ENGROSSED HOUSE
BILL NO. 1603 By: Stiles of the House

and

Anderson of the Senate

An Act relating to marriage and family; amending 43 O.S. 2001, Section 112, as last amended by Section 10, Chapter 358, O.S.L. 2010 (43 O.S. Supp. 2010, Section 112), which relates to custody and support of minor children in divorce proceedings; modifying requirements and procedures relating to military deployments; creating the Military Custody and Visitation Act; defining terms; directing court to provide for custody of child when parent has been deployed; authorizing deploying parents to delegate visitation rights; specifying authority of delegation; specifying limitation of delegation; specifying certain deployments shall be considered temporary absence for certain purposes; providing for jurisdiction; requiring deploying parent to provide certain notice; specifying notice requirements; providing exception; authorizing motions for certain custody hearings; specifying procedure; specifying required contents of motion; authorizing expedited hearing motions; requiring parent delegating visitation to identify family member so delegated; authorizing the use of electronic means for certain hearings; authorizing certain limitations; authorizing the entry of certain orders; establishing presumption that certain existing orders are in best interest of child; specifying certain requirements of temporary order; providing for visitation of other family members; specifying limitations of visitation orders; directing court to order reasonable visitation; providing exceptions; specifying visitation order shall be temporary; limiting authority of court to modify certain existing arrangements; providing exception; providing for delegation of visitation rights; specifying visitation orders shall be temporary; establishing

visitation requirements; providing exception; requiring attendance of certain family member at hearing; specifying rebuttable presumptions for deploying parents; requiring notice at the end of deployment; specifying contents of notice; authorizing motions for temporary orders after deployment; requiring liberal visitation; providing exception; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 43 O.S. 2001, Section 112, as last amended by Section 10, Chapter 358, O.S.L. 2010 (43 O.S. Supp. 2010, Section 112), is amended to read as follows:

Section 112. A. A petition or cross-petition for a divorce, legal separation, or annulment must state whether or not the parties have minor children of the marriage. If there are minor children of the marriage, the court:

1. Shall make provision for guardianship, custody, medical care, support and education of the children;

2. Unless not in the best interests of the children, may provide for the visitation of the noncustodial parent with any of the children of the noncustodial parent; and

3. May modify or change any order whenever circumstances render the change proper either before or after final judgment in the action; provided, that the amount of the periodic child support payment shall not be modified retroactively or payment of all or a

portion of the past due amount waived, except by mutual agreement of the obligor and obligee, or if the obligee has assigned child support rights to the Department of Human Services or other entity, by agreement of the Department or other entity. Unless the parties agree to the contrary, a completed child support computation form provided for in Section 120 of this title shall be required to be filed with the child support order.

The social security numbers of both parents and the child shall be included on the child support order summary form provided for in Section 120 of this title, which shall be submitted to the Central Case Registry as provided for in Section 112A of this title with all child support or paternity orders.

B. In any action in which there are minor unmarried children in awarding or modifying the custody of the child or in appointing a general guardian for the child, the court shall be guided by the provisions of Section 112.5 of this title and shall consider what appears to be in the best interests of the child.

C. 1. When it is in the best interests of a minor unmarried child, the court shall:

a. assure children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and

b. encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

2. There shall be neither a legal preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody.

3. When in the best interests of the child, custody shall be awarded in a way which assures the frequent and continuing contact of the child with both parents. When awarding custody to either parent, the court:

a. shall consider, among other facts, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and

b. shall not prefer a parent as a custodian of the child because of the gender of that parent.

4. In any action, there shall be neither a legal preference or a presumption for or against private or public school or home-schooling in awarding the custody of a child, or in appointing a general guardian for the child.

