

HB 2694

FILED

2009 APR 30 PM 4:47

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2009



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2694

(By Delegates Boggs, Webster, Iaquina, Ferro,
Wooten, Schoen, Tabb, Fleischauer, Schadler,
Hamilton and Hutchins)



Passed April 10, 2009

In Effect Ninety Days from Passage

E N R O L L E D

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**OFFICE WEST VIRGINIA
SECRETARY OF STATE**

H. B. 2694

**(BY DELEGATES BOGGS, WEBSTER, IAQUINTA, FERRO,
WOOTON, SCHOEN, TABB, FLEISCHAUER, SCHADLER,
HAMILTON AND HUTCHINS)**

[Passed April 10, 2009; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §48-1-233.3 and §48-1-233.4; to amend said code by adding thereto a new section, designated §48-9-404; to amend and reenact §48-11-106 of said code; and to amend said code by adding thereto a new section, designated §48-11-108, all relating to modifying custodial rights and child support for a parent who has been deployed for military service; providing definitions; modifying the terms of a parenting plan; requiring that any order is only a temporary order; providing for temporary modification of child support during the military service; requiring an expedited process for modification of a child support order; reinstating the child support obligation in place prior to the parent's military service upon release from service; and requiring that a further modification of child support be

based solely on the income and earning capacity the parent has after the military service.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §48-1-233.3 and §48-1-233.4; that said code be amended by adding thereto a new section, designated §48-9-404; that §48-11-106 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §48-11-108, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

PART 2--DEFINITIONS.

§48-1-233.3. Military parent defined.

1 “Military parent” means a natural parent or adoptive
2 parent of a child under the age of eighteen whose parental
3 rights have not been terminated by a court of competent
4 jurisdiction.

§ 48-1-233.4. Military service or service defined.

1 (a) In the case of a parent who is a member of the Army,
2 Navy, Air Force, Marine Corps, Coast Guard, or a Reserve
3 component of these services, “military service or service”
4 means a deployment for combat operations, a contingency
5 operation, or a natural disaster based on orders that do not
6 permit a family member to accompany the member on the
7 deployment.

8 (b) In the case of a parent who is a member of the
9 National Guard, “military service or service” means
10 service under a call to active service authorized by the
11 President of the United States or the Secretary of Defense
12 for a period of more than thirty consecutive days pursuant
13 to 32 U.S.C. 502(f) for purposes of responding to a
14 national emergency declared by the President and
15 supported by federal funds.

16 (c) “Military service or service” includes a period during
17 which a military parent remains subject to deployment orders
18 and remains deployed on account of sickness, wounds, leave
19 or other lawful cause.

**ARTICLE 9. ALLOCATION OF CUSTODIAL
RESPONSIBILITY AND
DECISION - MAKING
RESPONSIBILITY OF CHILDREN.**

PART 4. MODIFICATION OF PARENTING PLAN.

**§48-9 -404. Modification of a parenting plan due to military
service.**

1 (a) If a military parent is required to be separated from a
2 child due to military service, a court shall not enter a final
3 order modifying the terms of an existing parenting plan until
4 ninety days after the military parent is released from military
5 service. A military parent's absence or relocation because of
6 military service must not be the sole factor supporting a
7 change in circumstance or grounds sufficient to support a
8 permanent modification of an existing parenting plan.

9 (b) A parenting plan establishing the terms of custody or
10 visitation in place at the time a military parent is called to
11 military service may be temporarily modified to make

12 reasonable accommodation for the parties because of the
13 military parent's service.

14 (c) A temporary parenting plan pursuant to this section
15 shall provide that the military parent has at least substantial
16 custodial responsibility of the child during a period of leave
17 granted to the military parent during their military service,
18 unless the court determines that it is not in the best interest of
19 the child. If a temporary parenting plan is not issued pursuant
20 to this section, the nonmilitary custodial parent shall make the
21 child or children reasonably available to the military parent
22 when the military parent has leave to ensure that the military
23 parent has reasonable custodial responsibility and is able to
24 exercise custodial responsibility of the child or children.

25 (d) If there is no existing parenting plan or order
26 establishing the terms of custody or visitation and it appears
27 that military service is imminent, upon motion by either
28 parent, the court shall expedite a temporary hearing to
29 establish a temporary parenting plan to ensure the military
30 parent has access to the child, to establish support, and
31 provide other appropriate relief.

ARTICLE 11. SUPPORT OF CHILDREN

§48-11-106. Expedited process for modification.

1 (a) An expedited process for modification of a child
2 support order may be utilized if:

3 (1) Either parent experiences a substantial change of
4 circumstances resulting in a decrease in income due to loss of
5 employment or other involuntary cause;

6 (2) An increase in income due to promotion, change in
7 employment or reemployment;

8 (3) Other such change in employment status; or

9 (4) If a military parent is called to military service.

