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SENATE BILL 130

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Daniel A. Ivey-Soto and Nathan "Nate" Cote

FOR THE MILITARY AND VETERANS' AFFAIRS COMMITTEE

AN ACT

RELATING TO DOMESTIC RELATIONS; ENACTING THE SERVICE MEMBER
CHILD CUSTODY ACT; ESTABLISHING PROCEDURES FOR MODIFYING
EXISTING CUSTODY, TIME-SHARING OR VISITATION ORDERS FOR
CHILDREN OF SERVICE MEMBERS; PROHIBITING ENTRY OF FINAL ORDERS
MODIFYING EXISTING CHILD CUSTODY, TIME-SHARING OR VISITATION
ORDERS WHILE A SERVICE MEMBER IS UNAVAILABLE PURSUANT TO
MILITARY ORDERS; PROHIBITING THE MODIFICATION OF EXISTING CHILD
CUSTODY, TIME-SHARING OR VISITATION ORDERS SOLELY BECAUSE A
SERVICE MEMBER IS ABSENT OR MIGHT BE ABSENT PURSUANT TO
MILITARY ORDERS; PROVIDING FOR A SERVICE MEMBER TO DELEGATE
VISITATION RIGHTS; PROVIDING FOR AN EXPEDITED HEARING WHEN A
SERVICE MEMBER WILL BE UNAVAILABLE PURSUANT TO MILITARY ORDERS;
PROVIDING FOR ELECTRONIC TESTIMONY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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1 SECTION 1. ~~[NEW MATERIAL]~~ SHORT TITLE.--This act may be
2 cited as the "Service Member Child Custody Act".

3 SECTION 2. ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the
4 Service Member Child Custody Act:

5 A. "child" means an individual who has not attained
6 eighteen years of age or is not otherwise legally emancipated;

7 B. "deploying parent" means a military parent who
8 has received written orders to deploy with the United States
9 army, navy, air force, marine corps, coast guard or national
10 guard or a reserve component thereof;

11 C. "deployment" means military service in
12 compliance with military orders received by a service member to
13 report for combat operations, contingency operations,
14 peacekeeping operations, temporary duty, a remote tour of duty
15 or other active service for which a service member is required
16 to report unaccompanied by any family member; and "deployment"
17 includes a period during which a service member remains subject
18 to deployment orders and remains deployed on account of
19 sickness, wounds, leave or other military cause;

20 D. "family member" means a person related by blood,
21 adoption or marriage and includes a spouse, child, sibling,
22 parent or grandparent or other person who may significantly
23 affect a child's best interest;

24 E. "military parent" means a parent who is a
25 service member;

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1 F. "non-deploying parent" means a parent not
2 subject to deployment;

3 G. "parent" includes a biological or adoptive
4 parent of a child or other person who provides care for a child
5 and may significantly affect the child's best interest;

6 H. "period of leave" means an authorized absence
7 from military duty; and

8 I. "service member" means a member of the United
9 States army, navy, air force, marine corps, coast guard or
10 national guard or a member of a reserve component thereof.

11 SECTION 3. [NEW MATERIAL] FINAL ORDERS.--

12 A. A court shall not enter a final order modifying
13 an existing order concerning custody, time-sharing or
14 visitation to which a deploying parent is a party until ninety
15 days after that deploying parent's deployment ends unless all
16 parties stipulate to the entry of a final order.

17 B. Nothing in this section shall be interpreted to
18 limit the power of a court to conduct a hearing concerning
19 custody, time-sharing or visitation in which a military parent
20 is a party and to issue a temporary order concerning custody,
21 time-sharing or visitation in the best interest of the child
22 until a final order may be issued.

23 SECTION 4. [NEW MATERIAL] MODIFICATION OF CUSTODY, TIME-
24 SHARING OR VISITATION--DEPLOYMENT NOT SOLE FACTOR.--Deployment
25 or the potential for future deployment is not in itself a

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1 substantial and material change in circumstance affecting the
2 welfare of a child. A court shall not use deployment or the
3 potential for future deployment as the sole factor to modify an
4 existing order concerning custody, time-sharing or visitation.

