.

1 (b) Nothing in this act shall preclude the court
2 from hearing a motion for permanent modification of parental
3 rights and responsibilities or parent-child contact prior to
4 or upon return of the deploying parent. The moving party shall
5 bear the burden of showing a real, substantial, and
6 unanticipated change in circumstances and that resumption of
7 the parental rights and responsibilities or parent-child order
8 in effect before the deployment is no longer in the best
9 interests of the child. Absence created by deployment or
10 mobilization or the potential for future deployment or
11 mobilization shall not be the sole factor supporting a motion
12 for permanent modification of parental rights and
13 responsibilities or parent-child contact based on a real,
14 substantial, and unanticipated change in circumstances.

15 Section 7. Upon motion of a deploying parent,
16 provided reasonable advance notice is given and good cause
17 shown, the court shall allow the parent to present testimony
18 and evidence by electronic means with respect to parental
19 rights and responsibilities or parent-child contact matters
20 instituted under this section when the deployment of that
21 parent has a material effect on his or her ability to appear
22 in person at a regularly scheduled hearing. Electronic means
23 includes communication by telephone or video teleconference.

24 Section 8. (a) If there is no existing order
25 establishing the terms of parental rights and responsibilities
26 or parent-child contact and it appears that deployment or
27 mobilization is imminent, upon an action filed by either

1 parent, the court shall expedite a hearing to establish
2 temporary parental rights and responsibilities and
3 parent-child contact to ensure the deploying parent has access
4 to the child, to ensure disclosure of information, to grant
5 other rights and duties set forth herein, and to provide other
6 appropriate relief.

7 (b) Any initial pleading filed to establish parental
8 rights and responsibilities for or parent-child contact with a
9 child of a deploying parent shall be so identified at the time
10 of filing by stating in the text of the pleading the specific
11 facts related to deployment.

12 Section 9. (a) Because military necessity may
13 preclude court adjudication before deployment, the parties
14 shall cooperate with each other in an effort to reach a
15 mutually agreeable resolution of parental rights and
16 responsibilities, parent-child contact, and child support.
17 Each party shall provide information to the other in an effort
18 to facilitate agreement on these issues.

19 (b) Within 14 days of receiving notification of
20 deployment or mobilization, the military parent shall provide
21 written notice to the nondeploying parent of the same. If less
22 than 14 days' notice is received by the military parent then
23 notice shall be given immediately upon receipt of notice to
24 the nondeploying parent.

25 Section 10. In determining whether a parent has
26 failed to exercise parent-child contact, the court shall not
27 count any time periods during which the parent did not

1 exercise such contact due to the material effect of that
2 parent's military duties on the contact schedule.

3 Section 11. In making a determination pursuant to
4 this act, the court may award attorney's fees and costs based
5 on consideration of any of the following:

6 (1) Unreasonable failure of a party to accommodate
7 the other party in parental rights, responsibilities, or
8 parent-child contact matters related to a deploying parent. A
9 parent's refusal to accommodate the other parent shall not be
10 considered unreasonable if the parent demonstrated a
11 reasonable fear for his or her safety or the safety of his or
12 her child.

13 (2) Unreasonable delay caused by either party in
14 resolving parental rights and responsibilities or parent-child
15 contact related to a deploying parent.

16 (3) Failure of either party to provide timely
17 information about income and earnings information to the other
18 party.

19 (4) Other factors as the court may consider
20 appropriate and as may be required by law.

21 Section 12. All laws or parts of laws which conflict
22 with this act are repealed.

23 Section 13. This act shall become effective
24 immediately following its passage and approval by the
25 Governor, or its otherwise becoming law.