~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 14, 2012

**S. 1012**

Introduced by Senator Lourie

S. Printed 3/14/12--S.

Read the first time January 10, 2012.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 1012) to amend the Code of Laws of South Carolina, 1976, by adding Section 63‑5‑945 so as to provide for the delegation of a military parent’s visitation rights, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

Minimal (Some additional costs expected but can be absorbed)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Judicial Department

The department indicates that this bill will have a minimal fiscal impact on the General Fund of the State, which the agency can absorb.

Adjutant General’s Office

The office reports this bill will have no fiscal impact on the General Fund of the State or on federal and/or other funds.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 63‑5‑945 SO AS TO PROVIDE FOR THE DELEGATION OF A MILITARY PARENT’S VISITATION RIGHTS UNDER CERTAIN CIRCUMSTANCES; BY ADDING SECTION 63‑5‑960 SO AS TO PROVIDE FOR THIS STATE’S EXCLUSIVE CONTINUING JURISDICTION OVER AN ORDER OF CUSTODY DURING A MILITARY DEPLOYMENT FOR PURPOSES OF THE “UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT”; BY ADDING SECTION 63‑5‑970 SO AS TO RECOGNIZE A MILITARY FAMILY CARE PLAN FOR RESIDENCY PURPOSES DURING A MILITARY DEPLOYMENT FOR PURPOSES OF THE “UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT”; TO AMEND SECTION 63‑5‑930, RELATING TO THE TEMPORARY MODIFICATION OF A SUPPORT ORDER FOR THE DURATION OF A MILITARY PARENT’S MILITARY SERVICE, SO AS TO PROVIDE THAT A PROPERLY FILED NOTICE OF ACTIVATION AND ACCOMPANYING PETITION CONSTITUTES COMPLIANCE WITH 42 U.S.C., SECTION 666(a)(9)(C); AND TO AMEND SECTION 63‑5‑940, RELATING TO MUTUALLY AGREEABLE ARRANGEMENTS BETWEEN MILITARY AND NONMILITARY PARENTS PRIOR TO MOBILIZATION, SO AS TO PROVIDE THAT A NONDEPLOYED PARENT SHALL FACILITATE OPPORTUNITIES FOR TELEPHONIC AND ELECTRONIC COMMUNICATION BETWEEN A DEPLOYED PARENT AND CHILD.

Whereas, the deployment of an active duty servicemember or the mobilization of a member of the National Guard or Reserves, sometimes with little advance notice, can have a disruptive effect on custody or visitation arrangements involving minor children of servicemembers; and

Whereas, servicemembers should be protected, as should their minor children, from the loss of custodial arrangements and disruption of family contact due to the servicemember’s absence pursuant to military orders for temporary duty, deployment, or mobilization; and

Whereas, for children of military parents it is in the best interests of the child to maintain the parent‑child bond during a mobilization or deployment using electronic and other means of access to the greatest extent available. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 7, Chapter 5, Title 63 of the 1976 Code is amended by adding:

“Section 63‑5‑945. (A) Upon motion of the deploying parent, or upon motion of a family member of the deploying parent with his or her consent, the court may delegate his or her visitation rights, or a portion of them, to a family member with a close and substantial relationship to the minor child or children for the duration of the deployment if this is in the child’s best interest.

(B) This delegated parenting time or access does not create an entitlement or standing to assert separate rights to parenting time or access for any person other than a parent, and terminates by operation of law upon the end of the deployment, as set forth above.

(C) The person or persons to whom delegated visitation rights are granted has full legal standing to enforce those rights during the period that the military parent is deployed. ”

SECTION 2. Article 7, Chapter 5, Title 63 of the 1976 Code is amended by adding:

“Section 63‑5‑960. Once an order for custody has been entered in this State, an absence of a child from this State during a deployment is considered a temporary absence for purposes of the application of the Uniform Child Custody Jurisdiction and Enforcement Act. For the duration of the deployment, South Carolina shall retain exclusive continuing jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, and a deployment may not be used as a basis to assert inconvenience of the forum.”

SECTION 3. Article 7, Chapter 5, Title 63 of the 1976 Code is amended by adding:

“Section 63‑5‑970. In the event a military family care plan is executed by a military parent, and no Family Court order or rule of law provides to the contrary, this State recognizes the family care plan for residency purposes during the period of the military parent’s absence for military duty, if the residency within the family care plan alone is a temporary absence for purposes of the application of the Uniform Child Custody Jurisdiction and Enforcement Act. Upon presentation of the family care plan to the State or to a department, agency, instrumentality, or political subdivision of the State, the child is considered a South Carolina resident during the military absence.”

SECTION 4. Section 63‑5‑930 of the 1976 Code is amended to read:

“Section 63‑5‑930. (A) If a military parent is called to military service, either parent may file a notice of activation of military service and petition to modify a support order. In the petition, the parent must cite the basis for modifying the support order and the military parent’s change in financial circumstances supporting the petition. A properly filed notice of activation and accompanying petition constitutes compliance with 42 U.S.C., Section 666(a)(9)(C).

(B) The court ~~shall~~ temporarily shall modify the amount of child support for the duration of the military parent’s military service based on changes in income and earning capacity of the military parent during military service. An increase or decrease in income or earning capacity of a military parent due to military service only may be used to calculate support during the period of military service and ~~must not be~~ is not considered a permanent increase in wages or earning capacity. The effective date for a temporary modification ~~must be~~ is the date the military parent begins military service.

(C) Upon return from military service, the military parent’s child support obligation prior to a temporary modification is automatically reinstated, effective on the date the military parent is released from service. Within ninety days of the military parent’s release from service, either parent may make a subsequent request for modification to correspond to a change in the military parent’s nonservice‑related income or earning capacity. A modification must be based upon the income or earning capacity of the military parent following the period of military service.

(D) Except for modifying a child support obligation during military service pursuant to this section, a military parent’s income during military service must not be used to determine the military parent’s income or earning capacity.”

SECTION 5. Section 63‑5‑940 of the 1976 Code is amended to read:

“Section 63‑5‑940. (A) Military necessity may preclude court adjudication before mobilization, and the parties are encouraged to negotiate mutually agreeable arrangements prior to mobilization.

(B) The nonmilitary parent and the military parent shall cooperate with each other in an effort to reach a mutually agreeable resolution of custody, visitation, and child support. Each party shall provide information to each other in an effort to facilitate agreement on custody, visitation, and child support. The nondeployed parent shall facilitate opportunities for telephonic and electronic communication between the deployed parent and the child.

(C) A provision of custody, visitation, or child support agreed to by the parties pursuant to this section ~~must not be deemed~~ is not considered a substantial change of circumstances in an action for custody, visitation, or child support, which occurs subsequent to termination of the military parent’s military service. A negotiation of the parties concerning custody, visitation, and child support related to the military service conducted pursuant to this section are ~~deemed~~ considered settlement negotiations and are not admissible in custody, visitation, and child support actions between the parties after termination of the military parent’s military service.”

SECTION 6. This act takes effect upon approval by the Governor.

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