

No. 2008-127

## AN ACT

SB 1107

Amending Titles 23 (Domestic Relations) and 51 (Military Affairs) of the Pennsylvania Consolidated Statutes, further providing for modification of existing custody orders; and providing for protection of deployed members of the Pennsylvania National Guard and reserve components in child custody arrangements.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 5310 of Title 23 of the Pennsylvania Consolidated Statutes is amended to read:

§ 5310. Modification of existing custody orders.

**[Any] Except as provided in 51 Pa.C.S. § 4109 (relating to child custody proceedings during military deployment), any order for the custody of the child of a marriage entered by a court in this Commonwealth or any state may, subject to the jurisdictional requirements set forth in Chapter 54 (relating to uniform child custody jurisdiction and enforcement), be modified at any time to an order of shared custody in accordance with this subchapter.**

Section 2. Title 51 is amended by adding a section to read:

**§ 4109. Child custody proceedings during military deployment.**

**(a) Restriction on change of custody.—If a petition for change of custody of a child of an eligible servicemember is filed with any court in this Commonwealth while the eligible servicemember is deployed in support of a contingency operation, no court may enter an order modifying or amending any previous judgment or order, or issue a new order, that changes the custody arrangement for that child that existed as of the date of the deployment of the eligible servicemember, except that a court may enter a temporary custody order if it is in the best interest of the child.**

**(b) Completion of deployment.—In any temporary custody order entered under subsection (a), a court shall require that, upon the return of the eligible servicemember from deployment in support of a contingency operation, the custody order that was in effect immediately preceding the date of the deployment of the eligible servicemember is reinstated.**

**(c) Exclusion of military service from determination of child's best interest.—If a petition for the change of custody of the child of an eligible servicemember who was deployed in support of a contingency operation is filed after the end of the deployment, no court may consider the absence of the eligible servicemember by reason of that deployment in determining the best interest of the child.**

**(d) Failure to appear due to military deployment.—The failure of an eligible servicemember to appear in court due to deployment in support of**

*a contingency operation shall not, in and of itself, be sufficient to justify a modification of a custody or visitation order if the reason for the failure to appear is the eligible servicemember's active duty in support of a contingency operation.*

*(e) Relationship to other laws.—Notwithstanding any other provision of law, the provisions of this section shall be applied with regard to child custody issues related to eligible servicemembers deployed in support of contingency operations.*

*(f) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:*

*“Contingency operation.” A military operation that:*

*(1) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations or hostilities against an enemy of the United States or against an opposing military force; or*

*(2) results in the call or order to, or retention on, active duty of members of the uniformed services under 10 U.S.C. § 688 (relating to retired members: authority to order to active duty; duties), 12301(a) (relating to reserve components generally), 12302 (relating to Ready Reserve), 12304 (relating to Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency), 12305 (relating to authority of President to suspend certain laws relating to promotion, retirement, and separation) or 12406 (relating to National Guard in Federal service: call) or any other provision of 10 U.S.C. during a war or during a national emergency declared by the President or Congress.*

*“Eligible servicemember.” A member of the Pennsylvania National Guard or a member of an active or reserve component of the Armed Forces of the United States who is serving on active duty, other than active duty for training, for a period of 30 or more consecutive days, in support of a contingency operation.*

Section 3. This act shall take effect in 60 days.

APPROVED—The 9th day of October, A.D. 2008.

EDWARD G. RENDELL