HOUSE DOCKET, NO. 1807 FILED ON: 1/20/2011

HOUSE . . . . . No. 3289

The Commonwealth of Massachusetts

PRESENTED BY:

Harold P. Naughton, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the modification of custody orders.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Harold P. Naughton, Jr.	*12th Worcester*

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HOUSE . . . . . No. 3289

By Mr. Naughton of Clinton, a petition (accompanied by bill, House, No. 3289) of Harold P. Naughton, Jr. relative to the modification of custody orders involving parents called to active military service. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to the modification of custody orders.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 18 of chapter 207 of the General Laws, as appearing in the 2008 Official Edition is hereby amended by adding the following paragraph:-

If a motion for change of custody is filed during the time a parent is on active military duty, the court shall not enter an order modifying or amending a previous judgment or order, or issue a new order, that changes the child's placement that existed on the date the parent was called to active military duty: provided, however, that the court may enter a temporary custody order if there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's return from active military duty, the court shall reinstate the custody order in effect immediately preceding that period of active military duty. If a motion for change of custody is filed after a parent returns from active military duty, the court shall not consider a parent's absence due to that military duty in a best interest of the child determination.

12 SECTION 2. Section 19 of chapter 208 of the General Laws, as so appearing, is hereby
13 amended by adding the following paragraph:-

14 If a motion for change of custody is filed during the time a parent is on active military
15 duty, the court shall not enter an order modifying or amending a previous judgment or order, or
16 issue a new order, that changes the child's placement that existed on the date the parent was
17 called to active military duty; provided, however, that the court may enter a temporary custody
18 order if there is clear and convincing evidence that it is in the best interest of the child. Upon a
19 parent's return from active military duty, the court shall reinstate the custody order in effect
20 immediately preceding that period of active military duty. If a motion for change of custody is
21 filed after a parent returns from active military duty, the court shall not consider a parent's
22 absence due to that military duty in a best interest of the child determination.

23 SECTION 3. Section 20 of said chapter 208, as so appearing, is hereby amended by
24 adding the following paragraph:-

25 If a motion for change of custody is filed during the time a parent is on active military
26 duty, the court shall not enter an order modifying or amending a previous judgment or order, or
27 issue a new order, that changes the child's placement that existed on the date the parent was
28 called to active military duty; provided, however, that the court may enter a temporary custody
29 order if there is clear and convincing evidence that it is in the best interest of the child. Upon a
30 parent's return from active military duty, the court shall reinstate the custody order in effect
31 immediately preceding that period of active military duty. If a motion for change of custody is
32 filed after a parent returns from active military duty, the court shall not consider a parent's
33 absence due to that military duty in a best interest of the child determination.

34 SECTION 4. Section 20A of said chapter 208, as so appearing, is hereby amended by
35 adding the following paragraph:-

36 If a motion for change of custody is filed during the time a parent is on active military
37 duty, the court shall not enter an order modifying or amending a previous judgment or order, or
38 issue a new order, that changes the child's placement that existed on the date the parent was
39 called to active military duty; provided, however, that the court may enter a temporary custody
40 order if there is clear and convincing evidence that it is in the best interest of the child. Upon a
41 parent's return from active military duty, the court shall reinstate the custody order in effect
42 immediately preceding that period of active military duty. If a motion for change of custody is
43 filed after a parent returns from active military duty, the court shall not consider a parent's
44 absence due to that military duty in a best interest of the child determination.

45 SECTION 5. Section 28 of said chapter 208, as so appearing, is hereby amended by
46 adding the

47 following paragraph:-

48 If a motion for change of custody is filed during the time a parent is on active military
49 duty, the court shall not enter an order modifying or amending a previous judgment or order, or
50 issue a new order, that changes the child's placement that existed on the date the parent was
51 called to active military duty; provided, however, that the court may enter a temporary custody
52 order if there is clear and convincing evidence that it is in the best interest of the child. Upon a
53 parent's return from active military duty, the court shall reinstate the custody order in effect
54 immediately preceding that period of active military duty. If a motion for change of custody is

55 filed after a parent returns from active military duty, the court shall not consider a parent's
56 absence due to that military duty in a best interest of the child determination.

57 SECTION 6. Section 28A of said chapter 208, as so appearing, is hereby amended by
58 adding the following paragraph:-

59 If a motion for change of custody is filed during the time a parent is on active military
60 duty, the court shall not enter an order modifying or amending a previous judgment or order, or
61 issue a new order, that changes the child's placement that existed on the date the parent was
62 called to active military duty; provided, however, that the court may enter a temporary custody
63 order if there is clear and convincing evidence that it is in the best interest of the child. Upon a
64 parent's return from active military duty, the court shall reinstate the custody order in effect
65 immediately preceding that period of active military duty. If a motion for change of custody is
66 filed after a parent returns from active military duty, the court shall not consider a parent's
67 absence due to that military duty in a best interest of the child determination.

