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H.533

Introduced by Representatives Grad of Moretown, Fagan of Rutland City,  
Acinapura of Brandon, Adams of Hartland, Ainsworth of  
Royalton, Andrews of Rutland City, Baker of West Rutland,  
Bohi of Hartford, Branagan of Georgia, Bray of New Haven,  
Brennan of Colchester, Browning of Arlington, Canfield of Fair  
Haven, Clerkin of Hartford, Consejo of Sheldon, Courcelle of  
Rutland City, Crawford of Burke, Deen of Westminster,  
Devereux of Mount Holly, Dickinson of St. Albans Town,  
Donaghy of Poultney, Donahue of Northfield, Fisher of  
Lincoln, French of Shrewsbury, Gilbert of Fairfax, Head of  
South Burlington, Heath of Westford, Helm of Castleton,  
Higley of Lowell, Howard of Cambridge, Howard of Rutland  
City, Hubert of Milton, Jerman of Essex, Johnson of South  
Hero, Johnson of Canaan, Kilmartin of Newport City, Koch of  
Barre Town, Komline of Dorset, Krawczyk of Bennington,  
Lanpher of Vergennes, Larocque of Barnet, Lawrence of  
Lyndon, Leriche of Hardwick, Lewis of Derby, Lippert of  
Hinesburg, Lorber of Burlington, Maier of Middlebury,  
Manwaring of Wilmington, Marcotte of Coventry, Marek of  
Newfane, Martin of Springfield, McAllister of Highgate,

1                   McCullough of Williston, McDonald of Berlin, McNeil of  
2                   Rutland Town, Mitchell of Barnard, Moran of Wardsboro,  
3                   Morley of Barton, Morrissey of Bennington, Myers of Essex,  
4                   Nease of Johnson, O'Brien of Richmond, O'Donnell of Vernon,  
5                   Pearce of Richford, Peaslee of Guildhall, Perley of Enosburg,  
6                   Potter of Clarendon, Pugh of South Burlington, Ram of  
7                   Burlington, Reis of St. Johnsbury, Rodgers of Glover, Savage  
8                   of Swanton, Scheuermann of Stowe, Shand of Weathersfield,  
9                   Sharpe of Bristol, Shaw of Pittsford, South of St. Johnsbury,  
10                  Spengler of Colchester, Stevens of Waterbury, Stevens of  
11                  Shoreham, Till of Jericho, Turner of Milton, Webb of  
12                  Shelburne, Wheeler of Derby, Winters of Williamstown, Wright  
13                  of Burlington, Young of St. Albans City and Zuckerman of  
14                  Burlington

15       Referred to Committee on

16       Date:

17       Subject: Domestic relations; annulment and divorce; military parents' rights  
18               act

19       Statement of purpose: This bill proposes to establish court procedures to  
20       address parental rights and responsibilities and parent-child contact when a  
21       military parent is deployed for service unaccompanied by family members.

1           An act relating to military parents' rights

2           It is hereby enacted by the General Assembly of the State of Vermont:

3           Sec. 1. FINDINGS

4           The Vermont general assembly finds that:

5           (1) The military population in our state exceeds 5,000 Vermonters, a  
6           majority of whom serve a traditional part-time role. Many of these service  
7           members are parents to children under the age of 18.

8           (2) The mobilization of these military parents, with sometimes little  
9           advance notice, can have a disruptive effect on custody or visitation  
10          arrangements involving minor children.

11          (3) It is in the best interests of these children to minimize the loss of  
12          parental contact and disruption of the family that results from the service  
13          member's absence pursuant to military orders due to temporary duty  
14          performed outside the state, deployment, or mobilization.

15          (4) It is important to maintain parent-child contact as much as feasible  
16          when the child's parent is absent due to military orders.

17          (5) It is in the best interest of these children for the courts to address the  
18          military membership of one or both parents at the time of the initial custodial  
19          order or anytime thereafter, regardless of whether the service member has  
20          temporary duty orders or a deployment or mobilization order.

1           (6) The regular scheduling of hearings may be harmful to the interest of  
2           service members who, due to military orders, may need an expedited hearing  
3           or may need to use electronic means to give testimony when they cannot  
4           appear in person in court.

5           (7) The use of expedited hearings and testimony by electronic means,  
6           at the request of the service member who is absent or about to depart, would  
7           aid and promote fair, efficient, and prompt judicial processes for the  
8           resolution of family law matters.

