

Senate Study Bill 3148 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON KREIMAN)

A BILL FOR

1 An Act relating to custody, physical care, and visitation
2 provisions relating to a child of a parent who is serving
3 active duty in the military service of the United States.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 598.41C, subsection 1, Code 2009, is
2 amended to read as follows:

3 1. a. If an application for modification of a decree or a
4 petition for modification of an order regarding child custody
5 or physical care is filed prior to or during the time a parent
6 is serving active duty in the military service of the United
7 States, the court may only enter an order or decree temporarily
8 modifying the existing child custody or physical care order
9 or decree if there is clear and convincing evidence that the
10 modification is in the best interest of the child.

11 b. If the active duty of a parent affects the parent's
12 ability or anticipated ability to appear at a regularly
13 scheduled hearing, the court shall provide for an expedited
14 hearing in matters instituted under this section.

15 c. If the active duty or anticipated active duty of a parent
16 prevents the parent from appearing in person at a hearing, the
17 court shall provide, upon reasonable advance notice, for the
18 parent to present testimony and evidence by electronic means
19 in matters instituted under this section. For the purposes of
20 this paragraph, "electronic means" includes communication by
21 telephone, video teleconference, or the internet.

22 d. Upon the parent's completion of active duty, the court
23 shall reinstate the custody or physical care order or decree
24 that was in effect immediately preceding the period of active
25 duty. If an application for modification of a decree or a
26 petition for modification of an order is filed after a parent
27 completes active duty, the parent's absence due to active duty
28 does not constitute a substantial change in circumstances,
29 and the court shall not consider a parent's absence due to
30 that active duty in making a determination regarding the best
31 interest of the child.

32 Sec. 2. NEW SECTION. 598.41D Assignment of visitation —
33 parent serving active duty — family member.

34 1. Notwithstanding any provision to the contrary, a parent
35 who has been granted court-ordered visitation with the parent's

1 minor child may file an application for modification of a
2 decree or a petition for modification of an order regarding
3 child visitation, prior to or during the time the parent is
4 serving active duty in the military service of the United
5 States, to temporarily assign that parent's visitation rights
6 to a family member of the minor child, as specified by the
7 parent. The application or petition shall be accompanied by an
8 affidavit from the family member indicating the family member's
9 knowledge of the application or petition and willingness to
10 exercise the parent's visitation rights during the parent's
11 absence.

12 2. a. If the active duty of a parent affects the parent's
13 ability or anticipated ability to appear at a regularly
14 scheduled hearing, the court shall provide for an expedited
15 hearing in matters instituted under this section.

16 b. If the active duty or anticipated active duty of a parent
17 prevents the parent from appearing in person at a hearing, the
18 court shall provide, upon reasonable advance notice, for the
19 parent to present testimony and evidence by electronic means
20 in matters instituted under this section. For the purposes of
21 this paragraph, "*electronic means*" includes communication by
22 telephone, video teleconference or the internet.

23 3. The court may grant the parent's request for temporary
24 assignment of visitation if the court finds that such
25 visitation is in the best interest of the child.

26 4. An order granting assignment of visitation rights under
27 this section does not create separate rights to visitation for
28 a person other than the parent.

29 5. An order granting temporary assignment of visitation
30 rights pursuant to this section shall terminate upon
31 notification of the court by the parent or automatically upon
32 the parent's completion of active duty, whichever occurs first.

33 6. After a parent completes active duty, if an application
34 for modification of a decree or a petition for modification
35 of an order is filed, the parent's absence due to active duty

1 or the assignment of visitation rights does not constitute a
2 substantial change in circumstances, and the court shall not
3 consider a parent's absence due to that active duty or the
4 assignment of visitation rights in making a determination
5 regarding the best interest of the child relative to such an
6 application or petition filed after a parent completes active
7 duty.

8 7. As used in this section, "*active duty*" means active
9 military duty pursuant to orders issued under Tit. X of the
10 United States Code. However, this section shall not apply to
11 active guard and reserve duty or similar full-time military
12 duty performed by a parent when the child remains in actual
13 custody of the parent.

14 EXPLANATION

15 This bill relates to child custody, physical care, and
16 visitation of a minor child and a parent who is serving active
17 duty.

18 The bill amends a current Code provision relating to custody
19 and physical care of the child by providing for expedited
20 hearings and the presentation of testimony and evidence by
21 electronic means by a parent who is affected by active duty.

22 The bill also provides that a parent who has been granted
23 court-ordered visitation with the parent's minor child may
24 file an application for modification of a decree or a petition
25 for modification of an order regarding child visitation, prior
26 to or during the time the parent is serving active duty, to
27 temporarily assign that parent's visitation rights to a family
28 member of the minor child, as specified by the parent. The
29 application or petition must be accompanied by an affidavit
30 from the family member indicating the family member's knowledge
31 of the application or petition and willingness to exercise the
32 parent's visitation rights during the parent's absence.

33 The bill also provides for an expedited hearing on the
34 application or petition if the active duty or anticipated
35 active duty of the parent affects the parent's ability to

1 appear at a regularly scheduled hearing and for presentation
2 of testimony and evidence by electronic means if the parent
3 is prevented from appearing in person due to the active duty
4 or anticipated active duty, upon reasonable advance notice.
5 "Electronic means" includes communication by telephone, video
6 teleconference, or the internet.

7 The court may grant the parent's request for temporary
8 assignment of visitation if the court finds that such
9 visitation is in the best interest of the child. However, the
10 assignment of visitation rights does not create separate rights
11 to visitation for a person other than the parent. The order
12 granting temporary assignment of visitation terminates upon
13 notification of the court by the parent or automatically upon
14 the parent's completion of active duty, whichever occurs first.

15 The bill provides that after a parent completes active duty,
16 if an application for modification of a decree or a petition
17 for modification of an order is filed, the parent's absence
18 due to active duty or the assignment of visitation does not
19 constitute a substantial change in circumstances, and the
20 court shall not consider a parent's absence due to that active
21 duty or the assignment of visitation in making a determination
22 regarding the best interest of the child relative to such an
23 application or petition filed after a parent completes active
24 duty.

25 "Active duty" is defined as active military duty pursuant
26 to orders issued under Title X of the United States Code.
27 However, the bill does not apply to active guard and reserve
28 duty or similar full-time military duty performed by a parent
29 when the child remains in actual custody of the parent.