

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 148

97TH GENERAL ASSEMBLY

Reported from the Committee on Veterans' Affairs and Health, May 7, 2013, with recommendation that the Senate Committee Substitute do pass.

0712S.05C

TERRY L. SPIELER, Secretary.

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 section, to be known as section 452.413, to read as follows:

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

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

(2) "Deployment", military service in compliance with military orders received by a member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any other reserve component thereof to report for combat operations, contingency operations, peacekeeping operations, temporary duty (TDY), a remote tour of duty, or other service for which the deploying parent is required to report unaccompanied by any family member. Military 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;

(3) "Military parent", a parent of a child less than eighteen years 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 unless there is a written
31 agreement by both parties.

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

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

41 (2) A temporary modification order issued under this section
42 shall provide that the deploying parent shall have custody of the child
43 or reasonable visitation, whichever is applicable under the original
44 order, during a period of leave granted to the deploying parent, unless
45 it is not in the best interest of the child.

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

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

58 copy of the order shall be included in the notification. Nothing in this
59 subdivision shall be construed to eliminate the requirements under
60 section 452.377.

61 (5) Upon motion of a deploying parent, with reasonable advance
62 notice and for good cause shown, the court shall hold an expedited
63 hearing in any custody or visitation matters instituted under this
64 section when the military duties of the deploying parent have a
65 material effect on his or her ability or anticipated ability to appear in
66 person at a regularly scheduled hearing.

67 5. (1) A temporary modification of such an order automatically
68 ends no later than thirty days after the return of the deploying parent
69 and the original terms of the custody or visitation order in place at the
70 time of deployment are automatically reinstated.

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

76 (3) The nondeploying parent shall bear the burden of showing
77 that reentry of the custody or visitation order in effect before the
78 deployment is no longer in the child's best interests. The court shall set
79 any nonemergency motion by the nondeploying parent for hearing
80 within thirty days of the filing of the motion.

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

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

92 (3) Such delegated visitation time shall not exceed the visitation
93 time granted to the deploying parent under the existing order; except
94 that, the court may take into consideration the travel time necessary

95 to transport the child for such delegated visitation time.

96 (4) In addition, there is a rebuttable presumption that a deployed
97 parent's visitation rights shall not be delegated to a family member who
98 has a history of perpetrating domestic violence as defined under
99 section 455.010 against another family or household member, or
100 delegated to a family member with an individual in the family
101 member's household who has a history of perpetrating domestic
102 violence against another family or household member.

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

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

113 8. Any order entered under this section shall require that the
114 nondeploying parent:

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

117 (2) Facilitate opportunities for telephonic and electronic mail
118 contact between the deploying parent and the child or children during
119 deployment; and

120 (3) Receive timely information regarding the deploying parent's
121 leave schedule.

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

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

132 deployment.

133 **10. (1) Since military necessity may preclude court adjudication**
134 **before deployment, the parties shall cooperate with each other in an**
135 **effort to reach a mutually agreeable resolution of custody, visitation,**
136 **and child support.**

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

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

152 **12. Service of process on a nondeploying parent whose**
153 **whereabouts are unknown may be accomplished in accordance with the**
154 **provisions of section 506.160.**

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

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

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

168 **(1) The failure of either party to reasonably accommodate the**

169 **other party in custody or visitation matters related to a military**
170 **parent's service;**

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

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

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

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