

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

400T0356

HOUSE JUDICIARY ENGROSSED NO. **HB 1046** 1/20/2012

Introduced by: The Committee on Judiciary at the request of the Department of the Military

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding child custody during
2 a soldier's deployment.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 33-6-10 be amended to read as follows:

5 33-6-10. A ~~member of the armed forces of the United States, including a member of the~~
6 ~~reserve component of the armed forces of the United States called into active service of the~~
7 ~~armed forces, and servicemember ordered to deployment,~~ who is the physical custodian or
8 guardian of a minor or incapacitated person, may delegate by a properly executed power of
9 attorney to another person for a period of one year or less any of the powers regarding care and
10 custody of the minor child or ward, except the power to consent to marriage or adoption of a
11 minor ward. If the ~~custodian or guardian is serving on active duty with the armed forces of the~~
12 ~~United States, and a power of attorney properly executed by such person~~ lapses prior to the
13 servicemember's release of such ~~custodian or guardian~~ from active duty, the power of attorney
14 shall be automatically extended for an additional year unless the ~~custodian or guardian~~
15 servicemember is sooner released from active duty. ~~The~~ Neither the execution of such a power



1 of attorney pursuant to this section ~~or upon activation of the service member into the armed~~
2 ~~forces of the United States does not constitute a material change in circumstances for an action~~
3 ~~seeking to change the custody of the affected child or children by the parent without physical~~
4 ~~custody, nor the deployment, may be considered a factor in considering a substantial change of~~
5 ~~circumstance, nor a factor in a best interest of the child determination for purposes of permanent~~
6 ~~child custody modification proceedings.~~ There is hereby imposed an automatic stay of all
7 proceedings seeking a permanent change in custody of a minor child where the parent with
8 physical custody is a ~~member of the active component or reserve component of the armed forces~~
9 ~~of the United States called into active service during a period of national emergency~~
10 ~~servicemember called to active duty for deployment.~~ Such stay shall continue for the period of
11 service ~~of the national emergency due to deployment,~~ unless waived in writing by the service
12 member. Nothing in this section precludes a petition by the noncustodial parent to temporarily
13 change physical custody. ~~However, the best interests of the child shall be determinative~~ Any
14 temporary order modifying physical custody of the child automatically terminates upon return
15 of the servicemember from deployment and reverts back to the custody status or order in effect
16 prior to the deployment. However, if a material change in circumstances affects the
17 servicemember's ability to care for the child, the best interests of the child shall be
18 determinative.

19 Section 2. That § 25-4A-11 be amended to read as follows:

20 25-4A-11. Upon the filing of a summons and complaint for divorce or separate maintenance
21 or any other custody action or proceeding, the plaintiff shall also file and serve upon the
22 defendant a copy of the standard guidelines. The standard guidelines attached to the summons
23 shall become an order of the court upon fulfillment of the requirements of service. ~~Any~~ Except
24 as provided in § 33-6-10, any minor child of the marriage shall remain in the custody of the

1 parent who has been the primary caregiver for the minor child for the majority of time in the
2 twelve months preceding the filing of the summons and complaint, unless the parties agree
3 otherwise. The standard guidelines ~~shall~~ apply and shall continue in effect, unless the parties
4 agree, or the court orders otherwise. Imposition of the standard guidelines creates no
5 presumption as to who may be awarded custody at any hearing.