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State of Minnesota HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH SESSION

HOUSE FILE No. 2494

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The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

1.1 A bill for an act
1.2 relating to family law; prohibiting a court from considering a parent's military
1.3 status when determining or modifying a legal or physical custody order for
1.4 a child or determining or modifying parenting time orders upon a parent's
1.5 discharge from active military service; amending Minnesota Statutes 2006,
1.6 sections 257C.04, by adding a subdivision; 518.003, by adding a subdivision;
1.7 518.17, subdivisions 1, 2; 518.175, by adding a subdivision; 518.18; proposing
1.8 coding for new law in Minnesota Statutes, chapter 518.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. Minnesota Statutes 2006, section 257C.04, is amended by adding a
1.11 subdivision to read:

1.12 Subd. 3. Military status. If a parent who is a service member is a party seeking
1.13 custody under this section, the court shall not consider as a factor in determining the
1.14 legal or physical custody of a child whether the service member has been, is, or may
1.15 be ordered into active military service in the United States armed forces and as a
1.16 consequence has been, is, or will be absent from the service member's home. "Service
1.17 member" means a member of the United States armed forces, including both its regular
1.18 and reserve components.

1.19 Sec. 2. Minnesota Statutes 2006, section 518.003, is amended by adding a subdivision
1.20 to read:

1.21 Subd. 10. Service member. "Service member" means a member of the United
1.22 States armed forces, including both its regular and reserve components.

1.23 Sec. 3. Minnesota Statutes 2006, section 518.17, subdivision 1, is amended to read:

- 2.1 Subdivision 1. **The best interests of the child.** (a) "The best interests of the child"
- 2.2 means all relevant factors to be considered and evaluated by the court including:
- 2.3 (1) the wishes of the child's parent or parents as to custody;
- 2.4 (2) the reasonable preference of the child, if the court deems the child to be of
- 2.5 sufficient age to express preference;
- 2.6 (3) the child's primary caretaker;
- 2.7 (4) the intimacy of the relationship between each parent and the child;
- 2.8 (5) the interaction and interrelationship of the child with a parent or parents, siblings,
- 2.9 and any other person who may significantly affect the child's best interests;
- 2.10 (6) the child's adjustment to home, school, and community;
- 2.11 (7) the length of time the child has lived in a stable, satisfactory environment and
- 2.12 the desirability of maintaining continuity;
- 2.13 (8) the permanence, as a family unit, of the existing or proposed custodial home;
- 2.14 (9) the mental and physical health of all individuals involved; except that a
- 2.15 disability, as defined in section 363A.03, of a proposed custodian or the child shall not be
- 2.16 determinative of the custody of the child, unless the proposed custodial arrangement is not
- 2.17 in the best interest of the child;
- 2.18 (10) the capacity and disposition of the parties to give the child love, affection,
- 2.19 and guidance, and to continue educating and raising the child in the child's culture and
- 2.20 religion or creed, if any;
- 2.21 (11) the child's cultural background;
- 2.22 (12) the effect on the child of the actions of an abuser, if related to domestic abuse,
- 2.23 as defined in section 518B.01, that has occurred between the parents or between a parent
- 2.24 and another individual, whether or not the individual alleged to have committed domestic
- 2.25 abuse is or ever was a family or household member of the parent; and
- 2.26 (13) except in cases in which a finding of domestic abuse as defined in section
- 2.27 518B.01 has been made, the disposition of each parent to encourage and permit frequent
- 2.28 and continuing contact by the other parent with the child.
- 2.29 The court may not use one factor to the exclusion of all others. The primary
- 2.30 caretaker factor may not be used as a presumption in determining the best interests of the
- 2.31 child. The court must make detailed findings on each of the factors and explain how the
- 2.32 factors led to its conclusions and to the determination of the best interests of the child.
- 2.33 (b) The court shall not consider conduct of a proposed custodian that does not affect
- 2.34 the custodian's relationship to the child.
- 2.35 (c) If a parent is a service member, the court shall not consider as a factor in
- 2.36 determining the legal or physical custody of a child whether the service member has been,

3.1 is, or may be ordered into active military service in the United States armed forces and as
3.2 a consequence has been, is, or may be absent from the service member's home.

3.3 Sec. 4. Minnesota Statutes 2006, section 518.17, subdivision 2, is amended to read:

3.4 Subd. 2. **Factors when joint custody is sought.** In addition to the factors listed in
3.5 subdivision 1, where either joint legal or joint physical custody is contemplated or sought,
3.6 the court shall consider the following relevant factors:

3.7 (a) the ability of parents to cooperate in the rearing of their children;

3.8 (b) methods for resolving disputes regarding any major decision concerning the life
3.9 of the child, and the parents' willingness to use those methods;

3.10 (c) whether it would be detrimental to the child if one parent were to have sole
3.11 authority over the child's upbringing; and

3.12 (d) whether domestic abuse, as defined in section 518B.01, has occurred between
3.13 the parents.

3.14 If a parent is a service member, the court shall not consider as a factor in determining
3.15 the legal or physical custody of a child whether the service member has been, is, or may be
3.16 ordered into active military service in the United States armed forces and as a consequence
3.17 has been, is, or may be absent from the service member's home.

3.18 The court shall use a rebuttable presumption that upon request of either or both
3.19 parties, joint legal custody is in the best interests of the child. However, the court shall use
3.20 a rebuttable presumption that joint legal or physical custody is not in the best interests
3.21 of the child if domestic abuse, as defined in section 518B.01, has occurred between the
3.22 parents.