5. Notwithstanding any custody determination made pursuant to the Oklahoma Children's Code, when a custodial parent of a child is required to be separated from a child due to military service, ~~a~~ the court shall ~~not enter a final order modifying an existing custody~~

~~order until such time as the custodial parent has completed the term of duty requiring separation. For purposes of this paragraph:~~

~~a. in the case of a parent who is a member of the Army, Navy, Air Force, Marine Corps or Coast Guard, the term "military service" means a combat deployment, contingency operation, or natural disaster requiring the use of orders that do not permit any family member to accompany the member, and~~

~~b. in the case of a parent who is a member of the National Guard, the term "military service" means service under a call to active service authorized by the President of the United States or the Secretary of Defense for a period of more than thirty (30) consecutive days under 32 U.S.C. 502(f) for purposes of responding to a national emergency declared by the President and supported by federal funds. "Military service" shall include any period during which a member is absent from duty on account of sickness, wounds, leave or other lawful cause~~ determine custody and visitation pursuant to the provisions of the Military Custody and Visitation Act.

6. In making an order for custody, the court shall require compliance with Section 112.3 of this title.

D. 1. Except for good cause shown, a pattern of failure to allow court-ordered visitation may be determined to be contrary to the best interests of the child and as such may be grounds for modification of the child custody order.

2. For any action brought pursuant to the provisions of this section which the court determines to be contrary to the best interests of the child, the prevailing party shall be entitled to recover court costs, attorney fees and any other reasonable costs and expenses incurred with the action.

E. Except as otherwise provided by Section 112.1A of this title, any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a child is regularly enrolled in and attending high school, as set forth in Section 11-103.6 of Title 70 of the Oklahoma Statutes, other means of high school education, or an alternative high school education program as a full-time student, the child shall be entitled to support by the parents until the child graduates from high school or until the age of twenty (20) years, whichever occurs first. Full-time attendance shall include regularly scheduled breaks from the school year. No hearing or further order is required to extend support pursuant to this subsection after the child reaches the age of eighteen (18) years.

F. In any case in which provision is made for the custody or support of a minor child or enforcement of such order and before

hearing the matter or signing any orders, the court shall inquire whether public assistance money or medical support has been provided by the Department of Human Services, hereafter referred to as the Department, for the benefit of each child. If public assistance money, medical support, or child support services under the state child support plan as provided in Section 237 of Title 56 of the Oklahoma Statutes have been provided for the benefit of the child, the Department shall be a necessary party for the adjudication of the debt due to the State of Oklahoma, as defined in Section 238 of Title 56 of the Oklahoma Statutes, and for the adjudication of paternity, child support, and medical insurance coverage for the minor children in accordance with federal regulations. When an action is filed, the petitioner shall give the Department notice of the action according to Section 2004 of Title 12 of the Oklahoma Statutes. The Department shall not be required to intervene in the action to have standing to appear and participate in the action. When the Department is a necessary party to the action, any orders concerning paternity, child support, medical support, or the debt due to the State of Oklahoma shall be approved and signed by the Department.

G. In any case in which a child support order or custody order or both is entered, enforced or modified, the court may make a determination of the arrearages of child support.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150 of Title 43, unless there is created a duplication in numbering, reads as follows:

Sections 2 through 7 of this act shall be known and may be cited as the "Military Custody and Visitation Act".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.1 of Title 43, unless there is created a duplication in numbering, reads as follows:

As used in the Military Custody and Visitation Act:

1. "Close and substantial relationship" means a relationship in which a bond has been forged between the child and the other person by regular contact or communication;

2. "Custodial responsibility" refers to legal custody, physical custody or visitation rights with respect to a child;

3. "Deploying parent" means a legal parent of a minor child, who is a member of the United States Armed Forces and who is deployed or has been notified of an impending deployment;

4. "Deployment" means the temporary transfer of a servicemember in compliance with official orders to another location in support of combat, contingency operation, or natural disaster requiring the use of orders for a period of more than thirty (30) consecutive days, during which family members are not authorized to accompany the servicemember at government expense. Deployment shall include any

period during which a servicemember is absent from duty on account of sickness, wounds, leave or other lawful cause;

