

SECOND REGULAR SESSION

SENATE BILL NO. 731

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

Read 1st time February 1, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

5232S.011

AN ACT

To amend chapter 452, RSMo, by adding thereto one new section relating to child custody and visitation for military personnel.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 452, RSMo, is amended by adding thereto one new
2 section, to be known as section 452.413, to read as follows:

**452.413. 1. As used in this section, the following terms shall
2 mean:**

3 **(1) "Deploying parent", a parent of a child less than eighteen
4 years of age whose parental rights have not been terminated by a court
5 of competent jurisdiction or a guardian of a child less than eighteen
6 years of age who is deployed or who has received written orders to
7 deploy with the United States Army, Navy, Air Force, Marine Corps,
8 Coast Guard, National Guard, or any other reserve component thereof;**

9 **(2) "Deployment", military service in compliance with military
10 orders received by a member of the United States Army, Navy, Air
11 Force, Marine Corps, Coast Guard, National Guard, or any other
12 reserve component thereof to report for combat operations,
13 contingency operations, peacekeeping operations, temporary duty
14 (TDY), a remote tour of duty, or other service for which the deploying
15 parent is required to report unaccompanied by any family
16 member. Military service includes a period during which a military
17 parent remains subject to deployment orders and remains deployed on
18 account of sickness, wounds, leave, or other lawful cause;**

19 **(3) "Military parent", a parent of a child less than eighteen years
20 of age whose parental rights have not been terminated by a court of
21 competent jurisdiction or a guardian of a child less than eighteen years**

22 of age who is a service member of the United States Army, Navy, Air
23 Force, Marine Corps, Coast Guard, National Guard, or any other
24 reserve component thereof;

25 (4) "Nondeploying parent", a parent or guardian not subject to
26 deployment.

27 2. If a military parent is required to be separated from a child
28 due to deployment, a court shall not enter a final order modifying the
29 terms establishing custody or visitation contained in an existing order
30 until ninety days after the deployment ends.

31 3. In accordance with section 452.412, deployment or the
32 potential for future deployment shall not be the sole factor supporting
33 a change in circumstances or grounds sufficient to support a
34 permanent modification of the custody or visitation terms established
35 in an existing order.

36 4. (1) An existing order establishing the terms of custody or
37 visitation in place at the time a military parent is deployed may be
38 temporarily modified to make reasonable accommodation for the
39 parties due to the deployment.

40 (2) A temporary modification order issued under this section
41 shall provide that the deploying parent shall have custody of the child
42 or reasonable visitation, whichever is applicable under the original
43 order, during a period of leave granted to the deploying parent.

44 (3) Any court order modifying a previously ordered custody or
45 visitation due to deployment shall specify that the deployment is the
46 basis for the order and shall be entered by the court as a temporary
47 order.

48 (4) Any such custody or visitation order shall further require the
49 nondeploying parent to provide the court and the deploying parent
50 with a thirty day advance written notice of any change of address and
51 any change of telephone number. However, if a valid order of
52 protection under chapter 455 from this or another jurisdiction is in
53 effect that requires that the address or contact information of the
54 parent who is not deployed be kept confidential, the notification shall
55 be made to the court only, and a copy of the order shall be included in
56 the notification.

57 (5) Upon motion of a deploying parent with reasonable advance
58 notice and for good cause shown, the court shall hold an expedited

59 hearing in any custody or visitation matters instituted under this
60 section when the military duties of the deploying parent have a
61 material effect on his or her ability or anticipated ability to appear in
62 person at a regularly scheduled hearing.

63 5. (1) A temporary modification of such an order automatically
64 ends no later than thirty days after the return of the deploying parent
65 and the original terms of the custody or visitation order in place at the
66 time of deployment are automatically reinstated.

67 (2) Nothing in this section shall limit the power of the court to
68 conduct an expedited or emergency hearing regarding custody or
69 visitation upon return of the deploying parent, and the court shall do
70 so within ten days of the filing of a motion alleging an immediate
71 danger or irreparable harm to the child.

72 (3) The nondeploying parent shall bear the burden of showing
73 that reentry of the custody or visitation order in effect before the
74 deployment is no longer in the child's best interests. The court shall set
75 any nonemergency motion by the nondeploying parent for hearing
76 within thirty days of the filing of the motion and this shall take
77 precedence on the court's docket.

78 6. (1) Upon motion of the deploying parent or upon motion of a
79 family member of the deploying parent with his or her consent, the
80 court may delegate his or her visitation rights, or a portion of such
81 rights, to a family member with a close and substantial relationship to
82 the minor child or children for the duration of the deployment if it is
83 in the best interest of the child.

