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SENATE BILL NO. 188

Offered January 9, 2008

Prefiled January 7, 2008

A *BILL to amend the Code of Virginia by adding in Title 20 a chapter numbered 6.2, consisting of sections numbered 20-124.7 through 20-124.12, relating to the Virginia Military Parents Equal Protection Act.*

Patrons—Herring; Delegates: Moran and Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 20 a chapter numbered 6.2, consisting of sections numbered 20-124.7 through 20-124.12, as follows:

CHAPTER 6.2.

VIRGINIA MILITARY PARENTS EQUAL PROTECTION ACT.

§ 20-124.7. Definitions.

For purposes of this chapter:

"Military parent" means a parent, in military service, of a child under the age of 18 whose parental rights have not been terminated by a court of competent jurisdiction.

"Military service" means, in the case of a parent who is a member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or a reserve component, a combat deployment, contingency operation, or natural disaster requiring the use of orders that do not permit any family member to accompany the member. Military service includes any period in which a military parent is absent from duty on account of sickness, wounds, leave, or other lawful cause. In the case of a military parent who is a member of the National Guard, military service means any activation or training duty under Title 32 of the United States Code, as amended, a call to active federal service authorized by the President of the United States or the Secretary of Defense, or a call to state active duty pursuant to Title 44.

§ 20-124.8. Military service is not change of circumstances; temporary order; reversion.

A military parent's absence, relocation, or failure to comply with a custody or visitation order shall not, by itself, be considered a change in circumstances or sufficient to justify a permanent modification of a custody or visitation order if the reason for the absence, relocation, or failure to comply is the military parent's military service. Any order based in whole or in part on the military service and deployment of a military parent shall be temporary and shall revert to the previous child custody order at the end of the deployment.

§ 20-124.9. Custody and visitation orders; no permanent modification until completion of military service.

A. When a custodial military parent of a child is required to be separated from the child due to military service, a court shall not enter a final order modifying an existing custody order until the custodial military parent has completed the term of duty requiring separation. The military service shall not be used as a basis to alter or deny a permanent custody order, or a temporary custody order except for an actual period of deployment.

B. When a military parent with visitation rights is required to be separated from a child due to military service, a court shall not enter a final order modifying an existing visitation order until the custodial military parent has completed the term of duty requiring separation. Any modification of visitation shall not decrease the amount of visitation due to the military service.

The custodial parent shall reasonably accommodate the visitation rights of the noncustodial military parent called to military service. The custodial parent shall make the child available to accommodate the military leave of a military parent to ensure reasonable visitation occurs during available periods.

§ 20-124.10. When no order is in place; expedited hearing.

If no court order is in place, but an action is commenced, the court shall expedite a temporary hearing in order to establish custody or visitation to ensure the military parent has access to the child, and that reasonable support and other orders are in place for the protection of the parent-child relationship, consistent with other provisions of this chapter. The nonmilitary parent shall not use the circumstances of the military parent's military service to disrupt or prejudice the parental rights of the military parent.

§ 20-124.11. Child support orders; earning capacity due to military service; temporary orders.

A. If a military parent is activated to military service, either parent may file and serve a notice of activation of military service and request to modify a child support order by informing the court and the

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59 other party of the request to modify the support order based on the income and earning capacity as a
60 change in circumstances.

61 B. Any increase or decrease in the military parent's earning capacity due to military service may
62 only be considered for the period of military service, and shall not be deemed a permanent increase or
63 decrease in income, nor shall it be considered as the military parent's earning capacity for any
64 permanent order of child support. The court shall temporarily modify the amount of child support for
65 the duration of the military parent's military service according to the changes in his earning capacity
66 due to military service. Upon return from military service, the military parent's earning capacity prior to
67 activation or mobilization shall be the basis of child support, or the court may make a new
68 determination based upon the income of the military parent upon return to civilian employment. Military
69 duty pay shall not be imputed to the military parent as the permanent basis for earning capacity.

70 C. A request for modification shall be made within 90 days of a military parent's return from
71 military service.

72 D. Modification of child support shall be effective on the date of notice to the responding party or
73 the date of actual military service, whichever is later. Modification shall be effective on the date of
74 actual military service if the court finds military necessity precluded the military parent's ability to file,
75 or if through no fault of the filing parent, the other party could not be served with notice.

76 § 20-124.12. Duty to accommodate military parent; agreement of parties; attorney fees.

77 A. Military necessity may preclude court adjudication before mobilization, and the parties are
78 encouraged to mitigate the circumstances surrounding the mobilization.

79 B. The nonmilitary parent has an obligation to accommodate the military parent. The military parent
80 is under an obligation to provide timely information to the nonmilitary parent.

81 C. The failure of a nonmilitary parent to reasonably accommodate the leave schedule of the
82 mobilized military parent, an unreasonable delay of proceedings by the nonmilitary parent, or the
83 unreasonable failure of the military parent to provide documentation may be grounds for the court to
84 award attorney fees.

85 D. Any agreement of the parties, with or without a court order, shall not be considered as a change
86 of circumstances. Any agreement of the parties surrounding the military mobilization shall be deemed
87 settlement offers and shall not be admissible for issues other than attorney fees.