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## SENATE BILL NO. 188

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on February 11, 2008)

(Patrons Prior to Substitute—Senators Herring and Blevins [SB 170])

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 20-124.10, relating to the Virginia Military Parents Equal Protection Act.

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 20-124.10 as follows:

## CHAPTER 6.2.

## VIRGINIA MILITARY PARENTS EQUAL PROTECTION ACT.

## § 20-124.7. Definitions.

For purposes of this chapter:

"Deploying parent or guardian" means a parent of a child under the age of 18 whose parental rights have not been terminated by a court of competent jurisdiction or a guardian of a child under the age of 18 who is deployed or who has received written orders to deploy with the United States Army, Navy, Air Force, Marine Corps, or a reserve component thereof.

"Deployment" means compliance with military orders received by a member of the United States Army, Navy, Air Force, Marine Corps, or a reserve component thereof to report for combat operations or other active service for which the deploying parent or guardian is required to report unaccompanied by any family member.

## § 20-124.8. Deployment is not change of circumstances.

A. A deploying parent's or guardian's absence, relocation, or failure to comply with a custody or visitation order shall not, by itself, constitute a material change in circumstances warranting a permanent modification of a custody or visitation order if the reason for the absence, relocation, or failure to comply is the parent's or guardian's deployment.

B. Any court order limiting previously ordered custodial or visitation rights of a deploying parent or guardian due to the parent's or guardian's deployment shall specify the deployment as the basis for the order and shall be entered by the court as a temporary order. Any such order shall further require the nondeploying parent or guardian to provide the court with 30 days advance written notice of any change of address and any change of telephone number.

C. The court, on motion of the deploying parent or guardian returning from deployment seeking to amend or review the custody or visitation order entered based upon the deployment, shall set a hearing on the matter that shall take precedence on the court's docket, and shall be set within 30 days of the filing of the motion. Service on the nondeploying parent or guardian shall be at that parent's or guardian's last address provided to the court in writing. Such service, if otherwise statutorily sufficient, shall be deemed sufficient for the purposes of notice of the deploying parent's or guardian's motion to amend or review custody or visitation. For purposes of this hearing, the nondeploying parent or guardian shall bear the burden of showing that reentry of the custody or visitation order in effect before the deployment is no longer in the child's best interests.

D. This section shall not otherwise preclude a parent or guardian from petitioning for a modification of a custody or visitation order based upon a change in circumstances.

## § 20-124.9. When no order is in place; expedited hearing.

If no court order exists as to the custody, visitation, or support of a child of a deploying parent or guardian, any petition filed in the juvenile and domestic relations district court to establish custody, visitation, or support for a child of a deploying parent or guardian shall be so identified at the time of filing by the deploying parent or guardian to ensure that the deploying parent or guardian has access to the child, and that reasonable support and other orders are in place for the protection of the parent-child or guardian-child relationship, consistent with the other provisions of this chapter. Such petition shall be expedited on the court's docket in accordance with § 20-108.

## § 20-124.10. Duty to accommodate deploying parent or guardian; attorney fees.

A. Upon entry of an order pursuant to § 20-124.8, the nondeploying parent or guardian has an obligation to reasonably accommodate the leave schedule of a deploying parent or guardian and to facilitate opportunities for telephonic and electronic mail contact between the deploying parent or guardian and the child during the deployment period. The deploying parent or guardian has an obligation to provide timely information regarding his leave schedule to the nondeploying parent or guardian.

60        *B. If the nondeploying parent or guardian (i) fails to reasonably accommodate the leave schedule of*  
61 *the deploying parent or guardian during the deployment period, (ii) fails to facilitate opportunities for*  
62 *telephonic and electronic mail contact between the deploying parent or guardian and the child during*  
63 *the deployment period, or (iii) causes the unreasonable delay of proceedings pursuant to §§ 20-124.8*  
64 *and 20-124.9; or the deploying parent or guardian fails to provide documentation of deployment, leave,*  
65 *or release from deployment orders, such actions may be grounds for the court to award attorney fees.*