

2D SESSION **H. R. 4469**

To amend the Servicemembers Civil Relief Act to provide for protection of child custody arrangements for parents who are members of the Armed Forces deployed in support of a contingency operation.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 2010

Mr. TURNER introduced the following bill; which was referred to the Committee on Veterans' Affairs

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A BILL

To amend the Servicemembers Civil Relief Act to provide for protection of child custody arrangements for parents who are members of the Armed Forces deployed in support of a contingency operation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PROTECTION OF CHILD CUSTODY ARRANGE-**
4 **MENTS FOR PARENTS WHO ARE MEMBERS OF**
5 **THE ARMED FORCES DEPLOYED IN SUPPORT**
6 **OF A CONTINGENCY OPERATION.**

7 (a) **CHILD CUSTODY PROTECTION.**—Title II of the
8 Servicemembers Civil Relief Act (50 U.S.C. App. 521 et

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□HR 4469 IH

1 seq.) is amended by adding at the end the following new
2 section:

3 “**SEC. 208. CHILD CUSTODY PROTECTION.**

4 “(a) **RESTRICTION ON CHANGE OF CUSTODY.**—If a
5 motion for change of custody of a child of a servicemember
6 is filed while the servicemember is deployed in support of
7 a contingency operation, no court may enter an order
8 modifying or amending any previous judgment or order,
9 or issue a new order, that changes the custody arrange-
10 ment for that child that existed as of the date of the de-
11 ployment of the servicemember, except that a court may
12 enter a temporary custody order if the court finds that

13 it is in the best interest of the child.

14 “(b) COMPLETION OF DEPLOYMENT.—In any pre-
15 ceding covered under subsection (a), a court shall require
16 that, upon the return of the servicemember from deploy-
17 ment in support of a contingency operation, the custody
18 order that was in effect immediately preceding the date
19 of the deployment of the servicemember is reinstated, un-
20 less the court finds that such a reinstatement is not in
21 the best interest of the child, except that any such finding
22 shall be subject to subsection (c).

23 “(c) EXCLUSION OF MILITARY SERVICE FROM DE-
24 TERMINATION OF CHILD’S BEST INTEREST.—If a motion
25 for the change of custody of the child of a servicemember

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□HR 4469 IH

1 is filed, no court may consider the absence of the service-
2 member by reason of deployment, or possibility of deploy-
3 ment, in determining the best interest of the child.

4 “(d) NO FEDERAL RIGHT OF ACTION.—Nothing in
5 this section shall create a Federal right of action.

6 “(e) PREEMPTION.—In any case where State or Fed-
7 eral law applicable to a child custody proceeding under
8 State or Federal law provides a higher standard of protect-
9 tion to the rights of the parent who is a servicemember
10 than the rights provided under this section, the State or
11 Federal court shall apply the State or Federal standard.

12 “(f) CONTINGENCY OPERATION DEFINED.—In this
13 section, the term ‘contingency operation’ has the meaning
14 given that term in section 101(a)(13) of title 10, United
15 States Code, except that the term may include such other
16 deployments as the Secretary may prescribe.”.

17 (b) CLERICAL AMENDMENT.—The table of contents
18 in section 1(b) of such Act is amended by adding at the
19 end of the items relating to title II the following new item:
“208. Child custody protection.”.

**ADJUTANTS GENERAL ASSOCIATION OF THE UNITED STATES
(AGAUS)**

ADOPTED MAY 19, 2010

WHEREAS the Adjutants General Association of the United States (AGAUS) believes domestic relations matters involving National Guard and other service component members are best adjudicated through the existing framework of state laws and court-integrated social services and the existing safeguards built into the federal Servicemembers Civil Relief Act (SCRA),

NOW THEREFORE, BE IT RESOLVED that the nation's Adjutants General oppose enactment of federal legislation that would:

- (a) Create federal-question jurisdiction in child custody cases, including cases involving National Guard and other service component member-parents; or
- (b) Dictate case outcomes or impose evidentiary burdens in state child-custody matters involving National Guard or other service component member-parents; or
- (c) Infringe upon the sovereign authority of states to enact state laws, applied and enforced in state courts, to determine family law matters including child custody and to award custody based on a state court assessment of the best interests of the child; or
- (d) Preempt state laws that address child custody and other domestic relations matters so long as such laws do not discriminate against National Guard and other service component members based upon their military status or the performance of their military duties.

AND BE IT FURTHER RESOLVED that AGAUS urges states to enact legislation prohibiting a change of custody or denial of child custody to a National Guard or other service component member based solely on the service member's status or absence due to military deployment.