5. "Guardian" means a person who has been appointed as a guardian of a minor or incapacitated adult pursuant to the requirements of Title 30 of the Oklahoma Statutes. The term shall include a limited guardian, but shall not include a guardian ad litem;

6. "Nondeploying parent" means a legal parent or guardian who is not deployed and who has a child or ward in common with a deploying parent;

7. "Servicemember" means a member of either:

a. the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard, or

b. the active or reserve components of the National Guard; and

8. "Visitation" means the right to take a child for a limited period of time to a place other than the habitual residence of the child.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.2 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. In any proceeding in which the custody and visitation of a minor child is contested and a parent of the minor child is a servicemember subject to deployment, the court shall provide for the

custody and visitation of the child in the event the servicemember parent is deployed.

B. In order to ensure an ongoing relationship with the child while deployed, a deploying parent has the right to delegate his or her visitation rights to a member of the family of the child. Visitation awarded pursuant to this section derives from the deploying parent's own right to custodial responsibility. Neither this section nor a court order permitting delegations shall be deemed to create any separate or permanent rights to visitation.

C. The removal of a child from this state in anticipation of or during deployment shall be considered a temporary absence for the purposes of the Uniform Child Custody and Jurisdiction Enforcement Act (UCCJEA), Sections 551-101 through 551-402 of Title 43 of the Oklahoma Statutes. If this state has exclusive continuing jurisdiction pursuant to the UCCJEA at the time of deployment, the state shall retain jurisdiction for the duration of the deployment. The existence of a deployment shall not be used as a basis to assert the inconvenience of this state as a forum or otherwise to remove jurisdiction from the courts of this state. This section shall not prevent the exercise of temporary emergency jurisdiction by a court of this state under the UCCJEA.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.3 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. A deploying parent shall notify the nondeploying parent twenty (20) days after the date the deploying parent receives an order of deployment if the orders are received less than sixty (60) days before the date of deployment. However, the deploying parent shall provide notice to the nondeploying parent no less than ten (10) days prior to deployment unless it would be impractical for the servicemember to provide notice any earlier.

B. If a valid court order requires that the address or contact information of the nondeploying parent be kept confidential, the notification shall be made to the court only. The court shall notify the nondeploying parent, or counsel for the nondeploying parent, if the deploying parent is prohibited from directly contacting the nondeploying parent.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.4 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. Where an action affecting custody or visitation is pending before the court and the servicemember has been served notice of the Dissolution of Marriage for at least thirty (30) days prior to deployment, upon receiving notice of the deployment, either party may motion the court to enter a temporary order for custodial responsibility consistent with the Servicemembers Civil Relief Act.

B. Where an action affecting custody or visitation has been filed and the deploying parent has been served for less than thirty

(30) days before the deployment or filed during deployment, only the deploying parent may motion the court to enter a temporary order for custodial responsibility consistent with the Servicemembers Civil Relief Act.

C. The motion shall include the date on which the deployment begins or began, the length of deployment if known and whether the party requests an expedited hearing. If a party requests an expedited hearing, the court shall schedule a hearing within ten (10) days of the filing of the motion.

D. If the deployed or deploying parent is the movant and is exercising the right to delegate visitation to a family member, then the name of the family member shall be stated in the motion.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.5 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. Upon proper motion made pursuant to Section 6 of this act, the court shall enter temporary orders regarding custody, visitation and child support.

B. A deploying parent who is entitled to a stay in civil proceedings pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App., Sections 501 through 596, may elect to proceed while the deploying parent is unavailable to appear in the geographical location in which the litigation is pursued and may seek relief and

provide evidence through video conferencing, Internet camera, e-mail, telephone, or other reasonable electronic means.

C. Except for the privilege offered to the deployed servicemember in subsection B of this section, the court shall factor the same consideration and conduct the temporary order hearing as provided in Section 112 of Title 43 of the Oklahoma Statutes. Hearings conducted pursuant to this section shall be considered nonevidentiary hearings and the standard rules of evidence do not apply.