68 SECTION 7. Section 29 of said chapter 208, as so appearing, is hereby amended by
69 adding the following paragraph:-

70 If a motion for change of custody is filed during the time a parent is on active military
71 duty, the court shall not enter an order modifying or amending a previous judgment or order, or
72 issue a new order, that changes the child's placement that existed on the date the parent was
73 called to active military duty; provided, however, that the court may enter a temporary custody
74 order if there is clear and convincing evidence that it is in the best interest of the child. Upon a
75 parent's return from active military duty, the court shall reinstate the custody order in effect
76 immediately preceding that period of active military duty. If a motion for change of custody is

77 filed after a parent returns from active military duty, the court shall not consider a parent's
78 absence due to that military duty in a best interest of the child determination.

79 SECTION 8. Section 32 of chapter 209 of the General Laws, as so appearing, is hereby
80 amended by adding the following paragraph:-

81 If a motion for change of custody is filed during the time a parent is on active military
82 duty, the court shall not enter an order modifying or amending a previous judgment or order, or
83 issue a new order, that changes the child's placement that existed on the date the parent was
84 called to active military duty; provided, however, that the court may enter a temporary custody
85 order if there is clear and convincing evidence that it is in the best interest of the child. Upon a
86 parent's return from active military duty, the court shall reinstate the custody order in effect
87 immediately preceding that period of active military duty. If a motion for change of custody is
88 filed after a parent returns from active military duty, the court shall not consider a parent's
89 absence due to that military duty in a best interest of the child determination.

90 SECTION 9. Section 37 of said chapter 209, as so appearing, is hereby amended by
91 adding the following paragraph:-

92 If a motion for change of custody is filed during the time a parent is on active military
93 duty, the court shall not enter an order modifying or amending a previous judgment or order, or
94 issue a new order, that changes the child's placement that existed on the date the parent was
95 called to active military duty; provided, however, that the court may enter a temporary custody
96 order if there is clear and convincing evidence that it is in the best interest of the child. Upon a
97 parent's return from active military duty, the court shall reinstate the custody order in effect
98 immediately preceding that period of active military duty. If a motion for change of custody is

99 filed after a parent returns from active military duty, the court shall not consider a parent's
100 absence due to that military duty in a best interest of the child determination.

101 SECTION 10. Section 2 of chapter 209B of the General Laws, as so appearing, is
102 hereby amended by striking out subsection (e), as so appearing, and inserting in place thereof the
103 following subsection:-

104 (e) If a court of another state has made a custody determination in substantial conformity
105 with this chapter, a court of the commonwealth shall not modify that determination unless (1) it
106 appears to the court of the commonwealth that the court which made the custody determination
107 does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with
108 this chapter or that such court has declined to assume jurisdiction to modify its determination, (2)
109 a court of the commonwealth now has jurisdiction pursuant to this chapter and (3) if a motion for
110 change of custody is filed during the time a parent is on active military duty, the court shall not
111 enter an order modifying or amending a previous judgment or order, or issue a new order, that
112 changes the child's placement that existed on the date the parent was called to active military
113 duty; provided, however, that the court may enter a temporary custody order if there is clear and
114 convincing evidence that it is in the best interest of the child. Upon a parent's return from active
115 military duty, the court shall reinstate the custody order in effect immediately preceding that
116 period of active military duty. If a motion for change of custody is filed after a parent returns
117 from active military duty, the court shall not consider a parent's absence due to that military duty
118 in a best interest of the child determination.

119 SECTION 11. Section 3 of chapter 209C of the General Laws, as so appearing, is
120 hereby amended by adding the following subsection:-

121 (f) If a motion for change of custody is filed during the time a parent is on active military
122 duty, the court shall not enter an order modifying or amending a previous judgment or order, or
123 issue a new order, that changes the child's placement that existed on the date the parent was
124 called to active military duty; provided, however, that the court may enter a temporary custody
125 order if there is clear and convincing evidence that it is in the best interest of the child. Upon a
126 parent's return from active military duty, the court shall reinstate the custody order in effect
127 immediately preceding that period of active military duty. If a motion for change of custody is
128 filed after a parent returns from active military duty, the court shall not consider a parent's
129 absence due to that military duty in a best interest of the child determination.