

1 HB408  
2 115969-1  
3 By Representatives McDaniel, Sanderford and McLaughlin  
4 RFD: Judiciary  
5 First Read: 21-JAN-10

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8 SYNOPSIS: Existing law requires that custody be  
9 ordered according to the best interest of the  
10 child. Existing law makes no provision for  
11 maintaining custody when a parent is called to  
12 active duty in the military.

13 This bill would prohibit a court from  
14 modifying an order granting custody of a child if  
15 the party who has custody is a member of the  
16 Alabama National Guard or a branch of the armed  
17 services and he or she has been called to active  
18 duty. This bill would provide exceptions if the  
19 court determines that modifying the order is in the  
20 best interest of the child and the party has either  
21 died while on active duty or is no longer able to  
22 provide adequate care for the child.

23 This bill would prohibit a court from basing  
24 a determination of the best interest of the child  
25 on a parent's separation from his or her child due  
26 to active military duty.

1                   This bill would also prohibit courts from  
2                   making a final determination as to custody while a  
3                   parent is away on active military duty.

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5                   A BILL  
6                   TO BE ENTITLED  
7                   AN ACT  
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9                   To prohibit a court from modifying an order granting  
10                  custody of a child if the party who has custody of the child  
11                  is a member of the Alabama National Guard or the armed  
12                  services and he or she has been called to active duty; to  
13                  provide exceptions; to prohibit a court from basing a best  
14                  interest determination on the separation of a parent from the  
15                  child due to active military duty; and to prohibit courts from  
16                  making final custody determinations until a parent returns  
17                  from active military duty.

18                 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19                 Section 1. (a) Except as otherwise provided in  
20                 subsection (b), if a party has custody of a child, the court  
21                 shall not modify the order granting custody of the child if  
22                 the party meets all of the following criteria:

23                         (1) He or she is a member of the Alabama National  
24                         Guard or a member of a branch of the armed services.

25                         (2) He or she is a resident of Alabama.

26                         (3) He or she has been called to active duty.

1 (b) Notwithstanding subsection (a), a court may  
2 modify an order granting custody of a child to a party who  
3 meets the criteria described in subsection (a) if the court  
4 determines that modifying the order is in the best interest of  
5 the child and either of the following applies:

6 (1) The party has died while on active duty with the  
7 Armed Forces of the United States.

8 (2) The party is no longer able to provide adequate  
9 care for the child consistent with the court's determination  
10 of the best interest of the child and the determination of the  
11 best interest of the child is not based on the fact that the  
12 parent was separated from the child due to active military  
13 duty.

14 Section 2. (a) No court shall base a determination  
15 of what is in the best interest of the child on separation of  
16 a parent from the child due to active military duty in the  
17 National Guard or a branch of the armed services.

18 (b) If a parent is engaged in active military duty  
19 as a member of the National Guard or of a branch of the armed  
20 services, no court shall make a final determination of custody  
21 until the parent completes his or her term of active military  
22 duty.

23 Section 3. This act shall become effective  
24 immediately following its passage and approval by the  
25 Governor, or its otherwise becoming law.