
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 SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
OCTOBER 6, 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 child custody proceedings during military deployment), any order
14 for the custody of the child of a marriage entered by a court in
15 this Commonwealth or any state may, subject to the
16 jurisdictional requirements set forth in Chapter 54 (relating to
17 uniform child custody jurisdiction and enforcement), be modified

1 at any time to an order of shared custody in accordance with
2 this subchapter.

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

4 § 4109. Child custody proceedings during military deployment.

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

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

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

6 (e) Relationship to other laws.--Notwithstanding any other
7 provision of law, the provisions of this section shall be
8 applied with regard to child custody issues related to eligible
9 servicemembers deployed in support of contingency operations.

10 (f) Definitions.--As used in this section, the following
11 words and phrases shall have the meanings given to them in this
12 subsection:

13 "Contingency operation." A military operation that:

14 (1) is designated by the Secretary of Defense as an
15 operation in which members of the armed forces are or may
16 become involved in military actions, operations or
17 hostilities against an enemy of the United States or against
18 an opposing military force; or

19 (2) results in the call or order to, or retention on,
20 active duty of members of the uniformed services under 10
21 U.S.C. § 688 (relating to retired members: authority to order
22 to active duty; duties), 12301(a) (relating to reserve
23 components generally), 12302 (relating to Ready Reserve),
24 12304 (relating to Selected Reserve and certain Individual
25 Ready Reserve members; order to active duty other than during
26 war or national emergency), 12305 (relating to authority of
27 President to suspend certain laws relating to promotion,
28 retirement, and separation) or 12406 (relating to National
29 Guard in Federal service: call) or any other provision of 10
30 U.S.C. during a war or during a national emergency declared

1 by the President or Congress.

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

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