

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 859

H.P. 610

House of Representatives, February 16, 2005

An Act To Provide Greater Civil Relief Protection for Members of the Military

Submitted by the Department of Defense, Veterans and Emergency Management pursuant to Joint Rule 204.

Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND

Clerk

Presented by Representative TUTTLE of Sanford.

Cosponsored by Senator HOBBS of York and

Representatives: BROWN of South Berwick, HOTHAM of Dixfield, PATRICK of Rumford, PELLETIER-SIMPSON of Auburn, SHERMAN of Hodgdon, VALENTINO of Saco, Senator: PLOWMAN of Penobscot.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 18-A MRSA §2-506**, as enacted by PL 1979, c. 540, §1,
is amended to read:

6 **§2-506. Choice of law as to execution**

8 A written will is valid if executed in compliance with
10 section 2-502 or 2-503 or if its execution complies with the law
12 at the time of execution of the place where the will is executed,
14 or of the law of the place where at the time of execution or at
the time of death the testator is domiciled, has a place of abode
or is a national or if executed in compliance with 10 United
States Code, Section 1044d.

16 **Sec. 2. 18-A MRSA §5-508, sub-§(i)** is enacted to read:

18 (i) Notwithstanding subsections (c) and (d), any military
20 power of attorney executed in accordance with 10 United States
Code, Section 1044b is valid in this State.

22 **Sec. 3. 18-A MRSA §5-818** is enacted to read:

24 **§5-818. Military advanced medical directives**

26 A military advanced medical directive executed in accordance
with 10 United States Code, Section 1044c is valid in this State.

28 **Sec. 4. 37-B MRSA §343** is enacted to read:

30 **§343. Parental rights and responsibilities; parent on active duty**

32 **1. Departure under military orders.** A court may not
34 consider departure from the family residence or absence from the
36 child or children as an adverse factor in determining parental
rights and responsibilities with respect to a minor child when
38 the departing parent is a member of the National Guard or the
Reserves of the United States Armed Forces under an order to
40 active duty for a period of more than 30 days and whose absence
is due to compliance with military orders.

42 **2. Change of residence of child prohibited when parent**
44 **under military orders.** A court may not order a change of the
46 primary physical residence of a child when one of the child's
parents is a member of the National Guard or the Reserves of the
48 United States Armed Forces under an order to active duty for a
period of more than 30 days and whose absence from the State is
due to compliance with military orders.

2 3. Application. This section applies only if the service
3 of the member referred to in subsection 1 or subsection 2 is in
4 support of:

5 A. An operational mission for which members of the reserve
6 components have been ordered to active duty without their
7 consent; or

8 B. Forces activated during a period of war declared by
9 Congress or a period of national emergency declared by the
10 President or Congress.

11 Sec. 5. 37-B MRSA §389, as repealed and replaced by PL 2003,
12 c. 404, §6, is repealed.

13 Sec. 6. 37-B MRSA §389-A is enacted to read:

14 §389-A. Service members' civil relief

15 1. Short title. This section may be known and cited as
16 "the Service Members' Civil Relief Act."

17 2. Definitions. As used in this section, unless the
18 context otherwise indicates, the following terms have the
19 following meanings.

20 A. "Court" means any administrative agency, civil court or
21 venue of a proceeding involving a case management officer.

22 B. "Service member" means a member of the uniformed
23 services as that term is defined in 10 United States Code,
24 Section 101(a)(5) or a member of the state military forces
25 as that term is described in section 102, on active state
26 service as that term is defined in section 101-A.

27 3. Stay of proceeding. Any action or proceeding in any
28 court in which a service member is involved, either as plaintiff,
29 defendant or attorney, if the member is a member of the National
30 Guard or the Reserves of the United States Armed Forces, during
31 the period of any military service or within 60 days after any
32 military service, at the discretion of the court, or by the
33 member's own motion or motion of the court, may be stayed at any
34 stage of the proceeding unless, in the opinion of the court, the
35 ability of the plaintiff to prosecute the action, the defendant
36 to conduct the defendant's defense or the attorney to represent
37 either party is not materially affected by reason of the member's
38 military service.

39 4. Appearance. An application for a stay of a court or
40 administrative proceeding pursuant to the Soldiers' and Sailors'
41 and Air Reservists' and Air National Guardsmen's Civil Relief Act,
42 as amended, is not required.

2 Civil Relief Act of 1940, 50 United States Code, as amended, or
3 this section does not constitute an appearance for any purpose.

4 5. Electronic means; testimony and evidence. Upon motion
5 of a service member who is a party in a civil case, the court
6 shall allow the service member to present testimony and evidence
7 by electronic means when the military duties of the service
8 member have a material effect on the service member's ability to
9 appear in person at a regularly scheduled hearing, unless good
10 cause is shown. For purposes of this subsection, "electronic
11 means" includes, but is not limited to, telephone, video
12 teleconference and the Internet.

14 6. Expedited hearing. Upon motion of a service member who
15 is a party in a civil case, the court shall hold an expedited
16 hearing when the military duties of the service member have a
17 material effect on the service member's ability to appear in
18 person at a regularly scheduled hearing, unless good cause is
19 shown.

20 7. Transfer of custody and visitation. Upon motion of a
21 service member, or upon the court's own motion, in a case
22 involving custody or visitation, the court shall allow the
23 visitation rights of the service member to be exercised by a
24 relative of the service member who has a significant connection
25 with the child or children when the military duties of the
26 service member have a material effect on the ability of the
27 service member to exercise those rights, unless good cause is
28 shown.

32 SUMMARY

34 The bill provides that courts may not consider a military
35 member's departure from the family residence or absence from the
36 child or children as an adverse factor in determining parental
37 rights and responsibilities if the military member's absence is
38 due to military mobilization.

40 The bill strengthens existing state civil relief protections
41 for mobilized military members by allowing them to testify
42 electronically, by requiring that their cases be held
43 expeditiously and by allowing a service member to transfer the
44 custody and visitation rights of the member's child to one of the
45 member's relatives if the military member is mobilized.

46 The bill grants state recognition to wills, health care
47 directives and powers of attorney federal laws pertaining to the
48 military irrespective of specific state requirements.