9           Sec. 2. 15 V.S.A. chapter 11, subchapter 4a is added to read:

10                           Subchapter 4a. Military Parents' Rights Act

11           § 681. DEFINITIONS

12           As used in this subchapter:

13           (1) "Deploy" and "deployment" mean military service in compliance  
14           with military orders received by a member of the United States Armed Forces,  
15           including any reserve component thereof to report for combat operations,  
16           contingency operations, peacekeeping operations, a remote tour of duty or  
17           other active duty service for which the deploying parent is required to report  
18           unaccompanied by any family member. Deployment includes a period during  
19           which a military parent remains subject to deployment orders and remains  
20           deployed on account of sickness, wounds, leave, or other lawful cause.

1           (2) “Deploying parent” means a military parent who has been notified  
2 by military leadership that he or she will deploy or mobilize with the United  
3 States Armed Forces, including any reserve component thereof.

4 “Nondeploying parent” means a parent who is either not a member of the  
5 armed forces, including any reserve component thereof, or is a military parent  
6 who is currently not a deploying parent.

7           (3) “Military parent” means a natural parent, adoptive parent, legal  
8 parent or guardian of a child under the age of 18 whose parental rights have not  
9 been terminated by a court of competent jurisdiction, who is a member of the  
10 United States Armed Forces, including any reserve component thereof.

11           (4) “Mobilization” and “mobilize” mean the call-up of the Vermont  
12 National Guard or Reserve service members to extended active duty status.  
13 For purposes of this definition, “mobilization” does not include National Guard  
14 or reserve annual training, inactive duty days, or drill weekends, temporary  
15 duty, or state active duty.

16           (5) “State active duty” means the call-up by the governor of Vermont  
17 for the performance of any military duty in state status.

18           (6) “Temporary duty” means the transfer of a service member to a  
19 geographic location outside Vermont for a limited period of time to accomplish  
20 training or to assist in the performance of a noncombat mission.

1     § 682. FINAL ORDER

2           (a) If a deploying parent is required to be separated from a child, a court  
3     shall not enter a final order modifying parental rights and responsibilities and  
4     parent-child contact in an existing order until 90 days after the deployment  
5     ends, unless such modification is agreed to by the deploying parent.

6           (b) Deployment or the potential for future deployment shall not be the sole  
7     factor supporting a change in circumstance or grounds sufficient to support a  
8     permanent modification of the parental rights and responsibilities or  
9     parent-child contact established in an existing order.

10    § 683. TEMPORARY MODIFICATION

11           (a) Upon motion of a deploying or nondeploying parent, the court shall  
12    enter a temporary order modifying parental rights and responsibilities or  
13    parent-child contact during the period of deployment or mobilization when:

14            (1) a military parent who has shared, sole, or primary legal or physical  
15    parental rights and responsibilities for a child or who has parent-child contact  
16    pursuant to an existing court order has received notice from military leadership  
17    that he or she will deploy or mobilize in the near future; and

18            (2) the deployment or mobilization would have a material effect upon  
19    his or her ability to exercise such parental rights and responsibilities or  
20    parent-child contact.

1       (b) Motions for modification because of deployment shall be heard by the  
2 court as expeditiously as possible and shall be given priority for this purpose.

3       (c) All temporary modification orders shall include a specific transition  
4 schedule to facilitate a return to the predeployment order over the shortest  
5 reasonable time period after the deployment ends, taking into consideration the  
6 child's best interests. The temporary order shall expire upon the completion of  
7 the transition, and the prior order for parental rights and responsibilities and  
8 parent-child contact shall be in effect.

9       (d) Upon motion of the deploying parent, the court may delegate his or her  
10 parent-child contact rights, or a portion of them, to a family member, a person  
11 with whom the deploying parent cohabits, or another person with a close and  
12 substantial relationship to the minor child or children for the duration of the  
13 deployment, if it is in the child's best interests. Such delegated contact does  
14 not create separate rights to parent-child contact for a person other than a  
15 parent.

16       (e) A temporary modification order issued pursuant to this section shall  
17 designate the deploying parent's parental rights and responsibilities for and  
18 parent-child contact with a child during a period of leave granted to the  
19 deploying parent, in the best interests of the child.

1       (f) A temporary order issued under this section shall require that:

2           (1) The nondeploying parent shall make the child reasonably available  
3 to the deploying parent when the deploying parent has leave.

4           (2) The nondeploying parent shall facilitate opportunities for telephonic,  
5 electronic mail, and other such contact between the deploying parent and the  
6 child during deployment.

7           (3) The deploying parent shall provide timely information regarding his  
8 or her leave schedule to the nondeploying parent. Actual leave dates are  
9 subject to change with little notice due to military necessity and shall not be  
10 used by the nondeploying parent to prevent parent-child contact.

