

Regular Session, 2010

HOUSE BILL NO. 1156

BY REPRESENTATIVES HENRY BURNS, ABRAMSON, ANDERS, ARMES, ARNOLD, BOBBY BADON, BALDONE, BILLIOT, BURFORD, TIM BURNS, CARMODY, CHANDLER, CHANEY, CROMER, DOERGE, DOVE, DOWNS, EDWARDS, ELLINGTON, FANNIN, FOIL, GUINN, HARRISON, HAZEL, HILL, HOFFMANN, HOWARD, SAM JONES, KATZ, LIGI, LORUSSO, MILLS, MORRIS, RICHARD, RICHARDSON, GARY SMITH, JANE SMITH, TEMPLET, TUCKER, WADDELL, WHITE, AND WILLIAMS

1 AN ACT

2 To enact Subpart H of Part III of Chapter 1 of Code Title V of Code Book I of Title 9 of the
3 Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:359 through 359.13,
4 relative to child custody; to provide for the Military Parent and Child Custody
5 Protection Act; to provide for definitions; to provide for temporary modifications of
6 custody orders; to provide for evidence; to provide duties to disclose certain
7 information; to provide for the appointment of counsel; to provide for attorney fees;
8 and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Subpart H of Part III of Chapter 1 of Code Title V of Code Book I of Title
11 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:359 through 359.13, is
12 hereby enacted to read as follows:

13 SUBPART H. MILITARY PARENT AND CHILD CUSTODY PROTECTION ACT

14 §359. Short title

15 This Subpart may be cited as the "Military Parent and Child Custody
16 Protection Act".

17 §359.1. Definitions

18 As used in this Subpart, the following terms shall have the following
19 meanings:

20 (1) "Deploying parent" means a parent of a minor child whose parental rights
21 have not been terminated and whose custody or visitation rights have not been
22 restricted by court order to supervised visitation only, by a court of competent

1 jurisdiction who is deployed or has received written orders to deploy with the United
2 States military or any reserve component thereof.

3 (2) "Deployment" means military service in compliance with mandatory
4 written orders, unaccompanied by any family member, for combat operations,
5 contingency operations, peacekeeping operations, temporary duty, a remote tour of
6 duty, or other active service.

7 (3) "Order" means any custody or visitation judgment, decree, or order
8 issued by a court of competent jurisdiction in this state or any judgment of another
9 state which has been made executory in this state.

10 §359.2. Final order; modification prohibited

11 The court shall not enter a final order modifying the existing terms of a
12 custody or visitation order until ninety days after the termination of deployment;
13 however, if the matter was fully tried by a court prior to deployment, the court may
14 enter a final order at any time.

15 §359.3. Material change in circumstances

16 Deployment or the potential for future deployment alone shall not constitute
17 a material change in circumstances for the permanent modification of a custody or
18 visitation order.

19 §359.4. Temporary modification

20 A. An existing order of custody or visitation may be temporarily modified
21 to reasonably accommodate the deployment of a parent. Any such order issued in
22 accordance with the provisions of this Subpart shall be entered as a temporary order
23 by the court.

24 B. Unless the court determines that it is not in the best interest of the child,
25 a temporary modification order shall grant the deploying parent reasonable custody
26 or visitation during periods of approved military leave if the existing order granted
27 the deploying parent custody or visitation prior to deployment. All restrictions on
28 the custody or visitation in the existing order shall remain in effect in the temporary
29 modification order.

1 C. A temporary modification order shall specify that deployment is the
2 reason for modification and shall require the other parent to provide the court and the
3 deploying parent with written notice thirty days prior to a change of address or
4 telephone number.

5 D. The court shall have an expedited hearing on any custody or visitation
6 matters, upon the motion of a parent and for good cause shown, when military duties
7 prevent the deploying parent from personally appearing at a hearing scheduled
8 regularly on the docket.

9 §359.5. Termination of temporary modification order

10 A. A temporary modification order terminates by operation of law upon the
11 completion of deployment, and the prior order shall be reinstated. If the other parent
12 has relocated with the child in accordance with the provisions of R.S. 9:355.1 et seq.,
13 custody or visitation shall be exercised where the child resides, pending further
14 orders of the court.

15 B. Notwithstanding the provisions of Subsection A of this Section, the court
16 may, upon motion alleging immediate danger or irreparable harm to the child, grant
17 an expedited hearing on the termination of the temporary modification order and the
18 reinstatement of the prior order, or the court may grant an ex parte order of
19 temporary custody prior to the reinstatement of the prior order. Any ex parte
20 temporary order shall comply with the provisions of Code of Civil Procedure Article
21 3945.

22 §359.6. Delegation of visitation

23 The court may delegate some or all of the deploying parent's visitation, upon
24 motion of the deploying parent, to a family member with a substantial relationship
25 to the child if the court determines it is in the best interest of the child. For the
26 purposes of this Section, the court shall consider Civil Code Article 136 in
27 determining the best interest of the child. Delegated visitation shall not create
28 standing to assert separate visitation rights. Delegated visitation shall terminate by
29 operation of law in accordance with the provisions of R.S. 9:359.5 or upon a showing
30 that the delegated visitation is no longer in the best interest of the child.

1 §359.7. Testimony; evidence

2 The court shall permit the presentation of testimony and evidence by affidavit
3 or electronic means, upon motion of a parent and for good cause shown, when
4 military duties prevent the deploying parent from personally appearing.

5 §359.8. Lack of existing order of custody or visitation

6 When an order establishing custody or visitation has not been rendered and
7 deployment is imminent, upon the motion of either parent, the court shall expedite
8 a hearing to establish a temporary order in accordance with this Subpart.

9 §359.9. Duty to cooperate; disclosure of information

10 A. When military necessity precludes court adjudication prior to deployment,
11 the parties shall cooperate in custody or visitation matters.

12 B. Within ten days of receipt, a copy of the deployment orders shall be
13 provided to the other parent. When the deployment date is less than ten days after
14 receipt of the orders, a copy shall immediately be provided.

15 §359.10. Appointment of counsel

16 When the court declines to grant or extend a stay of proceedings in
17 accordance with the Servicemembers Civil Relief Act, 50 U.S.C. Appendix Section
18 521-522, upon motion of either parent or upon its own motion, the court shall
19 appoint an attorney to represent the child in accordance with the provisions of R.S.
20 9:345.

21 §359.11. Jurisdiction

22 When a court of this state has issued a custody or visitation order, the absence
23 of a child from this state during the deployment of a parent shall be a "temporary
24 absence" for the purposes of the Uniform Child Custody Jurisdiction and
25 Enforcement Act and this state shall retain exclusive continuing jurisdiction in
26 accordance with the provisions of R.S. 13:1814. The deployment of a parent may
27 not be used as a basis to assert inconvenience of the forum in accordance with the
28 provisions of R.S. 13:1819.

1 §359.12. Attorney fees

2 The court may award attorney fees and costs when either party causes
3 unreasonable delays, fails to provide information required in this Subpart, or in any
4 other circumstance in which the court considers it to be appropriate.

5 §359.13. Applicability

6 The provisions of this Subpart shall not apply to any custody or visitation
7 order requested in a verified petition alleging the applicability of the Domestic
8 Abuse Assistance Act, R.S. 46:2131 et seq., Children's Code Article 1564 et seq., or
9 the Post-Separation Family Violence Relief Act, R.S. 9:361 et seq.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____