

Legislative Analysis



POWER OF ATTORNEY: MILITARY FAMILY

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House Bill 5466 (Substitute H-1)

Sponsor: Rep. Judy Emmons

Committee: Judiciary

First Analysis (2-18-04)

BRIEF SUMMARY: The bill would allow members of the armed services who are deployed overseas to execute a power of attorney delegating the care of their dependent children to another that would extend for one month following the end of their deployment.

FISCAL IMPACT: The bill would have no fiscal impact on the Judiciary.

THE APPARENT PROBLEM:

The Estates and Protected Individuals Code allows a parent or guardian of a minor, or the guardian of a legally incapacitated individual, to delegate to another person, by a properly executed power of attorney, any of the parent's or guardian's powers regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption, for a period not exceeding six months.

A problem, therefore, exists for military personnel who are deployed overseas. Many persons in the military are the custodial parent or only parent. They must entrust the care of their children to others and must execute documents so that the caregivers have full legal authority to properly care for the children while the parents are unavailable. The length of time of a deployment sometimes extends beyond the six month time period specified in the law. Often deployments are for nine-months, with some extending to 18 months, if not longer, and sometimes are extended with little notice. When a power of attorney expires, the authority to authorize medical care, sign a permission slip for a school field trip, or make other decisions on the child's behalf also expires. Depending on the nature and location of the deployment, it may be difficult, if not impossible, for the parent/serviceperson to execute another power of attorney document in a timely manner so as to avoid any lapses in care for the children involved.

Legislation has been offered to allow service personnel who are deployed overseas to be able to execute a power of attorney that would be in effect for the full length of time of a deployment.

THE CONTENT OF THE BILL:

The bill would amend the Estates and Protected Individuals Code (MCL 700.5103) to specify that if a parent or guardian is serving in the armed forces of the United States and is deployed to a foreign nation, and if the power of attorney so provided, a delegation of powers would be effective until the thirty-first day after the end of the deployment.

ARGUMENTS:

For:

The bill would correct an unfortunate situation that affects military personnel. Currently, the law allows a parent or guardian to delegate, via a power of attorney, the care of his or her minor child or ward to another person. However, power of attorney executed under this provision is only good for six months, at which time a new document must be executed. Obviously, the automatic expiration clause is meant to protect the parent/child relationship. Unfortunately, for military personnel who are deployed overseas for longer than six months, the automatic expiration date may inadvertently mean that there is a lapse of legal authority for the caregiver to care for the child. Without a valid power of attorney, a caregiver cannot authorize medical care, sign a release to participate in sporting events, sign a permission slip for a school field trip, or access bank accounts or manage other property belonging to the child. Today's military includes many single-parent families and families in which both parents are active service personnel who may be deployed at the same time. Depending on a person's assignment or location of deployment, however, it may be difficult or impossible to execute another power of attorney in time to avoid a lapse in the caregiver's legal authority. It is imperative that these parents have peace of mind regarding their children's care whether they are keeping the peace abroad or actively fighting in combat situations.

The bill would rectify this situation by allowing military personnel to execute a power of attorney delegating the care of their children to other persons for the duration of their deployment. Since deployments often are either scheduled for a period longer than six months, or are extended beyond the originally scheduled time period with little to no prior warning, parents will not have the added stress of worrying whether their children are properly provided for.

POSITIONS:

There are no positions on the bill.

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