

CS FOR HOUSE BILL NO. 334(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/11/10

Referred: Rules

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

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) In determining the availability of a parent for custody or visitation, if a
7 parent is deployed or in a position where the parent may be deployed, the court shall
8 take particular care to ensure that the child has the maximum opportunity, consistent
9 with the best interests of the child, to have contact with the parent. Except as provided
10 in this section, a parent's temporary duty, mobilization, or deployment to military
11 service and the resultant temporary disruption to the child of the parent may not be a
12 factor in a court's decision to grant or deny a petition for custody or visitation.

13 (b) A parent who is deployed may petition a court of competent jurisdiction
14 for custody or visitation. The petition shall be construed to be an application for

1 affirmative relief, consistent with the protections afforded under 50 U.S.C. App. 501 -
2 596 (Servicemembers Civil Relief Act) and may include a request to delegate the
3 deployed parent's visitation rights to a family member.

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

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

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

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

12 (e) A parent who is deployed may not be presumed to have waived any rights
13 or protections with regard to custody or visitation of the deployed parent's child unless
14 the deployed parent expressly waives the right or protection in writing or on the
15 record.

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

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

20 (2) each parent facilitate contact, including telephonic and electronic
21 contact, between the other parent and the child if the contact is in the child's best
22 interest; electronic contact with a video image must be facilitated whenever feasible;

23 (3) the deployed parent provide timely information to the nondeployed
24 parent regarding the deployed parent's leave schedule; and

25 (4) each parent provide immediate notification of a change of address
26 or contact information as provided under AS 25.20.110(e)(5).

27 (g) In making a determination of the best interests of the child, the court shall
28 consider (1) the factors under AS 25.24.150(c) and apply the rebuttable presumption
29 under AS 25.24.150(g) to visitation, delegation, and custody orders issued under this
30 section, and (2) any history of violent behavior exhibited by a parent. In addition, there
31 is a rebuttable presumption that a deployed parent's visitation rights may not be

1 delegated to a family member who has a history of perpetrating domestic violence
 2 against a spouse, a child, or a domestic living partner, or to a family member with an
 3 individual in the family member's household who has a history of perpetrating
 4 violence. The court shall make specific written findings regarding the considerations
 5 required to be considered in (1) and (2) of this subsection. In this subsection, "history
 6 of violent behavior" does not include any behavior or actions performed or undertaken
 7 in connection with military duties.

8 (h) In this section,

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

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

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

22 (4) "parent" includes a legal guardian of the child.

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

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

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

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

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

9 (3) a hearing if a child of a deployed parent has been moved out of
10 state and the nondeployed parent has filed a motion that alleges that resumption of the
11 permanent custody order will result in immediate danger of irreparable harm to the
12 child or that the presumption under AS 25.24.150(g) exists;

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

17 (5) immediate notification by each parent of a change of address or
18 contact information to the other parent and to the court; if a valid court order issued
19 under AS 12.61.120 or AS 25.20.060 or an equivalent provision in another jurisdiction
20 is in effect that requires that the address or contact information of the parent be kept
21 confidential, the notification shall be made to the court only, and a copy of the order
22 shall be included in the notification.

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

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

1 history of perpetrating domestic violence against a spouse, a child, or a domestic
2 living partner.

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

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

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

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

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

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

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

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