

By: _____

No. _____

A BILL TO BE ENTITLED

AN ACT

1 relating to military deployment in a suit affecting the parent-child relationship.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

3 SECTION 1. Chapter 153, Family Code, is amended by adding Subchapter L to read
4 as follows:

5 SUBCHAPTER L. MILITARY DEPLOYMENT

6 SECTION 153.701. DEFINITIONS. In this subchapter:

7 (1) “Deployment” means the temporary transfer of a service member serving in an
8 active-duty status to another location in support of combat or some other military operation.

9 (2) “Designated person” means the person ordered by the court to temporarily exercise
10 the rights, duties, and periods of possession and access of a conservator during that conservator’s
11 deployment, mobilization, or temporary duty.

12 (3) “Mobilization” means the call-up of a National Guard or Reserve service member to
13 extended active duty status. For purposes of this definition, “mobilization” does not include
14 National Guard or Reserve annual training.

15 (4) “Temporary duty” means the transfer of a service member from one military base to
16 a different location, usually another base, for a limited period of time to accomplish training or to
17 assist in the performance of a non-combat mission.

18 SECTION 153.702. TEMPORARY ORDERS. (a) When a conservator receives

1 temporary duty, deployment or mobilization orders from the military that involve moving a
2 substantial distance from the conservator's residence having a material effect on the conservator's
3 ability to exercise the conservator's rights and duties, the conservator shall file a suit affecting
4 the parent-child relationship with the court of continuing jurisdiction for temporary orders in
5 accordance with the provisions of this subchapter. The conservator of the child may file with
6 the court a designation of a person other than a parent conservator to be the person designated to
7 exercise the rights and duties of that conservator during that conservator's deployment,
8 mobilization, or temporary duty, which person shall be made a party to the suit.

9 (b) If the conservator who has received temporary duty, deployment or mobilization
10 orders from the military is the conservator of the child with the exclusive right to designate the
11 primary residence of the child, the court shall appoint a parent conservator to be the designated
12 person as defined in this subchapter unless the court finds that the appointment of a parent
13 conservator is not in the best interest of the child. If the court finds that ordering a parent
14 conservator to be the designated person is not in the best interest of the child, the court shall:

15 (1) appoint the person named by the conservator of the child with the exclusive
16 right to designate the primary residence of the child to be the designated person; or

17 (2) if the court finds that naming a parent conservator or the person designated by
18 conservator of the child with the exclusive right to designate the primary residence of the child is
19 not in the best interest of the child, name another person to be the designated person.

20 (c) If the conservator who has received temporary duty, deployment or mobilization
21 orders from the military is not the conservator of the child with the exclusive right to designate
22 the primary residence of the child, the court shall:

1 (1) appoint the person named by the conservator of the child without the
2 exclusive right to designate the primary residence of the child to be the designated person; or

3 (2) if the court finds that naming a parent conservator or the person designated by
4 conservator of the child without the exclusive right to designate the primary residence of the
5 child is not in the best interest of the child, name another person to be the designated person.

6 (d) The court shall provide in the order that, except for the rights and duties regarding
7 child support, during periods of temporary duty, deployment or mobilization **the designated**
8 **person has the rights, duties, and periods of possession and access that the conservator who**
9 **received temporary duty, deployment or mobilization orders would be entitled to if not on**
10 **temporary duty, deployed, or mobilized.**

11 (e) Notwithstanding the provisions of Chapter 154, the court shall make such orders
12 regarding support of the child as **the court finds to be in the best interest of the child.**

13 (f) Upon motion of the conservator who has received temporary duty, deployment or
14 mobilization orders from the military, the court shall, for good cause shown, **hold an expedited**
15 **hearing** when the military duties of the conservator have a material effect on the conservator's
16 ability, or anticipated ability, to appear in person at a regularly scheduled hearing. Any hearing
17 pursuant to this section shall take precedence over all other causes not involving the public
18 interest, to the end that these cases may be expedited.

19 (g) Upon motion of any party, **the court shall,** upon reasonable advance notice and for
20 good cause shown, **allow a party to present testimony and evidence by electronic means,**
21 **including but not limited to teleconference or the Internet.**

22 SECTION 153.703. ENFORCEMENT. **Temporary orders under this chapter may be**

1 enforced by and against the designated person to the same extent that the order would be
2 enforceable by or against the conservator who is on temporary duty, deployed, or mobilized.

