

1 HB332
2 79762-1
3 By Representatives McDaniel, Sherer and Sanderford
4 RFD: Judiciary
5 First Read: 12-JAN-06

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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.