11       (g) A court order modifying a previous order for parental rights and  
12 responsibilities or parent-child contact because of deployment shall specify  
13 that the deployment is the basis for the order, and it shall be entered by the  
14 court as a temporary order. The order shall further require the nondeploying  
15 parent to provide the court and the deploying parent with 30 days' advance  
16 written notice of any change of address and any change of telephone number.

17       § 684. PERMANENT MODIFICATION; EMERGENCY MOTION TO  
18           MODIFY

19       (a) Nothing in this chapter shall preclude the court from hearing a motion  
20 for permanent modification of parental rights and responsibilities or  
21 parent-child contact prior to or upon return of the deploying parent. The



1 nondeploying parent shall bear the burden of showing that reentry of the  
2 parental rights and responsibilities or parent-child order in effect before the  
3 deployment is no longer in the child's best interests. The deployment and any  
4 resulting temporary disruption to the child shall not be considered in  
5 determining whether there has been a real, substantial, and unanticipated  
6 change of circumstances in regard to the motion to modify.

7 (b) Nothing in this chapter shall impair the court's ability to grant an ex  
8 parte order or to hear an emergency motion to modify parental rights and  
9 responsibilities or parent-child contact upon return of the deploying parent and  
10 upon the filing and service of a verified application for the same which alleges  
11 an immediate danger of irreparable harm to the child. Any such motions shall  
12 be heard as expeditiously as possible upon the return of the deploying parent,  
13 but in no event more than 15 days from the date of filing or 15 days from the  
14 date of the end of the deployment.

15 § 685. TESTIMONY AND EVIDENCE

16 Upon motion of a deploying parent, provided reasonable advance notice is  
17 given and good cause shown, the court shall allow such parent to present  
18 testimony and evidence by affidavit or electronic means with respect to  
19 parental rights and responsibilities or parent-child contact matters instituted  
20 under this section when the deployment of that parent has a material effect on  
21 his or her ability to appear in person at a regularly scheduled hearing. The

1 phrase “electronic means” includes communication by telephone, video  
2 teleconference, or the Internet.

3 § 686. NO EXISTING ORDER

4 If there is no existing order establishing the terms of parental rights and  
5 responsibilities or parent-child contact and it appears that deployment or  
6 mobilization is imminent, upon motion by either parent, the court shall  
7 expedite a hearing to establish temporary parental rights and responsibilities  
8 and parent-child contact to ensure the deploying parent has access to the child,  
9 to ensure disclosure of information, to grant other rights and duties set forth  
10 herein, and to provide other appropriate relief. Any initial pleading filed to  
11 establish parental rights and responsibilities for or parent-child contact with a  
12 child of a deploying parent shall be so identified at the time of filing by stating  
13 in the text of the pleading the specific facts related to deployment.

14 § 687. DUTY TO COOPERATE AND DISCLOSE INFORMATION

15 (a) Because military necessity may preclude court adjudication before  
16 deployment, the parties shall cooperate with each other in an effort to reach a  
17 mutually agreeable resolution of parental rights and responsibilities,  
18 parent-child contact, and child support. Each party shall provide information  
19 to one another in an effort to facilitate agreement on these issues.

20 (b) Within 14 days of receiving notification of deployment or mobilization  
21 in the near future from his or her military leadership, the military parent shall

1 provide written notice to the nondeploying parent of the same. If less than 14  
2 days' notice is received by the military parent then notice must be given  
3 immediately upon receipt of notice to the nondeploying parent.

4 § 688. FAILURE TO EXERCISE PARENT-CHILD CONTACT RIGHTS

5 In determining whether a parent has failed to exercise parent-child contact,  
6 the court shall not count any time periods during which the parent did not  
7 exercise such contact due to the material effect of that parent's military duties  
8 on the contact schedule.

9 § 689. ATTORNEY FEES

10 In making determinations pursuant to this subchapter, the court may award  
11 attorney's fees and costs based on the court's consideration of:

12 (1) the failure of either party to reasonably accommodate the other party  
13 in parental rights and responsibilities or parent-child contact matters related to  
14 a deploying parent;

15 (2) unreasonable delay caused by either party in resolving parental  
16 rights and responsibilities or parent-child contact related to a deploying parent;

17 (3) failure of either party to timely provide income and earnings  
18 information to the other party; and

19 (4) other factors as the court may consider appropriate and as may be  
20 required by law.

1       Sec. 3. EFFECTIVE DATE AND APPLICABILITY

2           This act shall take effect April 1, 2010, and shall apply to all motions which  
3       are filed on or after such date.