

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1107 Session of 2007

INTRODUCED BY FOLMER, BAKER, WASHINGTON, PUNT, CORMAN, STOUT, COSTA, RAFFERTY, KASUNIC, PILEGGI, FUMO, ORIE, M. WHITE, WOZNIAK, KITCHEN, BRUBAKER, BOSCOLA, REGOLA, STACK, PIPPY, BROWNE AND PICCOLA, OCTOBER 25, 2007

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, MARCH 18, 2008

AN ACT

1 Amending ~~Title 51~~ TITLES 23 (DOMESTIC RELATIONS) AND 51 <—  
2 (Military Affairs) of the Pennsylvania Consolidated Statutes,  
3 FURTHER PROVIDING FOR MODIFICATION OF EXISTING CUSTODY <—  
4 ORDERS; AND providing for protection of deployed members of  
5 the Pennsylvania National Guard and reserve components in  
6 child custody arrangements.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 ~~Section 1. Title 51 of the Pennsylvania Consolidated~~ <—  
10 ~~Statutes is amended by adding a section to read:~~

11 SECTION 1. SECTION 5310 OF TITLE 23 OF THE PENNSYLVANIA <—  
12 CONSOLIDATED STATUTES IS AMENDED TO READ:

13 § 5310. MODIFICATION OF EXISTING CUSTODY ORDERS.

14 [ANY] EXCEPT AS PROVIDED IN 51 PA.C.S. § 4109 (RELATING TO  
15 MILITARY CHILD CUSTODY PROTECTION), ANY ORDER FOR THE CUSTODY OF  
16 THE CHILD OF A MARRIAGE ENTERED BY A COURT IN THIS COMMONWEALTH  
17 OR ANY STATE MAY, SUBJECT TO THE JURISDICTIONAL REQUIREMENTS SET  
18 FORTH IN CHAPTER 54 (RELATING TO UNIFORM CHILD CUSTODY  
19 JURISDICTION AND ENFORCEMENT), BE MODIFIED AT ANY TIME TO AN

1 ORDER OF SHARED CUSTODY IN ACCORDANCE WITH THIS SUBCHAPTER.

2 SECTION 2. TITLE 51 IS AMENDED BY ADDING A SECTION TO READ:

3 § 4109. Military child custody protection.

4 (a) Restriction on change of custody.--If a motion for  
5 change of custody of a child of an eligible servicemember is  
6 filed with any court in this Commonwealth while the eligible  
7 servicemember is deployed in support of a contingency operation,  
8 no court may enter an order modifying or amending any previous  
9 judgment or order, or issue a new order, that changes the  
10 custody arrangement for that child that existed as of the date  
11 of the deployment of the eligible servicemember, except that a  
12 court may enter a temporary custody order if there is clear and  
13 convincing evidence that it is in the best interest of the  
14 child.

15 (b) Completion of deployment.--In any proceeding covered  
16 under subsection (a), a court shall require that, upon the  
17 return of the eligible servicemember from deployment in support  
18 of a contingency operation, the custody order that was in effect  
19 immediately preceding the date of the deployment or the eligible  
20 servicemember is reinstated.

21 (c) Exclusion of military service from determination of  
22 child's best interest.--If a motion for the change of custody of  
23 the child of an eligible servicemember who was deployed in  
24 support of a contingency operation is filed after the end of the  
25 deployment, no court may consider the absence of the eligible  
26 servicemember by reason of that deployment in determining the  
27 best interest of the child.

28 (d) Failure to appear due to military deployment.--The  
29 failure of an eligible servicemember to appear in court due to  
30 deployment in support of a contingency operation shall not, in

1 and of itself, be sufficient to justify a modification of a  
2 custody or visitation order if the reason for the absence,  
3 relocation or failure to comply is the eligible servicemember's  
4 active duty in support of a contingency operation.

5 (e) Notice.--An eligible servicemember deployed in support  
6 of contingency operations may send written notice of his or her  
7 status to any court with jurisdiction over the custody of the  
8 eligible servicemember's child or children and to the other  
9 parent or persons with physical custody of the eligible  
10 servicemember's child or children, provided that an eligible  
11 servicemember shall not be penalized for failure to send written  
12 notice. The written notice contemplated by this subsection  
13 should include the eligible servicemember's name, military rank  
14 or grade, unit of assignment, duty location, dates of duty or  
15 deployment, if known, and a copy of applicable military orders  
16 if not classified or otherwise protected from release.

17 (f) Relationship to other laws.--Notwithstanding any other  
18 provision of law, the provisions of this section shall be  
19 applied with regard to child custody issues related to eligible  
20 servicemembers deployed in support of contingency operations.

21 (g) Definitions.--As used in this section, the following  
22 words and phrases shall have the meanings given to them in this  
23 subsection:

24 "Contingency operation." A military operation that:

25 (1) is designated by the Secretary of Defense as an  
26 operation in which members of the armed forces are or may  
27 become involved in military actions, operations or  
28 hostilities against an enemy of the United States or against  
29 an opposing military force; or

30 (2) results in the call or order to, or retention on,

1 active duty of members of the uniformed services under 10  
2 U.S.C. § 688 (relating to retired members; authority to order  
3 to active duty; duties), 12301(a) (relating to reserve  
4 components generally), 12302 (relating to Ready Reserve),  
5 12304 (relating to Selected Reserve and certain Individual  
6 Ready Reserve members; order to active duty other than during  
7 war or national emergency), 12305 (relating to authority of  
8 President to suspend certain laws relating to promotion,  
9 retirement, and separation) or 12406 (relating to National  
10 Guard in Federal service: call) or any other provision of 10  
11 U.S.C. during a war or during a national emergency declared  
12 by the President or Congress.

13 "Eligible servicemember." A member of the Pennsylvania  
14 National Guard or a member of an active or reserve component of  
15 the Armed Forces of the United States who is serving on active  
16 duty, other than active duty for training, for a period of 30 or  
17 more consecutive days, in support of a contingency operation.

18 Section 2 3. This act shall take effect in 60 days.

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