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Reps. Keeley, Barbieri, Bennett, Blakey, Briggs King,  
Mitchell, Hocker, Scott, D. Short, Walls; Sens. Bunting,  
Henry, Venables

HOUSE OF REPRESENTATIVES  
145th GENERAL ASSEMBLY

HOUSE BILL NO. 418

AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE RELATING TO CUSTODY PROCEEDINGS.

1 WHEREAS, temporary duty, the deployment of an active-duty service member, or the mobilization of a member  
2 of the National Guard or Reserves, often with little advance notice, can have a disruptive effect on custody and visitation  
3 arrangements involving the minor child of a military service member; and

4 WHEREAS, service members and their minor children should be protected from the loss of custodial  
5 arrangements and disruption of family contact due to the service member's absence pursuant to military orders for  
6 temporary duty, deployment or mobilization; and

7 WHEREAS, other members of a service member's family, such as parents or current spouses, can frequently  
8 provide love, comfort, care and continuity to a service member's child through delegated visitation when a service member  
9 is absent due to military orders; and

10 WHEREAS, the regular scheduling of hearings may be detrimental to the interests of service members who, due to  
11 military orders, may need expedited proceedings or to use electronic means to give testimony when they cannot personally  
12 appear in court; and

13 WHEREAS, General Assembly finds that the use of expedited hearings and testimony by electronic means, at the  
14 request of a service member who is about to depart pursuant to military orders, will aid and promote the fair, efficient and  
15 prompt resolution of custody and visitation issues caused by a service member's absence due to military orders.

16 NOW, THEREFORE:

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

18 Section 1. Amend Chapter 7, Title 13 of the Delaware Code by designating the entirety of Subchapter II as  
19 "Subpart A" thereof and by adding a new "Subpart B" thereto as follows:

20 "Subpart B. Military Parents' Rights Act.

21 §734. Definitions.

22 As used in this Subpart:

23 (1) "Deploy" and "deployment" shall mean military service in compliance with military orders received by a  
24 member of the United States Armed Forces, including any reserve component thereof, to report for combat operations,  
25 contingency operations, peacekeeping operations, a remote tour of duty, or other active service for which the deploying  
26 parent is required to report unaccompanied by any family member. Deployment includes a period during which a military  
27 parent remains subject to deployment orders and remains deployed on account of sickness, wounds, leave, or other lawful  
28 cause.

29 (2) "Deploying parent" shall mean a military parent who has been notified by military leadership that he or she  
30 will deploy or mobilize or who is currently deployed or mobilized with the United States Armed Forces, including any  
31 reserve component thereof.

32 (3) "Military parent" shall mean a member of the United States Armed Forces, including any reserve component  
33 thereof, who is the natural or adoptive parent of a child under the age of 18 and whose parental rights have not been  
34 terminated or transferred to the State or another person by order of the Family Court as authorized in this Title.

35 (4) "Mobilization" and "mobilize" shall mean the call-up of National Guard or Reserve service members to  
36 extended active service. For purposes of this definition, "mobilization" does not include National Guard or reserve annual  
37 training, inactive duty days, drill weekends, temporary duty, or state active duty.

38 (5) "Non-deploying parent" shall mean a parent or guardian not subject to deployment.

39 (6) "State active duty" shall mean the call-up by a governor for the performance of any military duty in state  
40 status.

41 (7) "Temporary duty" shall mean the transfer of a service member to a geographic location outside of this State for  
42 a limited period of time to accomplish training or to assist in the performance of a non-combat mission.

43 §735. Interim Orders; Modification.

44 (a) Any custody, primary residential placement or visitation order entered when a  
45 military parent is deployed or is a deploying parent shall be an interim order which may be modified upon the  
46 military's parent's return to the United States or termination of service. The Family Court shall not enter a final order  
47 modifying a military parent's custody, primary residential placement or visitation rights until at least 90 days after such  
48 person's deployment have elapsed, unless such modification is agreed to by the military parent.

49 (b) A military parent's absence due to deployment or mobilization, or the potential for future deployment or  
50 mobilization, shall not be the sole basis for the modification of a military parent's custody, primary residential custody or  
51 other parental rights.

52 §736. Temporary Modification.