5 SECTION 5. [NEW MATERIAL] TEMPORARY MODIFICATION--LEAVE
6 AND OTHER ACCOMMODATIONS.--

7 A. A court may issue a temporary order to modify an
8 existing order concerning custody, time-sharing or visitation
9 to which a deploying parent is a party to make reasonable
10 accommodation for the child because of the deploying parent's
11 deployment.

12 B. A temporary modification order issued pursuant
13 to this section shall provide that:

14 (1) the deploying parent shall have custody of
15 the child or reasonable time-sharing or visitation, whichever
16 is applicable, pursuant to the existing order concerning child
17 custody or visitation, during a period of leave granted to the
18 deploying parent;

19 (2) the non-deploying parent shall facilitate
20 telephonic, electronic mail or other communications and contact
21 between the deploying parent and the child during deployment;
22 and

23 (3) the deploying parent shall provide
24 information regarding the deploying parent's period of leave
25 schedule to the non-deploying parent at least ten days prior to

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1 the commencement of the period of leave or within reasonable
2 time if the deploying parent received less than ten days'
3 notice of a period of leave.

4 C. The non-deploying parent shall make a reasonable
5 effort to afford the deploying parent custody, time-sharing and
6 visitation pursuant to the existing order and parenting plan
7 concerning custody, time-sharing and visitation; provided,
8 however, that the non-deploying parent shall not be obligated
9 to incur a financial burden to facilitate custody, time-sharing
10 and visitation with the deploying parent. A reasonable effort
11 to afford custody, time-sharing and visitation includes
12 facilitation of the transportation of the child within the
13 exterior boundaries of New Mexico and other facilitation for
14 the child to visit with the deploying parent.

15 D. A court modifying an existing order concerning
16 custody, time-sharing or visitation due to deployment shall
17 specify that the deployment is the basis for the modification
18 and shall enter the order as a temporary order. The court
19 shall require the non-deploying parent to provide the court and
20 the deploying parent with thirty days' advance written notice
21 of any change of address and any change of telephone number,
22 unless a domestic violence order requires that the address or
23 contact information of the non-deploying parent be kept
24 confidential pursuant to the Family Violence Protection Act.

25 E. Upon motion of a deploying parent notifying the

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1 court of imminent deployment, the court shall hold an expedited
2 hearing in the custody, time-sharing or visitation proceeding
3 to which that deploying parent is a party.

4 SECTION 6. [NEW MATERIAL] TERMINATION OF TEMPORARY ORDER
5 ISSUED DURING DEPLOYMENT.--

6 A. Except as provided in Subsection B of this
7 section, a temporary order modifying an existing order
8 concerning custody, time-sharing or visitation during
9 deployment of a military parent shall terminate no later than
10 ten days after the end of the deployment of the military
11 parent. The original terms of the existing order and parenting
12 plan concerning custody, time-sharing or visitation prior to
13 deployment shall be reinstated. The deploying parent shall
14 notify the court and the non-deploying parent, in writing, of
15 the deploying parent's termination of deployment at least
16 fifteen days prior to the termination of deployment. If the
17 address of the non-deploying parent is confidential due to a
18 domestic violence order, the deploying parent shall only notify
19 the court in writing of the deploying parent's termination of
20 deployment.

21 B. The court shall not terminate the temporary
22 order if either the deploying parent or non-deploying parent
23 files an emergency or expedited motion alleging an immediate
24 danger or irreparable harm to the child if the terms of the
25 existing order concerning custody, time-sharing or visitation

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1 is reinstated. The court shall hold a hearing within ten days
2 of the filing of an emergency or expedited motion by either the
3 deploying parent or non-deploying parent alleging an immediate
4 danger of irreparable harm to the child if the terms of the
5 existing order and parenting plan concerning custody, time-
6 sharing and visitation are reinstated.

7 SECTION 7. [NEW MATERIAL] DELEGATION OF VISITATION
8 RIGHTS.--

9 A. Upon motion of a deploying parent, or upon
10 motion of a family member of the deploying parent with the
11 consent of the deploying parent, the court may issue a
12 temporary order to delegate all or a portion of the deploying
13 parent's visitation rights to a family member with a close and
14 substantial relationship to the child or to the non-deploying
15 parent for the duration of the deployment if in the best
16 interest of the child. The person to whom delegated visitation
17 rights are granted shall have full legal standing to enforce
18 that temporary order.

