AMENDED

February 12, 2009

**H. 3171**

Introduced by Reps. J.E. Smith, H.B. Brown, E.H. Pitts, Williams and Jefferson

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Read the first time January 13, 2009.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 7 TO CHAPTER 5, TITLE 63 SO AS TO ENACT THE “MILITARY PARENT EQUAL PROTECTION ACT”, TO PROVIDE THAT A MILITARY PARENT’S MILITARY SERVICE SHALL NOT BE CONSIDERED A CHANGE IN CIRCUMSTANCE FOR PURPOSES OF CHILD CUSTODY AND VISITATION, TO PROVIDE THAT THE CUSTODIAL NONMILITARY PARENT MUST REASONABLY ACCOMMODATE THE MILITARY PARENT’S LEAVE SCHEDULE, TO PROVIDE THAT THE FAMILY COURT MAY HOLD AN EXPEDITED TEMPORARY HEARING TO ENSURE THAT THE MILITARY PARENT HAS ACCESS TO A MINOR CHILD, AND TO PROVIDE THAT AN INCREASE OR DECREASE IN EARNING CAPACITY DUE TO MILITARY SERVICE IS NOT CONSIDERED A PERMANENT CHANGE; AND BY ADDING SECTION 15‑1‑340 SO AS TO PROVIDE THAT A SERVICE MEMBER ENTITLED TO A STAY PURSUANT TO THE SERVICE MEMBERS CIVIL RELIEF ACT MAY SEEK RELIEF AND PROVIDE TESTIMONY BY ELECTRONIC MEANS UNDER CERTAIN CONDITIONS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 5, Title 63 of the 1976 Code is amended by adding:

“Article 7

Military Parent Equal Protection Act

Section 63‑5‑900. This article may be cited as the ‘Military Parent Equal Protection Act’.

Section 63‑5‑910. For purposes of this article:

(A)(1) In the case of a parent who is a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or a Reserve component of these services, ‘military service or service’ means a deployment for combat operations, a contingency operation, or a natural disaster based on orders that do not permit a family member to accompany the member on the deployment.

(2) In the case of a parent who is a member of the National Guard, ‘military service or service’ means service under a call to active service authorized by the President of the United States or the Secretary of Defense for a period of more than thirty consecutive days pursuant to 32 U.S.C. 502(f) for purposes of responding to a national emergency declared by the President and supported by federal funds.

‘Military service or service’ includes a period during which a military parent remains subject to deployment orders and remains deployed on account of sickness, wounds, leave, or other lawful cause.

(B) ‘Military parent’ means a natural parent or adoptive parent of a child under the age of eighteen whose parental rights have not been terminated by a court of competent jurisdiction.

Section 63‑5‑920. (A) If a military parent is required to be separated from a child due to military service, a court shall not enter a final order modifying the terms establishing custody or visitation contained in an existing order until ninety days after the military parent is released from military service. A military parent’s absence or relocation because of military service must not be the sole factor supporting a change in circumstance or grounds sufficient to support a permanent modification of the custody or visitation terms established in an existing order.

(B) An existing order establishing the terms of custody or visitation in place at the time a military parent is called to military service may be temporarily modified to make reasonable accommodation for the parties because of the military parent’s service. A temporary modification automatically terminates when the military parent is released from service and, upon release, the original terms of the custody or visitation order in place at the time the military parent was called to military service are automatically reinstated.

(C) A temporary modification order issued pursuant to this section must provide that the military parent has custody of the child or reasonable visitation, whichever is applicable pursuant to the original order, with the child during a period of leave granted to the military parent during their military service. If a temporary modification order is not issued pursuant to this section, the nonmilitary custodial parent shall make the child or children reasonably available to the military parent when the military parent has leave to ensure that the military parent has reasonable visitation and is able to visit the child or children.

(D) If there is no existing order establishing the terms of custody or visitation and it appears that military service is imminent, upon motion by either parent, the court shall expedite a temporary hearing to establish temporary custody or visitation to ensure the military parent has access to the child, to establish support, and provide other appropriate relief.

Section 63‑5‑930. (A) If a military parent is called to military service, either parent may file a notice of activation of military service and petition to modify a support order. In the petition, the parent must cite the basis for modifying the support order and the military parent’s change in financial circumstances supporting the petition.

(B) Based upon application of the South Carolina Child Support Guidelines required by Section 43-5-580(b), the court shall temporarily modify the amount of child support for the duration of the military parent’s military service based on changes in income and earning capacity of the military parent during military service. An increase or decrease in income or earning capacity of a military parent due to military service may only be used to calculate support during the period of military service and must not be considered a permanent increase in wages or earning capacity. The effective date for a temporary modification must be the date the military parent begins military service or the date of filing, whichever is later.

(C) Upon return from military service, the military parent’s child support obligation prior to a temporary modification is automatically reinstated, effective on the date the military parent is released from service. Within ninety days of the military parent’s release from service, either parent may make a subsequent request for modification to correspond to a change in the military parent’s nonservice related income or earning capacity. A modification must be based upon the income or earning capacity of the military parent following the period of military service.

(D) Except for modifying a child support obligation during military service pursuant to this section, a military parent’s income during military service must not be used to determine the military parent’s income or earning capacity.

Section 63‑5‑940. (A) Military necessity may preclude court adjudication before mobilization, and the parties are encouraged to negotiate mutually agreeable arrangements prior to mobilization.

(B) The nonmilitary parent and the military parent shall cooperate with each other in an effort to reach a mutually agreeable resolution of custody, visitation, and child support. Each party shall provide information to each other in an effort to facilitate agreement on custody, visitation, and child support.

(C) A provision of custody, visitation, or child support agreed to by the parties pursuant to this section must not be deemed a substantial change of circumstances in an action for custody, visitation, or child support which occurs subsequent to termination of the military parent’s military service. A negotiation of the parties concerning custody, visitation, and child support related to the military service conducted pursuant to this section are deemed settlement negotiations and are not admissible in custody, visitation, and child support actions between the parties after termination of the military parent’s military service.

Section 63‑5‑950. In making determinations pursuant to this article, the court may award attorney’s fees and costs based on the court’s consideration of:

(1) the failure of either party to reasonably accommodate the other party in custody, visitation, and support matters related to a military parent’s service;

(2) unreasonable delay caused by either party in resolving custody, visitation, and support matters related to a military parent’s service;

(3) failure of either party to timely provide income and earnings information to the other party; and

(4) other factors as the court may consider appropriate and as may be required by law.”

SECTION 2. Chapter 1, Title 15 of the 1976 Code is amended by adding:

“Section 15‑1‑340. (A) A service member who is entitled to a stay in civil proceedings pursuant to the Service Members Civil Relief Act, 50 U.S.C. App. Section 501, et seq. may elect to proceed while the service member is reasonably unavailable to appear in the geographical location in which the litigation is pursued and may seek relief and provide evidence through video‑conferencing, internet camera, email, or another reasonable electronic means. Testimony presented must be made under oath, in a manner viewable by all parties, and in the presence of a court reporter. In matters when a party who is physically present in the State is permitted to use affidavits or seek temporary relief, the service member may submit testimony by affidavit.

(B) The court must allow a party to proceed pursuant to this section unless an opposing party establishes a compelling reason not to proceed by clear and convincing evidence. The court must allow a party to present evidence pursuant to a method provided by this section unless an opposing party established that the method will cause a substantial injustice, deny effective cross examination, deny the right to confront the witness, or abridge another constitutional right.”

SECTION 3. This act takes effect upon approval by the Governor.

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