3.23 If the court awards joint legal or physical custody over the objection of a party, the
3.24 court shall make detailed findings on each of the factors in this subdivision and explain
3.25 how the factors led to its determination that joint custody would be in the best interests of
3.26 the child.

3.27 Sec. 5. Minnesota Statutes 2006, section 518.175, is amended by adding a subdivision
3.28 to read:

3.29 Subd. 5a. **Military status.** If a parent is a service member, the court shall not
3.30 consider as a factor in determining parenting time of a child whether the service member
3.31 has been, is, or may be ordered into active military service in the United States armed
3.32 forces and as a consequence has been, is, or may be absent from the service member's
3.33 home.

4.1 Sec. 6. Minnesota Statutes 2006, section 518.18, is amended to read:

4.2 **518.18 MODIFICATION OF ORDER.**

4.3 (a) Unless agreed to in writing by the parties, no motion to modify a custody order
4.4 or parenting plan may be made earlier than one year after the date of the entry of a decree
4.5 of dissolution or legal separation containing a provision dealing with custody, except in
4.6 accordance with paragraph (c).

4.7 (b) If a motion for modification has been heard, whether or not it was granted, unless
4.8 agreed to in writing by the parties no subsequent motion may be filed within two years
4.9 after disposition of the prior motion on its merits, except in accordance with paragraph (c).

4.10 (c) The time limitations prescribed in paragraphs (a) and (b) shall not prohibit a
4.11 motion to modify a custody order or parenting plan if the court finds that there is persistent
4.12 and willful denial or interference with parenting time, or has reason to believe that the
4.13 child's present environment may endanger the child's physical or emotional health or
4.14 impair the child's emotional development.

4.15 (d) If the court has jurisdiction to determine child custody matters, the court shall
4.16 not modify a prior custody order or a parenting plan provision which specifies the child's
4.17 primary residence unless it finds, upon the basis of facts, including unwarranted denial of,
4.18 or interference with, a duly established parenting time schedule, that have arisen since the
4.19 prior order or that were unknown to the court at the time of the prior order, that a change
4.20 has occurred in the circumstances of the child or the parties and that the modification is
4.21 necessary to serve the best interests of the child. In applying these standards the court
4.22 shall retain the custody arrangement or the parenting plan provision specifying the child's
4.23 primary residence that was established by the prior order unless:

4.24 (i) the court finds that a change in the custody arrangement or primary residence is in
4.25 the best interests of the child and the parties previously agreed, in a writing approved by a
4.26 court, to apply the best interests standard in section 518.17 or 257.025, as applicable; and,
4.27 with respect to agreements approved by a court on or after April 28, 2000, both parties
4.28 were represented by counsel when the agreement was approved or the court found the
4.29 parties were fully informed, the agreement was voluntary, and the parties were aware
4.30 of its implications;

4.31 (ii) both parties agree to the modification;

4.32 (iii) the child has been integrated into the family of the petitioner with the consent
4.33 of the other party;

4.34 (iv) the child's present environment endangers the child's physical or emotional
4.35 health or impairs the child's emotional development and the harm likely to be caused by a
4.36 change of environment is outweighed by the advantage of a change to the child; or

5.1 (v) the court has denied a request of the primary custodial parent to move the
5.2 residence of the child to another state, and the primary custodial parent has relocated
5.3 to another state despite the court's order.

5.4 In addition, a court may modify a custody order or parenting plan under section
5.5 631.52.

5.6 (e) In deciding whether to modify a prior joint custody order, the court shall apply
5.7 the standards set forth in paragraph (d) unless: (1) the parties agree in writing to the
5.8 application of a different standard, or (2) the party seeking the modification is asking the
5.9 court for permission to move the residence of the child to another state.

5.10 (f) If a parent has been granted sole physical custody of a minor and the child
5.11 subsequently lives with the other parent, and temporary sole physical custody has been
5.12 approved by the court or by a court-appointed referee, the court may suspend the obligor's
5.13 child support obligation pending the final custody determination. The court's order
5.14 denying the suspension of child support must include a written explanation of the reasons
5.15 why continuation of the child support obligation would be in the best interests of the child.

5.16 (g) In an action modifying a legal or physical custody order, if a party is a service
5.17 member, the court shall not consider as a factor in determining the legal or physical
5.18 custody of a child whether the service member has been, is, or may be ordered into active
5.19 military service in the United States armed forces and as a consequence has been, is, or
5.20 may be absent from the service member's home.

5.21 **Sec. 7. [518.181] REINSTATEMENT OF FORMER PHYSICAL CUSTODY**
5.22 **ORDER AND PARENT TIME PLAN.**

5.23 If a party is a service member and the court modifies an order for physical custody
5.24 or a parenting time order or plan on the basis that the service member has been, is, or
5.25 will be ordered into active military service in the United States armed forces, the court
5.26 shall require in the order that the allocation of physical custody and, if applicable, the
5.27 parenting time order or plan that were in effect before the modification are reinstated
5.28 immediately upon the service member's release or discharge from active military service.
5.29 As a matter of law, this provision is a part of all orders issued on or before the effective
5.30 date of this section.

5.31 **Sec. 8. EFFECTIVE DATE.**

5.32 Sections 1 to 7 are effective the day following final enactment and apply to orders
5.33 awarding or modifying legal or physical custody and orders awarding or modifying
5.34 parenting time granted before, on, or after that date.