10 (b) The party seeking the recalculation of support and
11 modification of the support order shall file a description of
12 the decrease or increase in income and an explanation of the
13 cause of the decrease or increase on a standardized form to be
14 provided by the secretary-clerk or other employee of the
15 family court. The standardized form shall be verified by the
16 filing party. Any available documentary evidence shall be
17 filed with the standardized form. Based upon the filing and
18 information available in the case record, the amount of
19 support shall be tentatively recalculated.

20 (c) The secretary-clerk shall serve a notice of the filing,
21 a copy of the standardized form and the support calculations
22 upon the other party by certified mail, return receipt
23 requested, with delivery restricted to the addressee, in
24 accordance with rule 4(d)(1)(D) of the West Virginia rules of
25 civil procedure. The secretary-clerk shall also mail a copy,
26 by first-class mail, to the local office of the bureau for child
27 support enforcement for the county in which the family court
28 is located in the same manner as original process under rule
29 4(d) of the rules of civil procedure.

30 (d) The notice shall fix a date fourteen days from the date
31 of mailing and inform the party that unless the recalculation
32 is contested and a hearing request is made on or before the
33 date fixed, the proposed modification will be made effective.
34 If the filing is contested, the proposed modification shall be
35 set for hearing; otherwise, the court shall enter an order for a
36 judgment by default. Either party may move to set aside a
37 judgment by default, pursuant to the provisions of rule 55 or
38 rule 60(b) of the rules of civil procedure.

39 (e) If an obligor uses the provisions of this section to
40 expeditiously reduce his or her child support obligation, the
41 order that effected the reduction shall also require the
42 obligor to notify the obligee of reemployment, new
43 employment or other such change in employment status
44 that results in an increase in income. If an obligee uses the
45 provisions of this section to expeditiously increase his or
46 her child support obligation, the order that effected the
47 increase shall also require the obligee to notify the obligor
48 of reemployment, new employment or other such change in
49 employment status that results in an increase in income of
50 the obligee.

51 (f) The supreme court of appeals shall develop the
52 standardized form required by this section.

§48-11-108. Modification of support based on military service.

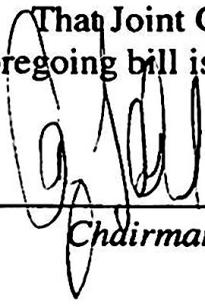
1 (a) If a military parent is called to military service, either
2 parent may file a notice of activation of military service and
3 a request for an expedited modification of a support order
4 pursuant to section one hundred six of this article. In the
5 petition, the parent must cite the basis for modifying the
6 support order and the military parent's change in financial
7 circumstances supporting the petition.

8 (b) The court shall temporarily modify the amount of
9 child support for the duration of the military parent's military
10 service pursuant to the provisions of section fifteen of this
11 article if there is a substantial change in circumstances based
12 upon changes in income and earning capacity of the military
13 parent during military service. An increase or decrease in
14 income or earning capacity of a military parent due to
15 military service may only be used to calculate support during
16 the period of military service and must not be considered a
17 permanent increase or decrease in income or earning

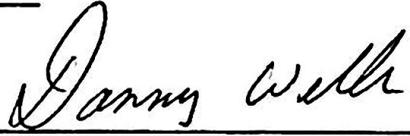
18 capacity. The effective date for a temporary modification
19 must be the date the military parent begins military service.

20 (c) Upon return from military service, the military
21 parent's child support obligation prior to a temporary
22 modification is automatically reinstated, effective on the date
23 the military parent is released from service. Within ninety
24 days of the military parent's release from service, either
25 parent may make a request for a modification of child support
26 to correspond to a change in the military parent's nonservice
27 related income or earning capacity. A modification of child
28 support must be based solely upon the income or earning
29 capacity the military parent has following his or her period of
30 military service.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



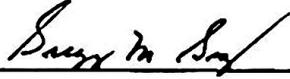
Chairman House Committee

Originating in the House.

In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

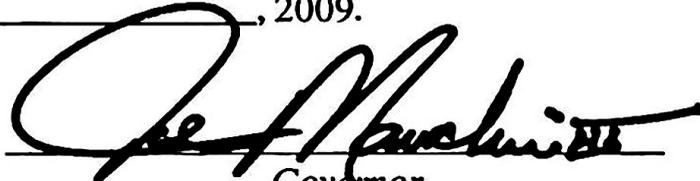


President of the Senate



Speaker of the House of Delegates

The within is approved this the 30th
day of April, 2009.



Governor

PRESENTED TO THE
GOVERNOR

APR 29 2009

Time 11:35 AM