3 SECTION 153.704. TERMINATION OF TEMPORARY ORDERS. (a) Except as
4 provide in Subsection (b), after temporary duty, mobilization or deployment of the service
5 member is concluded, and the the conservator who is on temporary duty, deployed, or mobilized
6 returns to that conservator's usual residence, the designated person's rights and duties under this
7 section terminate and the rights and duties of all affected parties are governed by the terms of
8 any court order applicable when a conservator is not on temporary duty, deployed, or mobilized.

9 (b) If the conservator who has received temporary duty, deployment or mobilization
10 orders from the military is not the conservator of the child with the exclusive right to designate
11 the primary residence of the child, the court may extend the temporary orders and award that
12 conservator additional periods of possession of or access to the child to compensate for the
13 periods of possession and access to which the conservator would have otherwise been entitled
14 during the conservator's deployment.

15 (c) In making the determination under Subsection (b), the court:

16 (1) shall consider:

17 (A) the periods of possession of or access to the child to which the conservator
18 would otherwise have been entitled during the conservator's deployment;

19 (B) whether the court provided in an order under Section 153.702(c) that a
20 person exercise limited possession of the child during the conservator's deployment;

21 (C) any other factor the court considers appropriate; and

22 (D) the best interest of the child; and

1 (2) is not required to award additional periods of possession of or access to the child
2 that equals the possession or access to which the conservator would have been entitled during the
3 conservator's deployment, as computed under Subsection (c)(1).

4 (d) After the exercise of any additional periods of possession and access the temporary
5 orders under this section terminate and the rights and duties of all affected parties are governed
6 by the terms of any court order applicable when a conservator is not on temporary duty,
7 deployed, or mobilized.

8 SECTION 2. Section 156.006, Family Code, is amended by adding Subsection (c) to
9 read as follows:

10 (c) Subsection (b)(2) does not apply to a conservator who has the exclusive right to
11 designate the primary residence of the child and who has been on temporary duty, mobilization
12 or deployment as defined in Section 153.701.

13 SECTION 3. Section 156.101, Family Code, is amended to read as follows:

14 Sec. 156.101. GROUNDS FOR MODIFICATION OF ORDER ESTABLISHING
15 CONSERVATORSHIP OR POSSESSION AND ACCESS. (a) The court may modify an
16 order that provides for the appointment of a conservator of a child, that provides the terms and
17 conditions of conservatorship, or that provides for the possession of or access to a child if
18 modification would be in the best interest of the child and:

19 (1) the circumstances of the child, a conservator, or other party affected by the
20 order have materially and substantially changed since the earlier of:

21 (A) the date of the rendition of the order; or

22 (B) the date of the signing of a mediated or collaborative law settlement

1 agreement on which the order is based;

2 (2) the child is at least 12 years of age and has filed with the court, in writing, the name
3 of the person who is the child's preference to have the exclusive right to designate the primary
4 residence of the child; or

5 (3) the conservator who has the exclusive right to designate the primary residence of the
6 child has voluntarily relinquished the primary care and possession of the child to another person
7 for at least six months.

8 (b) Subsection (a)(3) does not apply to a conservator who has the exclusive right to
9 designate the primary residence of the child and who has been on temporary duty, mobilization
10 or deployment as defined in Section 153.701.

11 SECTION 4. Section 156.102, Family Code, is amended by adding Subsection (d) to read
12 as follows:

13 (d) Subsection (b)(3) does not apply to a person who has the exclusive right to designate
14 the primary residence of the child and who has been on temporary duty, mobilization or
15 deployment as defined in Section 153.701.

16 SECTION 5. Section 156.105, Family Code, is amended by deleting Subsections (a),
17 (b) and (c) and adding language to read as follows:

18 SECTION 156.105. MODIFICATION OF ORDER BASED ON MILITARY DUTY
19 [DEPLOYMENT]. The military duty of a conservator who is on temporary duty, mobilization
20 or deployment as defined in Section 153.701 does not by itself constitute a material and
21 substantial change of circumstances sufficient to justify a modification of an existing court order
22 or portion of a decree that provides for rights and duties of a conservator or sets the terms and

1 conditions for the possession of or access to a child.

2 SECTION 6. The changes in law made by this Act apply to an action to modify an order
3 in a suit affecting the parent-child relationship that is pending in a trial court on the effective date
4 of this Act or filed on or after that date.

5 SECTION 7. This Act takes effect September 1, 2009.