

ASSEMBLY BILL NO. 313—ASSEMBLYMEN BUSTAMANTE ADAMS,
BOBZIEN, ANDERSON AND HORNE

MARCH 18, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the custody and visitation of children for persons who are members of the military. (BDR 11-627)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to child custody; providing for the expiration by operation of law of certain orders modifying custody and visitation of children for persons who are members of the military; authorizing a court to delegate the visitation rights of a member of the military to a family member of the member of the military under certain circumstances; requiring a court, under certain circumstances, to provide an expedited hearing concerning custody or visitation matters to allow participation in such a hearing by affidavit or electronic means, or to both hold an expedited hearing and allow such participation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that an award of child custody or visitation may only be made by considering the best interest of the child. (NRS 125.480, 125C.010) Existing law further provides that the court is authorized, with certain exceptions, to modify its order at any time. (NRS 125.510) **Section 10** of this bill prohibits a court from entering a final order modifying the terms of an existing custody or visitation order of a parent or legal guardian who is a member of the military and who has received mandatory written orders for deployment until 90 days after the deployment ends. **Section 11** of this bill provides that deployment or the potential for future deployment of a parent or legal guardian must not, by itself, constitute a substantial change sufficient to justify a permanent modification of a custody or visitation order.

Section 12 of this bill authorizes a court to modify a custody or visitation order to reasonably accommodate the deployment of a parent or legal guardian and



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deems any such modification to be a temporary order. **Section 13** of this bill provides, with certain exceptions, that such a temporary order expires automatically upon the completion of the deployment and the custody or visitation order that was in place before the order was modified by the temporary order is automatically reinstated.

Section 15 of this bill authorizes a court to delegate the visitation rights of the parent or legal guardian who is deployed to a family member of the parent or legal guardian under certain circumstances.

Section 14 of this bill requires a court, upon a motion of a parent or legal guardian who is deployed or has received mandatory written orders for deployment and who is prevented by military duties from appearing in person at a regularly scheduled hearing concerning custody or visitation matters, to: (1) hold an expedited hearing; (2) allow the parent or legal guardian to present testimony and evidence by affidavit or electronic means; or (3) both hold an expedited hearing and allow testimony and evidence to be presented by affidavit or electronic means.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 125.510 is hereby amended to read as follows:
125.510 1. In determining the custody of a minor child in an action brought pursuant to this chapter, the court may, except as otherwise provided in this section and chapter 130 of NRS ~~§~~ *and sections 3 to 20, inclusive, of this act:*

(a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest; and

(b) At any time modify or vacate its order, even if the divorce was obtained by default without an appearance in the action by one of the parties.

➔ The party seeking such an order shall submit to the jurisdiction of the court for the purposes of this subsection. The court may make such an order upon the application of one of the parties or the legal guardian of the minor.

2. Any order for joint custody may be modified or terminated by the court upon the petition of one or both parents or on the court's own motion if it is shown that the best interest of the child requires the modification or termination. The court shall state in its decision the reasons for the order of modification or termination if either parent opposes it.

3. Any order for custody of a minor child or children of a marriage entered by a court of another state may, subject to *the provisions of sections 3 to 20, inclusive, of this act and to* the jurisdictional requirements in chapter 125A of NRS, be modified at any time to an order of joint custody.



1 4. A party may proceed pursuant to this section without
2 counsel.

3 5. Any order awarding a party a limited right of custody to a
4 child must define that right with sufficient particularity to ensure
5 that the rights of the parties can be properly enforced and that the
6 best interest of the child is achieved. The order must include all
7 specific times and other terms of the limited right of custody. As
8 used in this subsection, "sufficient particularity" means a statement
9 of the rights in absolute terms and not by the use of the term
10 "reasonable" or other similar term which is susceptible to different
11 interpretations by the parties.

12 6. All orders authorized by this section must be made in
13 accordance with the provisions of chapter 125A of NRS *and*
14 *sections 3 to 20, inclusive, of this act* and must contain the
15 following language:

16
17 PENALTY FOR VIOLATION OF ORDER: THE
18 ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD
19 IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A
20 CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS
21 200.359 provides that every person having a limited right of custody
22 to a child or any parent having no right of custody to the child who
23 willfully detains, conceals or removes the child from a parent,
24 guardian or other person having lawful custody or a right of
25 visitation of the child in violation of an order of this court, or
26 removes the child from the jurisdiction of the court without the
27 consent of either the court or all persons who have the right to
28 custody or visitation is subject to being punished for a category D
29 felony as provided in NRS 193.130.
30

31 7. In addition to the language required pursuant to subsection
32 6, all orders authorized by this section must specify that the terms of
33 the Hague Convention of October 25, 1980, adopted by the 14th
34 Session of the Hague Conference on Private International Law,
35 apply if a parent abducts or wrongfully retains a child in a foreign
36 country.