53 (a) Upon motion of a deploying or non-deploying parent, the Family Court may enter an interim order modifying  
54 custody, primary residence or visitation during a military parent's period of deployment or mobilization when:

55 (1) a military parent who has joint or sole custody of a child, primary residential placement of a child or visitation  
56 rights with a child pursuant to an existing court order has received notice from military leadership that he or she will deploy  
57 or mobilize in the near future; and

58 (2) the deployment or mobilization will have a material effect on the military parent's ability to exercise their  
59 custody, primary residential placement, or visitation rights and responsibilities.

60 (b) Motions for modification because of deployment shall be given priority by the Court and heard on an expedited  
61 basis.

62 (c)(1) All temporary modification orders shall include a specific transition schedule to facilitate a return to the pre-  
63 deployment order over the shortest reasonable time period after the deployment ends, taking into consideration the child's  
64 best interests.

65 (2) The temporary order shall, to the extent possible, recite a date certain for the end of deployment and the start of  
66 the transition period. If deployment is extended, the temporary order shall remain in effect during such period of extended  
67 deployment, and the transition schedule shall take effect at the end of the extended deployment.

68 (3) A temporary modification order entered pursuant to this section shall expire upon the completion of the  
69 transition, and the prior order for custody, residential placement and visitation shall be in effect.

70 (d) Upon motion of the deploying parent, the Family Court may delegate such person's visitation rights, or a  
71 portion of them, to a family member, a person with whom the deploying parent cohabits, or another person who has a close  
72 and substantial relationship to the minor child or children for the duration of the deployment, if the Family Court finds that  
73 such delegated contact is in the child's best interest. Such delegated contact shall not constitute a separate right to visitation  
74 for a person other than a parent once the temporary order is no longer in effect.

75 (e) A temporary modification order issued pursuant to this section shall designate the deploying parent's custody,  
76 residential placement and visitation rights with a child during any period of leave granted to the deploying parent.

77 (f) A temporary order issued under this section may require any of the following if the Family Court finds it is in  
78 the best interests of the child:

79 (1) The non-deploying parent shall make the child reasonably available to the deploying parent when the  
80 deploying parent has leave.

81 (2) The non-deploying parent shall facilitate opportunities for telephonic, electronic mail, and other such contact  
82 between the deploying parent and the child during deployment.

83 (3) The deploying parent shall provide timely information regarding his or her leave schedule to the non-deploying  
84 parent. Actual leave dates are subject to change with little notice due to military necessity and a change in leave dates shall  
85 not be used by the non-deploying parent to prevent contact.

86 (g) Any order modifying a previous order of custody, primary residential placement or visitation because of  
87 deployment shall specify that the deployment is the basis for such order, and it shall be entered by the Court as a temporary  
88 order. The order shall further require the non-deploying parent to provide the Court and the deploying parent with written  
89 notice of any change of address or telephone number as soon as such change is known.

90 §737. Emergency Modification; Permanent Modification.

91 (a) Upon the return of the deploying parent, either parent may file a motion to modify the temporary order on the  
92 grounds that compliance with the order will result in immediate danger of irreparable harm to the child, and may request  
93 that the court issue an ex parte order. The deploying parent may file such a motion prior to his or her return. The motion  
94 shall be accompanied by an affidavit in support of the requested order. Upon a finding of an immediate danger or  
95 irreparable harm based on the facts set forth in the affidavit, the Court may issue an ex parte order modifying custody,  
96 primary residential placement or visitation. If the Court issues an ex parte order, the Court shall set the matter for hearing  
97 within ten days from the issuance of the order.

98 (b) Nothing in this chapter shall preclude the Court from hearing a motion for permanent modification of custody,  
99 primary residential placement or visitation prior to or upon return of the deploying parent. The moving party shall bear the  
100 burden of showing a real, substantial, and unanticipated change in circumstances and that resumption of the custody,  
101 primary residential placement or visitation order in effect prior to the military parent's deployment is no longer in the  
102 child's best interests. Absence created by deployment or mobilization or the potential for future deployment or mobilization  
103 shall not be the sole factor supporting a real, substantial, and unanticipated change in circumstances.

104 §738. Testimony and Evidence.

