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SENATE BILL NO. 910

Offered January 12, 2011

Prefiled January 10, 2011

A *BILL to amend and reenact §§ 20-108, 20-124.8, and 20-124.9 of the Code of Virginia, relating to military parents; delegation of visitation rights.*

Patron—Herring

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-108, 20-124.8, and 20-124.9 of the Code of Virginia are amended and reenacted as follows:

§ 20-108. Revision and alteration of such decrees.

The court may, from time to time after decreeing as provided in § 20-107.2, on petition of either of the parents, or on its own motion or upon petition of any probation officer or the Department of Social Services, which petition shall set forth the reasons for the relief sought, revise and alter such decree concerning the care, custody, and maintenance of the children and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require. The intentional withholding of visitation of a child from the other parent without just cause may constitute a material change of circumstances justifying a change of custody in the discretion of the court.

No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for modification in any court, but only from the date that notice of such petition has been given to the responding party.

Any member of the United States ~~Armed Forces Reserves~~ Army, Navy, Air Force, Marine Corps, Coast Guard, ~~Virginia National Guard, or Virginia National Guard Reserves~~ any other reserve component thereof, who files a petition or is a party to a petition requesting the adjudication of the custody, visitation or support of a child based on a change of circumstances ~~because due to one of the parents has been called to active duty parent's deployment, as that term is defined in § 20-124.7,~~ shall be entitled to have such a petition expedited on the docket of the court.

§ 20-124.8. Deployment; temporary order.

A. 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.

B. *The court, on motion of the deploying parent or guardian to delegate visitation to a family member, including a stepparent, with whom the child has a close and substantial relationship and upon finding that such delegation is in the best interests of the child, may enter an order delegating visitation that:*

1. Delegates all or a portion of the deploying parent's or guardian's visitation rights to such family member, if the deploying parent or guardian had visitation rights with the child prior to the deployment; or

2. Provides visitation rights to such family member, if the deploying parent or guardian had physical custody of the child prior to the deployment and the nondeploying parent or guardian, or a family member of the nondeploying parent or guardian, is awarded physical custody during the deployment.

An order delegating or providing visitation rights to a family member pursuant to this subsection does not create a separate right to visitation in the family member to whom visitation rights are delegated or provided. The deploying parent or guardian may at any time file a motion to rescind the order delegating or providing visitation rights to a family member and such order terminates by operation of law upon the return of the deploying parent or guardian from deployment.

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. 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.

ED. 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.

59 § 20-124.9. When no order is in place; expedited hearing; conduct of hearing.

60 A. If no court order exists as to the custody, visitation, or support of a child of a deploying parent or
61 guardian, any petition filed to establish custody, visitation, or support for a child of a deploying parent
62 or guardian shall be so identified at the time of filing by the deploying parent or guardian to ensure that
63 the deploying parent or guardian has access to the child, and that reasonable support and other orders
64 are in place for the protection of the parent-child or guardian-child relationship, consistent with the other
65 provisions of this chapter. Such petition shall be expedited on the court's docket in accordance with
66 § 20-108.

67 B. *In any proceeding under this chapter where a deploying parent or guardian is reasonably unable*
68 *to appear as a result of his deployment, the court, upon motion of the deploying parent or guardian and*
69 *for good cause shown, may (i) conduct any hearing using a telephonic communication system or an*
70 *electronic audio and video communication system to provide for the appearance of any parties and*
71 *witnesses and (ii) admit affidavits in lieu of testimony into evidence.*