

CS FOR HOUSE BILL NO. 334(MLV)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

Offered: 2/24/10

Referred: Judiciary

Sponsor(s): REPRESENTATIVES THOMAS, Dahlstrom, Gatto, Tammie Wilson, Lynn, Ramras, Buch

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing child custody, modification, and visitation standards for a military**
2 **parent; and amending Rule 99, Alaska Rules of Civil Procedure."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 25.20 is amended by adding a new section to read:

5 **Sec. 25.20.095. Custody and visitation proceedings involving a military**
6 **parent.** (a) Except as provided in this section, a parent's temporary duty, mobilization,
7 or deployment to military service and the resultant temporary disruption to the
8 schedule of a child of the parent may not be a factor in a court's decision to grant or
9 deny a petition for custody or visitation.

10 (b) A parent who is deployed may petition a court of competent jurisdiction
11 for custody or visitation. The petition shall be construed to be an application for
12 affirmative relief, consistent with the protections afforded under 50 U.S.C. App. 501 -
13 596 (Servicemembers Civil Relief Act) and may include a request to delegate the
14 deployed parent's visitation rights to a family member.

1 (c) A court shall order a delegation of visitation rights based on a petition filed
2 under (b) of this section if the court finds that

3 (1) the family member receiving the delegation has an existing close
4 relationship to the child; and

5 (2) the delegation is in the child's best interest.

6 (d) A hearing on a petition filed under this section shall be expedited by the
7 court on a motion filed by the deployed parent and subject to an additional 10 days'
8 notice.

9 (e) A parent who is deployed may not be construed to have waived any rights
10 or protections with regard to custody or visitation of the deployed parent's child unless
11 the deployed parent expressly waives the right or protection in writing.

12 (f) A court order entered under this section must require that

13 (1) the nondeployed parent make the child reasonably available for
14 visitation to the deployed parent when the deployed parent is on leave if the visits are
15 in the child's best interest;

16 (2) the nondeployed parent facilitate contact, including telephonic and
17 electronic contact, between the deployed parent's child and the deployed parent if the
18 contact is in the child's best interest; electronic contact with a video image must be
19 facilitated whenever feasible; and

20 (3) the deployed parent provide timely information to the nondeployed
21 parent regarding the deployed parent's leave schedule.

22 (g) In making a determination of the best interests of the child, the court shall
23 consider the factors under AS 25.24.150(c) and apply the rebuttable presumption
24 under AS 25.24.150(g) to visitation, delegation, and custody orders issued under this
25 section. In addition, there is a rebuttable presumption that a deployed parent's
26 visitation rights may not be delegated to a family member who has a history of
27 perpetrating domestic violence against a spouse, a child, or a domestic living partner,
28 or to a family member with an individual in the family member's household who has a
29 history of perpetrating domestic violence against a spouse, a child, or a domestic
30 living partner.

31 (h) In this section,

(1) "deployment" or "deployed" means military services performed in compliance with a valid order received by an active duty or reserve member of the armed services of the United States, National Guard, or United States Coast Guard to report for combat operations, contingency operations, peacekeeping operations, temporary duty, a remote tour of duty, or other active service for which the deploying parent reports unaccompanied by any family member;

(2) "family member" means a person who is an adult sibling, aunt, uncle, first cousin, or grandparent related by blood, adoption, or marriage or a stepparent to the child who is the subject of a custody order issued under this section;

(3) "military service" includes the period from which the deployed parent receives and is subject to deployment orders and the period in which the parent is awaiting travel or remains deployed because of sickness, wounds, leave, or other lawful cause.

* **Sec. 2.** AS 25.20.110 is amended by adding new subsections to read:

(d) Except as provided in (e) - (h) of this section, a parent's temporary duty, mobilization, or deployment to military service and the resultant temporary disruption to the schedule of a child of the parent may not be a factor in finding a change of circumstances on a motion to modify child custody or visitation.

(e) A court may provide for a temporary modification of a custody or visitation order during the period of a parent's deployment to military service to make reasonable accommodation for the deployment. The temporary order must specify that deployment is the basis of the order and include provisions for

(1) custody or reasonable visitation during a period of leave granted to the deployed parent if the custody or visitation is in the child's best interest;

(2) termination of the temporary order and resumption of the permanent order within 10 days after notification of the deployed parent's ability to resume custody or visitation unless the court finds that resumption of the custody or visitation order in effect before deployment is no longer in the child's best interest; the nondeployed parent shall bear the burden of proving that resumption of the order is no longer in the child's best interest;

(3) a hearing if a child of a deployed parent has been moved out of

1 state and the nondeployed parent has filed a motion that alleges that resumption of the
 2 permanent custody order will result in immediate danger of irreparable harm to the
 3 child or that the presumption under AS 25.24.150(g) exists;

4 (4) delegation, on request of the deployed parent, of the deployed
 5 parent's visitation rights under an existing order, if any, to another family member who
 6 has an existing close relationship to the child if the delegation is in the child's best
 7 interest; and

8 (5) immediate notification by the parent who is not deployed of a
 9 change of address or contact information to the deployed parent and to the court; if a
 10 valid court order issued under AS 12.61.120 or AS 25.20.060 or an equivalent
 11 provision in another jurisdiction is in effect that requires that the address or contact
 12 information of the parent who is not deployed be kept confidential, the notification
 13 shall be made to the court only, and a copy of the order shall be included in the
 14 notification.

15 (f) A court shall expedite a hearing to modify custody or visitation on a
 16 motion made by a parent who is subject to deployment.

17 (g) In making a determination of the best interests of the child, the court shall
 18 consider the factors under AS 25.24.150(c) and apply the rebuttable presumption
 19 under AS 25.24.150(g) to visitation, delegation, and custody orders issued under this
 20 section. In addition, there is a rebuttable presumption that a deployed parent's
 21 visitation rights may not be delegated to a family member who has a history of
 22 perpetrating domestic violence against a spouse, a child, or a domestic living partner,
 23 or to a family member with an individual in the family member's household who has a
 24 history of perpetrating domestic violence against a spouse, a child, or a domestic
 25 living partner.

26 (h) In this section, "deployment," "family member," and "military service"
 27 have the meanings given in AS 25.20.095.

28 * **Sec. 3.** AS 25.24.150 is amended by adding a new subsection to read:

29 (l) Except as provided in AS 25.20.095 and 25.20.110, a court may not
 30 consider a parent's activation to military service and deployment in determining the
 31 best interest of the child under (c) of this section. In this subsection, "deployment" has

1 the meaning given in AS 25.20.095.

2 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 DIRECT COURT RULE AMENDMENT. Rule 99(a), Alaska Rules of Civil
5 Procedure, is amended to read:

6 (a) **Authorization for Telephonic, Video, or Internet Participation.** The
7 court may allow one or more parties, counsel, witnesses or the judge to participate
8 telephonically in any hearing or deposition for good cause and in the absence of
9 substantial prejudice to opposing parties. **The court shall allow video or Internet**
10 **testimony if the hearing or deposition involves the custody or visitation of a child**
11 **of a parent who is deployed, as that term is defined in AS 25.20.095, at the**
12 **request of the deployed parent.** Authorization for a witness to telephonically
13 participate in a deposition does not bar the witnesses' testimony from being videotaped
14 under Civil Rule 30.1; nor does it bar a party or attorney from being present at the site
15 at which the witness is physically present.

16 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 CONDITIONAL EFFECT. The amendment to Rule 99(a), Alaska Rules of Civil
19 Procedure, made by sec. 4 of this Act, takes effect only if sec. 4 of this Act receives the two-
20 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
21 Alaska.