

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

AS AMENDED ON THIRD CONSIDERATION, APRIL 29, 2008

AN ACT

1 Amending Titles 23 (Domestic Relations) and 51 (Military
2 Affairs) of the Pennsylvania Consolidated Statutes, further
3 providing for modification of existing custody orders; and
4 providing for protection of deployed members of the
5 Pennsylvania National Guard and reserve components in child
6 custody arrangements.

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

9 Section 1. Section 5310 of Title 23 of the Pennsylvania
10 Consolidated Statutes is amended to read:

11 § 5310. Modification of existing custody orders.

12 [Any] Except as provided in 51 Pa.C.S. § 4109 (relating to
13 military child custody protection CHILD CUSTODY PROCEEDINGS ←

14 DURING MILITARY DEPLOYMENT), any order for the custody of the
15 child of a marriage entered by a court in this Commonwealth or
16 any state may, subject to the jurisdictional requirements set
17 forth in Chapter 54 (relating to uniform child custody
18 jurisdiction and enforcement), be modified at any time to an
19 order of shared custody in accordance with this subchapter.

1 Section 2. Title 51 is amended by adding a section to read:

2 § 4109. ~~Military child custody protection~~ CHILD CUSTODY ←

3 PROCEEDINGS DURING MILITARY DEPLOYMENT.

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 TEMPORARY CUSTODY ORDER ENTERED under subsection (a), a court ←
17 shall require that, upon the return of the eligible
18 servicemember from deployment in support of a contingency
19 operation, the custody order that was in effect immediately
20 preceding the date of the deployment ~~or~~ OF the eligible ←
21 servicemember is reinstated.

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

29 (d) Failure to appear due to military deployment.--The
30 failure of an eligible servicemember to appear in court due to

1 deployment in support of a contingency operation shall not, in
2 and of itself, be sufficient to justify a modification of a
3 custody or visitation order if the reason for the absence, <—
4 relocation or failure to comply APPEAR is the eligible <—
5 servicemember's active duty in support of a contingency
6 operation.

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

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

23 ~~(g) (F) Definitions.--As used in this section, the following~~ <—
24 ~~words and phrases shall have the meanings given to them in this~~
25 ~~subsection:~~

26 "Contingency operation." A military operation that:

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

1 an opposing military force; or

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

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

20 Section 3. This act shall take effect in 60 days.