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SENATE BILL NO. 170

Offered January 9, 2008

Prefiled January 7, 2008

A BILL to amend and reenact § 20-124.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 20-124.3:2, relating to modification of custody orders when a parent is on active military duty.

Patrons—Blevins and McDougle; Delegates: Moran and Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 20-124.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 20-124.3:2 as follows:

§ 20-124.1. Definitions.

As used in this chapter:

"Active military duty" means (i) for a member of the United States Army, Navy, Air Force, Marine Corps, or a reserve component, any deployment for combat operations or other deployments in which the member's orders do not permit any family member to accompany him or (ii) for a member of the National Guard, any call to active federal service or training duty pursuant to Title 32 of the United States Code, as amended, or any call to state active duty pursuant to Title 44 of the Virginia Code.

"Joint custody" means (i) joint legal custody where both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child even though the child's primary residence may be with only one parent, (ii) joint physical custody where both parents share physical and custodial care of the child, or (iii) any combination of joint legal and joint physical custody which the court deems to be in the best interest of the child.

"Person with a legitimate interest" shall be broadly construed and includes, but is not limited to grandparents, stepparents, former stepparents, blood relatives and family members provided any such party has intervened in the suit or is otherwise properly before the court. The term shall be broadly construed to accommodate the best interest of the child. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from or through a person whose parental rights have been terminated, either voluntarily or involuntarily, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted, except where a final order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was conceived as a result of such violation.

"Sole custody" means that one person retains responsibility for the care and control of a child and has primary authority to make decisions concerning the child.

§ 20-124.3:2. Custody and visitation; modification based on active military duty.

A. A court shall not modify a custody order at any time while a parent is on active military duty, except that a court may enter a temporary order modifying a prior custody order if such modification is in the best interests of the child. Any temporary order entered pursuant to this subsection shall be effective only for the duration of the parent's active military duty, and the custody order in effect immediately prior to the entry of any temporary order shall be reinstated upon the termination of the active military duty.

B. If a parent on active military duty had been awarded visitation rights in a custody order, any temporary order entered pursuant to subsection A may include a provision allowing the parent to delegate his visitation rights, or a portion thereof, to a person with a legitimate interest, if such delegation is in the best interests of the child.

C. Nothing in this section precludes a parent on active military duty from entering into an agreement with the other parent that will extend past the duration of the active military duty concerning the custody or visitation of a child. Any court order modifying custody or visitation entered pursuant to such an agreement, if such agreement is in the best interests of the child, shall remain effective past the duration of the active military duty.

INTRODUCED

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