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3 **Alabama Mobilized Parent and Child Protection Act**

4 **SYNOPSIS:** This bill addresses (1) custody modifications to
5 mobilized parents in the armed forces; (2) the right of first
6 refusal of the secondary custodial parent to exercising physical
7 custody when a mobilized parent is on active duty; and (3) when
8 any legal action not listed within this Act is filed against a
9 mobilized parent, provisions of the federal Servicemembers Civil
10 Relief Act (SCRA) shall be applicable.

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12 **A BILL**
13 **TO BE ENTITLED**
14 **AN ACT**

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16 **BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:**

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18 **Definitions**

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20 For the purposes of this article the following words shall
21 have the following meanings:

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23 (1) **ARMED FORCES.** The National Guard and the Reserve
24 Components of the Armed Forces, the United States
25 Army, the United States Navy, the United States Marine
26 Corps, the United States Coast Guard, and the United
27 States Air Force, and any other branch of the military
28 and naval forces or auxiliaries of the United States
29 or this state.

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31 (2) **MOBILIZED PARENT.** A parent who:
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33 (a) Is a member of the armed forces; and
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35 (b) Is called to active duty or receives
36 orders for duty that is outside the
37 state or country, which is consistent
38 with provision of the SCRA.
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40 (3) **SECONDARY CUSTODIAL PARENT.** A parent who:
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42 (a) Has shared legal custody of a child.
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44 (b) Does not have physical custody, but has
45 rights of visitation of a child.

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Actions filed against a mobilized parent.

A court shall apply the Servicemember Civil Relief Act to any legal action filed against a mobilized parent while said parent is on active duty in the armed forces.

Transfer of temporary physical custody of children of mobilized parent to the secondary custodial parent.

- (1) When a mobilized parent with primary physical custody of the children has been called to active duty, the mobilized parent shall notify the secondary custodial parent by written certified mail within 15 days of notice of said active duty assignment.
- (2) The secondary custodial parent shall have the right of first refusal to exercise primary parenting status with his or her children while the mobilized parent is on active duty. The right of first refusal does not apply to a biological parent that does not have shared legal custody of said children.
- (3) The secondary custodial parent must provide written notice to the mobilizing parent by certified mail within 15 days from receipt of notice stating intent to accept or refuse exercising primary custody of said children.
- (4) When the secondary parent refuses to accept temporary primary custody during the mobilized parent active duty assignment, the mobilized parent shall proceed with selection of a guardian as provided in the military care plan of the armed forces.
- (5) If a mobilized parent does not notify the secondary custodial parent consistent with provisions of this Act, the secondary custodial parent shall at any time file a legal petition with the court to exercise temporary primary custody while the mobilized parent is on active duty.
- (6) With proper notice the court shall grant temporary primary physical custody to the secondary custodial parent over the objections of the mobilized parent

91 including overruling military care plan when the
92 mobilized parent does not honor provisions of this act.

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94 **Temporary modification of decree for child custody or parenting**
95 **time for children of a mobilized parent.**

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97 (1) A court shall not permanently modify a decree for child
98 custody or parenting time solely on the basis that one (1) of
99 the parents is a mobilized parent.

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101 (2) Any modification of a child custody decree based on the
102 active duty of a mobilized parent shall be temporary and shall
103 revert back to the previous child custody decree at the end of
104 the deployment, as appropriate.

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106 **Petition for assignment of parenting time rights to legal or**
107 **biological relatives while a mobilized parent is out of the**
108 **state on active duty military service.**

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110 (a) When a mobilized parent has been called to active duty
111 military service and the active duty service requires the
112 parent to be out of the state for a period of at least
113 ninety (90) days, the mobilized parent may petition the
114 court with jurisdiction of the order granting parenting
115 time for a modification of that order for the temporary
116 assignment of that parent's parenting time rights to a
117 legal or biological relative or relatives, provided said
118 relatives, are fit, willing and capable of exercising said
119 parenting times. The mobilized parent shall be joined in
120 the petition by the relative or relatives to whom the
121 parent is seeking to assign parenting time rights. The
122 petition shall include a proposed parenting time schedule
123 with the relative or relatives that shall not exceed the
124 parenting time granted to the parent at the time of filing
125 the petition.

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127 (b) A court shall hold a hearing regarding sub section (a)
128 within 60 days from date petition is filed, and shall issue
129 an order within 30 days of said hearing, unless the court
130 has valid concerns to the fitness of said relatives.

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132 (c) Any time a valid concern of fitness regarding legal or
133 biological relative or relatives of the mobilized parent is
134 brought to the courts attention, the court shall order a
135 home study or other investigation as required to protect
136 the children. Said investigation shall conclude within 30
137 days concerns are brought to the courts attention.

- 139 (d) Any findings of unfitness under subsection (c) shall be
140 determined by clear and convincing evidence. The court
141 shall list written findings of fact to support such
142 determination.
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- 144 (e) Any party that makes false accusations of unfitness
145 against a military parent, and/or legal or biological
146 relative of a military parent regarding sub section (a) and
147 proved under subsection (c) shall be fined no less than
148 \$5,000, plus reasonable attorney fees payable to the
149 parties required to defend such false accusations.
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- 151 (f) If the mobilized parent does not petition the court for
152 said temporary modification within ninety days (90 days) of
153 mobilization, the children shall remain first, in the
154 primary care of the non-mobilized parent, provided said
155 parent desires primary care of the children; or second, in
156 the care of the guardian the mobilized parent approved
157 under the military care plan required by the armed
158 services. Said parenting times shall revert back to the
159 previous custody decree at the end of the deployment, as
160 appropriate.
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- 162 (g) The court shall presume unless the petitioning mobilized
163 parent has been found unfit - by clear and convincing
164 evidence - that said parent has a fundamental parental
165 right to make best interests decisions for said children.
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- 167 (h) The court shall grant the petitioner's request for
168 assignment of parenting time if the court finds that said
169 parenting time is not inconsistent with this Act, and not
170 inconsistent with the federal Servicemembers Civil Relief
171 Act.
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- 173 (i) An order granting an assignment of parenting time rights
174 pursuant to this Act shall terminate immediately upon the
175 termination of the petitioner's term of out of state active
176 duty military service.
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178 NOTE: The Armed Services does not, as a matter of
179 routine, investigate fitness of persons that a mobilized
180 parent chooses to leave his/her children. If said child
181 best interest decisions of mobilized parents are
182 satisfactory for the military, same should be
183 satisfactory for the state.
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