37 8. If a parent of the child lives in a foreign country or has
38 significant commitments in a foreign country:

39 (a) The parties may agree, and the court shall include in the
40 order for custody of the child, that the United States is the country
41 of habitual residence of the child for the purposes of applying the
42 terms of the Hague Convention as set forth in subsection 7.

43 (b) Upon motion of one of the parties, the court may order the
44 parent to post a bond if the court determines that the parent poses an
45 imminent risk of wrongfully removing or concealing the child



1 outside the country of habitual residence. The bond must be in an
2 amount determined by the court and may be used only to pay for the
3 cost of locating the child and returning the child to his or her
4 habitual residence if the child is wrongfully removed from or
5 concealed outside the country of habitual residence. The fact that a
6 parent has significant commitments in a foreign country does not
7 create a presumption that the parent poses an imminent risk of
8 wrongfully removing or concealing the child.

9 9. Except where a contract providing otherwise has been
10 executed pursuant to NRS 123.080, the obligation for care,
11 education, maintenance and support of any minor child created by
12 any order entered pursuant to this section ceases:

13 (a) Upon the death of the person to whom the order was
14 directed; or

15 (b) When the child reaches 18 years of age if the child is no
16 longer enrolled in high school, otherwise, when the child reaches 19
17 years of age.

18 10. As used in this section, a parent has "significant
19 commitments in a foreign country" if the parent:

20 (a) Is a citizen of a foreign country;

21 (b) Possesses a passport in his or her name from a foreign
22 country;

23 (c) Became a citizen of the United States after marrying the
24 other parent of the child; or

25 (d) Frequently travels to a foreign country.

26 **Sec. 2.** Chapter 125C of NRS is hereby amended by adding
27 thereto the provisions set forth as sections 3 to 20, inclusive, of this
28 act.

29 **Sec. 3.** *As used in sections 3 to 20, inclusive, of this act,*
30 *unless the context otherwise requires, the words and terms defined*
31 *in sections 4 to 9, inclusive, of this act have the meanings ascribed*
32 *to them in those sections.*

33 **Sec. 4.** *"Custody or visitation order" means:*

34 *1. A judgment, decree or order issued by a court of competent*
35 *jurisdiction in this State which provides for custody or visitation*
36 *with respect to a child; and*

37 *2. A judgment, decree or order issued by a court of another*
38 *state which provides for custody or visitation with respect to a*
39 *child if the judgment, decree or order has been registered in this*
40 *State pursuant to NRS 125A.465.*

41 **Sec. 5.** *"Deployment" means the transfer or reassignment of*
42 *a member of the military, unaccompanied by any family member,*
43 *on active duty status in support of combat or another military*
44 *operation, including, without limitation, temporary duty. The term*



1 *does not include annual training of a reserve component of the*
2 *Armed Forces of the United States or of the National Guard.*

3 **Sec. 6.** *“Member of the military” means a person who is*
4 *presently serving in the Armed Forces of the United States, a*
5 *reserve component thereof or the National Guard.*

6 **Sec. 7.** *“Parent” means a parent or legal guardian of a child*
7 *under the age of 18 years.*

8 **Sec. 8.** *“Parent who received orders for deployment” means*
9 *a parent who has received mandatory written orders for*
10 *deployment and who is awaiting deployment or has been deployed*
11 *pursuant to those orders.*

12 **Sec. 9.** *“Temporary duty” means the transfer of a member of*
13 *the military, unaccompanied by any family member, from a*
14 *military base to a different location, including, without limitation,*
15 *another military base, for a limited time to accomplish training or*
16 *to assist in the performance of a combat mission.*

17 **Sec. 10. 1.** *Except as otherwise provided in subsection 2, if*
18 *a parent who is a member of the military and who has been*
19 *awarded sole or joint custody or visitation of a child receives*
20 *mandatory written orders for deployment, the court shall not enter*
21 *a final order modifying the terms of the existing custody or*
22 *visitation order until 90 days after the termination of the parent’s*
23 *deployment.*

24 **2.** *If the matter was fully adjudicated by a court before the*
25 *parent’s deployment, the court may enter such a final order at any*
26 *time.*

27 **Sec. 11.** *Deployment or the potential for future deployment*
28 *must not, by itself, constitute a substantial change in*
29 *circumstances sufficient to warrant a permanent modification of a*
30 *custody or visitation order.*

31 **Sec. 12. 1.** *The court may temporarily modify a custody or*
32 *visitation order to reasonably accommodate the deployment of a*
33 *parent. Any such modification by the court of a custody or*
34 *visitation order shall be deemed a temporary order.*