D. 1. If a prior judicial decree contains provisions for custodial responsibility of the child in the event of deployment, those provisions shall not be modified by the court unless:

a. a subsequent substantial change of circumstances has occurred after the prior judicial decree was ordered, or

b. a showing that enforcement of the provisions of the prior decree would result in substantial harm to the child.

2. If the deploying parent and the nondeploying parent have previously agreed in writing to provisions for the custodial responsibility of the child in the event of deployment, there shall be a rebuttable presumption that the agreement is in the best interest of the child. The presumption may be overcome only if the

court makes specific findings of fact establishing that the agreement is not in the best interest of the child.

E. When entering a temporary order for custodial responsibility prior to or during a deployment, the court shall:

1. Identify the nature of the deployment that is the basis for the order;

2. Specify that the order is temporary;

3. Specify the contact between the deploying parent and the child during deployment, including the means by which the deploying parent may remain in communication with the child, such as electronic communication by Internet camera, telephone, e-mail and other available means; and

4. Order liberal contact between the deploying parent and child when the deploying parent is on leave or is otherwise available, consistent with the best interest of the child.

F. In an order granting delegation of visitation rights pursuant to Section 8 of this act, the court shall:

1. Set out a process to resolve any disputes that may arise between the person receiving visitation and the nondeploying parent;

2. Identify the nature of the deployment that is the basis for the order; and

3. Specify that the order is a temporary order and shall terminate at the end of the deployment.

G. If the matter before the court concerns a postdissolution modification of custody or visitation, the court shall not modify the previously ordered custody or visitation arrangement until the expiration of the servicemember's deployment, unless the child is at risk of serious irreparable harm.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.6 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. If the deploying parent moves to delegate visitation rights, the court shall grant reasonable visitation to a member of the family of the child, including a stepparent or step sibling, with whom the child has a close and substantial relationship as defined in the Military Custody and Visitation Act.

B. Any visitation ordered by the court pursuant to this section shall be temporary in nature and shall not exceed or be less than the amount of custodial time granted to the deploying parent under any existing permanent order or agreement between the parents, with the exception that the court may take into account unusual travel time required to transport the child between the nondeploying parent and the family members allowed visitation.

C. The person appointed by the deploying parent to exercise visitation shall appear at the temporary order hearing.

D. Rebuttable presumptions for proceedings under this act:

1. In postdissolution proceedings, there shall be a rebuttable presumption that it is in the best interests of the child for a stepparent to exercise the deployed parent's parental duties;

2. There shall be a rebuttable presumption that if the person appointed by the deployed or deploying party meets the requirements of subsection A of this section, then it shall be in the best interest of the child that the person receive visitation; and

3. There shall be a rebuttable presumption that visitation by a family member who has perpetrated domestic violence against a spouse, a child, a domestic living partner, or is otherwise subject to registration requirements of the Sex Offenders Registration Act is not in the best interest of the child.

E. Once the court has ordered visitation, the person to whom visitation is ordered shall have legal standing to enforce the visitation rights as allowed by law, so long as the deploying parent has not revoked consent to the delegation of visitation rights.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.7 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. Within ten (10) days of the completion of the deployment, the deploying parent shall notify the nondeploying parent of the return of the nondeploying parent. If the deploying parent is unable to locate the nondeploying parent, the parent shall notify the court of the return.

B. At any time upon the completion of the deployment, either party may file a motion for new temporary orders. If this motion is filed within thirty (30) days of the completion of the deployment, the court shall hold an expedited hearing no later than ten (10) days after the filing of the motion.

C. In establishing a temporary order upon deployment, the court shall grant liberal visitation to the deployed parent in order to reestablish the relationship with the child and the deployed parent. If the court reasonably believes liberal visitation would cause irreparable harm to the child, the court shall order a transition period which allows a gradual return to the prior custody order.

SECTION 10. This act shall become effective November 1, 2011.

Passed the House of Representatives the 17th day of March, 2011.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2011.

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Presiding Officer of the Senate