19 B. The delegation of visitation rights or access to
20 the child shall not create an entitlement or standing to assert
21 separate rights to a liberty interest in the care and custody
22 of the child for a person other than a parent. A temporary
23 order delegating the visitation rights of a deploying parent
24 shall terminate by operation of law upon the end of that
25 deploying parent's deployment.

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1 C. A delegation of visitation rights shall not
2 exceed the visitation time granted to the deploying parent
3 under the existing order concerning child custody or
4 visitation, unless the court determines that additional time is
5 required to transport the child.

6 **SECTION 8. [NEW MATERIAL] TESTIMONY.--**

7 A. In addition to other procedures available to a
8 party, a party to a custody, time-sharing or visitation
9 proceeding involving the child of a service member may offer
10 testimony of witnesses who are located in another state or
11 country, including testimony of the parties and the child, by
12 deposition or other means allowable in this state for testimony
13 taken in another state or country. The court on its own motion
14 may order that the testimony of a person be taken in another
15 state or country and may prescribe the manner in which and the
16 terms upon which the testimony is taken.

17 B. A court of this state may permit an individual
18 residing in another state or country to be deposed or to
19 testify by telephone, audiovisual means or other electronic
20 means before a designated court or at another location in that
21 state or country. A court of this state shall cooperate with
22 courts of other states or military facilities and courts in
23 other countries in designating an appropriate location for the
24 deposition or testimony.

25 **SECTION 9. [NEW MATERIAL] NO EXISTING ORDER.--**

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1 A. If a military parent has not been issued an
2 order concerning the terms of custody, time-sharing or
3 visitation and it appears that deployment is imminent, upon the
4 filing of initial pleadings and a motion by either the
5 deploying parent or the non-deploying parent notifying the
6 court in the title of the pleading that deployment of a
7 military parent is imminent, the court shall expedite a hearing
8 to establish temporary custody, time-sharing or visitation to
9 ensure that the military parent has access to the child during
10 deployment, to ensure disclosure of information, to grant other
11 rights and duties pursuant to the Service Member Child Custody
12 Act and to provide other appropriate relief.

13 B. An initial pleading filed to establish custody,
14 time-sharing or visitation for a child of a deploying parent
15 shall be identified at the time of filing by stating in the
16 title of the pleading that the matter concerns a deploying
17 parent, and the pleading shall state the specific facts related
18 to the deployment.

19 SECTION 10. [NEW MATERIAL] DUTY TO COOPERATE AND DISCLOSE
20 INFORMATION.--A deploying parent shall provide a copy of the
21 deployment orders to the non-deploying parent promptly and
22 without delay before deployment. Notification shall be made
23 within ten days of the receipt of the deployment orders or
24 notification of a period of leave. If less than ten days'
25 notification is received by the deploying parent, then

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1 notification to the non-deploying parent shall be given
2 immediately upon receipt of the deployment orders. If all or
3 part of the orders are classified or restricted as to release,
4 the deploying parent shall provide all nonclassified or
5 nonrestricted information to the non-deploying parent.

6 SECTION 11. [NEW MATERIAL] FAILURE TO EXERCISE TIME-
7 SHARING OR VISITATION RIGHTS.--In determining whether a parent
8 has failed to exercise time-sharing or visitation rights, the
9 court shall not count any time periods during which the
10 military parent did not exercise time-sharing or visitation due
11 to the material effect of that military parent's military
12 duties on time-sharing or visitation time.

13 SECTION 12. [NEW MATERIAL] REMOVAL FROM THE STATE.--Once
14 an order for child custody involving the child of a military
15 parent has been entered in this state, any absence of a child
16 from this state during the military parent's deployment shall
17 be designated a "temporary absence" for the purposes of the
18 application of the Uniform Child-Custody Jurisdiction and
19 Enforcement Act. For the duration of the military parent's
20 deployment, this state shall retain exclusive continuing
21 jurisdiction under that act and the non-deploying parent shall
22 not use the non-deploying parent's relocation to another state
23 as a basis to assert inconvenience of the forum under that act.

24 SECTION 13. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2014.

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