

Sec. 57. EFFECTIVE UPON ENACTMENT AND RETROACTIVE APPLICABILITY. The section of this division of this Act enacting section 411.9, subsection 1B, being deemed of immediate importance, takes effect upon enactment and applies retroactively to years beginning after December 31, 2008.

Approved April 23, 2010

CHAPTER 1168

CHILDREN OF MILITARY SERVICE MEMBERS ON ACTIVE DUTY — CUSTODY, CARE, AND VISITATION

S.F. 2226

AN ACT relating to custody, physical care, and visitation provisions relating to a child of a parent who is serving active duty in the military service of the United States and including effective date provisions.

Be It Enacted by the General Assembly of the State of Iowa:

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

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

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

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

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

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

1. Notwithstanding any provision to the contrary, a parent who has been granted court-ordered visitation with the parent's minor child may file an application for modification of a decree or a petition for modification of an order regarding child visitation, prior to or during the time the parent is serving active duty in the military service of the United States, to temporarily assign that parent's visitation rights to a family member of the minor child, as specified by the parent. The application or petition shall be accompanied by an affidavit from the family member indicating the family member's knowledge of the application or petition and willingness to exercise the parent's visitation rights during the parent's absence. The application or petition shall also request any change in the visitation schedule necessitated by the assignment.

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

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

3. *a.* The court may grant the parent's request for temporary assignment of visitation and any change in the visitation schedule requested if the court finds that such visitation is in the best interest of the child.

b. In determining the best interest of the child, the court shall ensure all of the following:

(1) That the specified family member is not a sex offender as defined in section 692A.101.

(2) That the specified family member does not have a history of domestic abuse, as defined in section 236.2. In determining whether a history of domestic abuse exists, the court's consideration shall include but is not limited to commencement of an action pursuant to section 236.3, the issuance of a protective order against the individual or the issuance of a court order or consent agreement pursuant to section 236.5, the issuance of an emergency order pursuant to section 236.6, the holding of an individual in contempt pursuant to section 664A.7, the response of a peace officer to the scene of alleged domestic abuse or the arrest of an individual following response to a report of alleged domestic abuse, or a conviction for domestic abuse assault pursuant to section 708.2A.

(3) That the specified family member does not have a record of founded child or dependent adult abuse.

(4) That the specified family member has an established relationship with the child and assigning visitation to the specified family member will provide the child the opportunity to maintain an ongoing family relationship that is important to the child.

(5) That the specified family member is able to personally and financially support the child during visitation.

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

5. The parent whose visitation rights are temporarily assigned shall provide a copy of the order granting assignment of visitation to the school and school district of the child to whom the order applies.

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

7. After a parent completes active duty, if an application for modification of a decree or a petition for modification of an order is filed, the parent's absence due to active duty or the assignment of visitation rights does not constitute a substantial change in circumstances, and the court shall not consider a parent's absence due to that active duty or the assignment of visitation rights in making a determination regarding the best interest of the child relative to such an application or petition filed after a parent completes active duty.

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

Sec. 3. EFFECTIVE UPON ENACTMENT. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 27, 2010