105 Upon motion of a deploying parent, provided reasonable advance notice is given and good cause shown, the Court  
106 may allow such parent to present testimony and evidence by electronic means when the military parent's deployment has a  
107 material effect on his or her ability to appear in person at a regularly scheduled hearing. The phrase "electronic means"  
108 shall include communication by telephone or video teleconference but shall not include electronic mail or messaging.

109 §739. Expedited Hearings.

110 (a) If there is no existing order establishing the terms of custody, primary residential placement or visitation and it  
111 appears that the deployment or mobilization of a military parent is imminent, upon an action filed under this subpart by  
112 either parent, the court shall expedite a hearing to establish temporary custody, primary residential placement and visitation  
113 rights to ensure the deploying parent has access to the child, to ensure disclosure of information, to grant other rights and  
114 duties set forth herein, and to provide such other relief as the Court deems appropriate.

115 (b) Any initial pleading filed to establish custody, primary residential placement or visitation rights with a child of  
116 a deploying parent shall be so identified at the time of filing by reciting in the text of the pleading the specific facts relating  
117 to deployment.

118 §740. Duty to Cooperate and Disclose Information.

119 (a) Because military necessity may preclude court adjudication prior to deployment, the parties shall cooperate  
120 with each other in an effort to reach a mutually agreeable resolution of custody, primary residential placement, and  
121 visitation matters prior to the military parent's deployment. Each party shall provide information to the other in an effort to  
122 facilitate agreement on these issues.

123 (b) Within 14 days of receiving notification of deployment or mobilization from his or her military leadership, the  
124 military parent shall provide written notice to the non-deploying parent of the same. If less than 14 days' notice of  
125 deployment or mobilization is received by the military parent, then notice must be given immediately upon receipt of notice  
126 to the non-deploying parent.

127 §741. Failure to Exercise Visitation Rights.

128 In determining whether a military parent has failed to exercise visitation rights, the Court shall not consider any  
129 time during which the military parent did not exercise such contact rights due to deployment, mobilization, temporary duty  
130 or other military obligations.

131 §742. Attorney's Fees.

132 In making determinations pursuant to this subpart, the Court may award attorney's fees and costs based on the  
133 Court's determination of:

134 (1) An unreasonable failure of either parent to accommodate the other parent in custody, primary residential  
135 placement or visitation matters relating to the military parent's deployment. A parent's refusal to accommodate the other  
136 parent shall not be considered unreasonable if the parent demonstrates a reasonable fear for his or her safety or the safety of  
137 his or her child;

138 (2) An unreasonable delay caused by either party in resolving custody, primary residential placement or visitation  
139 matters related to the military parent's deployment;

- 140 (3) The failure of either party to provide timely information about income and earnings to the other party; or  
141 (4) Any other factors the Court may consider appropriate.”.

142 Section 2. Amend §727, Title 13 of the Delaware code by striking subsection “(d)” thereof in its entirety.

#### SYNOPSIS

Modeled on legislation adopted by other states, this Act adopts a “Military Parents’ Rights Act” to provide military service members with certain substantive rights and procedural protections designed to ensure that an absence due to military deployment does not result in a forfeiture or diminution of the military parent’s custody or visitation rights. The act incorporates existing Delaware law by providing that any custody, primary residential placement or visitation order entered when a military parent is deploying or deployed shall be interim order which may be modified upon the service member’s return to the United States or termination of service. The Act also guarantees that a military parent’s absence due to deployment shall not constitute the sole basis for a modification of any existing custody, residential placement or visitation order. Further, the Act provides for the temporary modification of any custody, residential placement or visitation order due to a military parent’s impending deployment and assures that requests for a temporary modification are heard on an expedited basis by the Family Court. Temporary modification orders shall contain a transition provision which, consistent with the best interest of the child, will facilitate a return to the pre-deployment order over the shortest reasonable time period after deployment ends. The Act also allows military service members to delegate their visitation rights to another family member, such as a parent or current spouse, if the Family Court determines that the delegation of visitation rights is consistent with the child’s best interests. Finally, the Act permits military service members to provide evidence by electronic means if they cannot appear due to deployment and further imposes obligations on both the deploying and non-deploying parent to cooperate and disclose information in an effort to resolve any custody, residential placement and visitation matters related to the military service member’s deployment.