

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

400T0356

HOUSE ENGROSSED NO. **HB 1046** - 1/26/2012

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 and~~
5 ~~material change of circumstances, nor a factor in a best interest of the child determination for~~
6 ~~purposes of permanent child custody modification proceedings.~~ There is hereby imposed an
7 automatic stay of all proceedings seeking a permanent change in custody of a minor child where
8 the parent with physical custody is a ~~member of the active component or reserve component of~~
9 ~~the armed forces of the United States called into active service during a period of national~~
10 ~~emergency~~ servicemember called to active duty for deployment. Such stay shall continue for the
11 period of service ~~of the national emergency~~ due to deployment, unless waived in writing by the
12 service member. Nothing in this section precludes a petition by the noncustodial parent to
13 temporarily change physical custody. ~~However, the best interests of the child shall be~~
14 ~~determinative~~ Any temporary order modifying physical custody of the child automatically
15 terminates upon return of the servicemember from deployment and reverts back to the custody
16 status or order in effect prior to the deployment. However, if upon return from deployment the
17 servicemember exhibits a substantial and material change in circumstances which adversely
18 affects the servicemember's ability to adequately care for the child, the best interests of the child
19 shall be determinative.

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

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

1 as provided in § 33-6-10, any minor child of the marriage shall remain in the custody of the
2 parent who has been the primary caregiver for the minor child for the majority of time in the
3 twelve months preceding the filing of the summons and complaint, unless the parties agree
4 otherwise. The standard guidelines ~~shall~~ apply and shall continue in effect, unless the parties
5 agree, or the court orders otherwise. Imposition of the standard guidelines creates no
6 presumption as to who may be awarded custody at any hearing.