35 **2.** *A temporary order issued pursuant to subsection 1 must:*

36 **(a)** *Unless the court determines it is not in the best interest of*
37 *the child, grant the parent who received orders for deployment*
38 *reasonable custody or visitation during periods of approved*
39 *military leave if the existing custody or visitation order granted*
40 *that parent custody or visitation before deployment;*

41 **(b)** *Include any restrictions concerning custody or visitation*
42 *set forth in the existing custody or visitation order;*

43 **(c)** *Specify that deployment is the reason for the modification*
44 *of the existing custody or visitation order; and*



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(d) Require the other parent to provide the court and the parent who received orders for deployment with written notice of any change of his or her address or telephone number as soon as practicable but not later than 30 days after such change.

Sec. 13. 1. Except as otherwise provided in subsection 2, a temporary order issued pursuant to section 12 of this act expires by operation of law upon the completion of the parent's deployment and the previous custody or visitation order is reinstated.

2. The court may, upon a motion alleging immediate danger of irreparable harm to the child, hold an expedited hearing concerning custody or visitation upon the completion of the parent's deployment.

Sec. 14. 1. If military duties prevent a parent who received orders for deployment from appearing in person at a regularly scheduled hearing concerning any custody or visitation matters, the court shall, upon a motion of that parent and for good cause shown:

(a) Hold an expedited hearing;

(b) Allow the parent who received orders for deployment to present testimony and evidence by affidavit or electronic means; or

(c) Both hold an expedited hearing pursuant to paragraph (a) and allow testimony and evidence to be presented pursuant to paragraph (b).

2. As used in this section, "electronic means" includes, without limitation, telephone, videoconference or the Internet.

Sec. 15. 1. Upon a motion by the parent who received orders for deployment, the court may delegate his or her visitation rights, or a portion of those rights, to a family member of that parent who has a substantial relationship with the child if the court determines that such delegated visitation is in the best interest of the child.

2. In determining whether visitation rights should be delegated to a family member pursuant to subsection 1, the court shall consider the factors set forth in paragraphs (a) to (i), inclusive, of subsection 6 of NRS 125C.050.

3. Any visitation rights delegated to a family member pursuant to subsection 1 terminate upon:

(a) The expiration of a temporary order pursuant to section 13 of this act; or

(b) A showing that the delegated visitation is no longer in the best interest of the child.

4. Nothing in this section increases the authority of a family member who is delegated visitation rights pursuant to subsection 1



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1 to seek separate visitation rights of the child pursuant to
2 NRS 125C.050.

3 **Sec. 16.** *If a custody or visitation order has not been issued*
4 *and a parent's deployment is imminent, the court shall, upon a*
5 *motion of either parent, hold an expedited hearing for the purpose*
6 *of issuing a temporary order establishing the custody and*
7 *visitation arrangement in accordance with sections 3 to 20,*
8 *inclusive, of this act.*

9 **Sec. 17. 1.** *If military necessity precludes court*
10 *adjudication before deployment, the parent who received orders*
11 *for deployment and the other parent shall cooperate with and*
12 *provide information to each other in an effort to reach a mutually*
13 *agreeable resolution with regard to custody and visitation matters.*

14 **2.** *Except as otherwise provided in this subsection, the parent*
15 *who received orders for deployment shall, within 10 days after*
16 *receiving the orders, provide a copy of the orders to the other*
17 *parent. If the date of deployment is less than 10 days after receipt*
18 *of the orders, a copy of the orders must be provided immediately to*
19 *the other parent.*

20 **Sec. 18. 1.** *If a court in this State has issued a custody or*
21 *visitation order, the absence of a child from this State during the*
22 *deployment of a parent shall be deemed a temporary absence*
23 *for the purposes of NRS 125A.085 and 125A.135 and this*
24 *State retains exclusive, continuing jurisdiction as provided in*
25 *NRS 125A.315.*

26 **2.** *The deployment of a parent may not be used as a basis to*
27 *assert the issue of inconvenient forum pursuant to NRS 125A.365.*

28 **Sec. 19.** *In making a determination pursuant to sections 3 to*
29 *20, inclusive, of this act, a court may award costs and reasonable*
30 *attorney's fees against any parent:*

31 **1.** *Who the court determines caused unreasonable delays;*

32 **2.** *Who failed to provide any information required pursuant*
33 *to sections 3 to 20, inclusive, of this act; and*

34 **3.** *In such other circumstances as the court deems proper.*

35 **Sec. 20.** *The provisions of sections 3 to 20, inclusive, of this*
36 *act do not apply to any custody or visitation arrangement*
37 *requested in a verified application for a temporary or extended*
38 *order for protection against domestic violence filed pursuant to*
39 *NRS 33.020.*