84 (2) Such delegated visitation time or access does not create an
85 entitlement or standing to assert separate rights to parent time or
86 access for any person other than a parent, and shall terminate by
87 operation of law upon the end of the deployment, as set forth in this
88 section.

89 (3) Such delegated visitation time shall not exceed the visitation
90 time granted to the deploying parent under the existing order; except
91 that, the court may take into consideration the travel time necessary
92 to transport the child for such delegated visitation time.

93 (4) In addition, there is a rebuttable presumption that a deployed
94 parent's visitation rights shall not be delegated to a family member who
95 has a history of perpetrating domestic violence as defined under

96 section 455.010 against another family or household member, or
97 delegated to a family member with an individual in the family
98 member's household who has a history of perpetrating domestic
99 violence against another family or household member.

100 (5) The person or persons to whom delegated visitation time has
101 been granted shall have full legal standing to enforce such rights.

102 7. Upon motion of a deploying parent and upon reasonable
103 advance notice and for good cause shown, the court shall permit such
104 parent to present testimony and evidence by affidavit or electronic
105 means in support, custody, and visitation matters instituted under this
106 section when the military duties of such parent have a material effect
107 on his or her ability to appear in person at a regularly scheduled
108 hearing. Electronic means includes communication by telephone, video
109 conference, or the internet.

110 8. Any order entered under this section shall require that the
111 nondeploying parent:

112 (1) Make the child or children reasonably available to the
113 deploying parent when the deploying parent has leave;

114 (2) Facilitate opportunities for telephonic and electronic mail
115 contact between the deploying parent and the child or children during
116 deployment; and

117 (3) Receive timely information regarding the deploying parent's
118 leave schedule.

119 9. (1) If there is no existing order establishing the terms of
120 custody and visitation and it appears that deployment is imminent,
121 upon the filing of initial pleadings and motion by either parent, the
122 court shall expedite a hearing to establish temporary custody or
123 visitation to ensure the deploying parent has access to the child, to
124 ensure disclosure of information, to grant other rights and duties set
125 forth in this section, and to provide other appropriate relief.

126 (2) Any initial pleading filed to establish custody or visitation for
127 a child of a deploying parent shall be so identified at the time of filing
128 by stating in the text of the pleading the specific facts related to
129 deployment.

130 10. (1) Since military necessity may preclude court adjudication
131 before deployment, the parties shall cooperate with each other in an
132 effort to reach a mutually agreeable resolution of custody, visitation,

133 and child support. Each party shall provide information to each other
134 in an effort to facilitate agreement on custody and visitation.

135 (2) A deploying parent shall provide a copy of his or her orders
136 to the nondeploying parent promptly and without delay prior to
137 deployment. Notification shall be made within ten days of receipt of
138 deployment orders. If less than ten days notice is received by the
139 deploying parent, notice shall be given immediately upon receipt of
140 military orders. If all or part of the orders are classified or restricted
141 as to release, the deploying parent shall provide, under the terms of
142 this subdivision, all such nonclassified or nonrestricted information to
143 the nondeploying parent.

144 11. In an action brought under this chapter, whenever the court
145 declines to grant or extend a stay of proceedings under the
146 Servicemembers Civil Relief Act, 50 U.S.C. Appendix Sections 521-522,
147 and decides to proceed in the absence of the deployed parent, the court
148 shall appoint at the request of the deployed parent or on its own
149 motion a guardian ad litem to represent the minor child's interests.

150 12. Service of process on a nondeploying parent whose
151 whereabouts are unknown may be accomplished by certified mail,
152 return receipt requested, to the nondeploying parent's last known
153 address based on an affidavit of the deploying parent.

154 13. In determining whether a parent has failed to exercise
155 visitation rights, the court shall not count any time periods during
156 which the parent did not exercise visitation due to the material effect
157 of such parent's military duties on visitation time.

158 14. Once an order for custody has been entered in Missouri, any
159 absence of a child from this state during deployment shall be
160 denominated a temporary absence for the purposes of application of
161 the Uniform Child Custody Jurisdiction and Enforcement Act
162 (UCCJEA). For the duration of the deployment, Missouri shall retain
163 exclusive jurisdiction under the UCCJEA and deployment shall not be
164 used as a basis to assert inconvenience of the forum under the UCCJEA.

165 15. In making determinations under this section, the court may
166 award attorney's fees and costs based on the court's consideration of:

167 (1) The failure of either party to reasonably accommodate the
168 other party in custody or visitation matters related to a military
169 parent's service;

170 **(2) Unreasonable delay caused by either party in resolving**
171 **custody or visitation related to a military parent's service;**

172 **(3) Failure of either party to timely provide military orders,**
173 **income, earnings, or payment information, housing or education**
174 **information, or physical location of the child to the other party; and**

175 **(4) Other factors as the court may consider appropriate and as**
176 **may be required by law.**

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