

HOUSE BILL REPORT

HB 2173

As Reported by House Committee On:
Judiciary

Title: An act relating to service members' civil relief.

Brief Description: Adopting the service members' civil relief act.

Sponsors: Representatives Serben, Lantz, Curtis, Darneille, Williams, Rodne, Ahern, Sump, Sells, Woods, Dunn, Springer, Haler, Talcott, Wallace, Conway, O'Brien, Kenney and P. Sullivan.

Brief History:

Committee Activity:

Judiciary: 3/1/05 [DPS].

Brief Summary of Substitute Bill

- Establishes the Washington Service Members' Civil Relief Act to provide certain rights and protections in civil proceedings to service members and their dependents during their military service or within 180 days after the termination of their military service.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Edie Adams (786-7180).

Background:

The federal Servicemember's Civil Relief Act (SCRA) provides a number of protections to military personnel while on active duty. The SCRA was adopted by Congress in 2003 and is a revision to the Soldiers' and Sailors' Civil Relief Act of 1940. The SCRA applies to all judicial and administrative proceedings in any federal or state court or agency. It does not apply to criminal proceedings.

The SCRA contains numerous protections for service members whose financial and legal obligations may be adversely impacted by active military duty. These protections include, among others, protecting service members from adverse actions in civil proceedings by

protecting against default judgments and by staying court proceedings if the service member is unable to defend his or her interests in the proceeding.

Default Judgments

A court may not enter a judgment against an absent defendant until the plaintiff has filed an affidavit stating whether the defendant is in military service. If it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant.

The court must grant a stay of proceedings for a minimum of 90 days if the court finds there may be a defense to the action that cannot be raised without the service member's presence, or counsel has been unable to contact the service member to determine whether there is a valid defense.

A default judgment against a service member during military service, or within 60 days after termination of military service, may be reopened to allow the service member to defend the action if the military service materially affected the ability to raise a defense, and the application to reopen the judgment is filed no later than 90 days after the date military service ends.

Stay of Civil Proceedings

A service member whose military service materially affects his or her ability to appear at a civil proceeding and who is unable to receive military leave to appear at the proceeding is entitled to an automatic stay of the proceedings for a period of at least 90 days. The service member may apply for an additional stay if military service continues to materially affect the service member's ability to appear. If a court refuses to grant the additional stay, the court must appoint counsel to represent the service member.

Contract Fines and Penalties

A court may reduce or waive a penalty that accrues under a contract for nonperformance by a service member if the service member was in military service when the penalty was incurred and the military service materially affected the service member's ability to perform the contract obligation. In addition, a penalty for noncompliance with a contract cannot be imposed if an action on the contract has been stayed.

Statutes of Limitations

The period of a service member's military service is excluded from the calculation of any statute of limitation periods provided in law (except for federal internal revenue laws) regarding when an action or proceeding may be brought either by or against the service member.

Summary of Substitute Bill:

The Washington Service Members' Civil Relief Act (Act) is established to provide certain rights and protections in civil proceedings to service members called to active duty, and their dependents, during the period of military service or within 180 days after military service ends. The Act applies to all judicial and administrative proceedings, but does not apply to criminal proceedings.

"Service member" means a Washington resident who is a member of the National Guard or a military reserve component. "Military service" means service under a call to service for a period of more than 30 consecutive days. "Dependent" means a spouse or child of the service member or a person for whom the service member provides more than one-half of the person's support for the six months prior to applying for relief under the Act.

Default Judgments

In a civil action where a defendant does not make an appearance, the plaintiff must file an affidavit stating whether or not the defendant is in military service or is a dependent of a service member in military service. A person who makes or uses such an affidavit knowing that it is false is guilty of a class C felony.

The court may not enter a judgment against an absent defendant who is a service member in military service, or who is a dependent of a service member in military service, until after the court appoints an attorney to represent the defendant. The actions of the attorney are not binding on the service member or dependent if the attorney is unable to locate the service member or dependent.

In a civil action where a service member or dependent is a defendant and does not make an appearance, the court must grant a stay of proceedings until 180 days after termination of or release from military service if the court finds:

- there may be a defense to the action that cannot be raised without the defendant's presence; or
- counsel has been unable to contact the defendant to determine whether there is a valid defense.

If a default judgment is entered against a service member or dependent during military service or within 180 days after military service ends, the service member or dependent is entitled to have the judgment reopened to allow for defense of the action if the service member or dependent:

- was materially affected in making a defense because of the military service; and
- has a meritorious or legal defense to the action or some part of the action.

Any default judgment that is vacated or set aside under this provision does not impair a right or title acquired by a bona fide purchaser for value.

Stay of Proceedings

A service member or dependent may apply for a stay of a civil proceeding in which the member or dependent is a defendant during military service or within 180 days after the

termination of military service. The court must stay the proceedings until 180 days after termination of military service if the application contains:

- a description of how the military service requirements materially affect the ability to appear and a date when the member or dependent will be able to appear; and
- a letter from a commanding officer stating that the service member's military duty prevents the service member's or dependent's appearance.

A service member or dependent may apply for an additional stay based on the continuing impact of military duty on the ability to appear. If the court refuses to grant an additional stay, the court must appoint counsel to represent the service member or dependent in the action.

Contract Fines or Penalties

A court may reduce or waive a penalty that accrues under a contract for nonperformance by a service member or dependent if the service member was in military service when the penalty was incurred and the military service materially affected the ability to perform the contract obligation. In addition, a penalty for noncompliance with a contract cannot be imposed if an action on the contract has been stayed.

Statutes of Limitations

The period of a service member's military service is excluded from the calculation of any statute of limitation periods provided in law (except for federal internal revenue laws) regarding when an action or proceeding may be brought either by or against the service member or a dependent of the service member.

Secondarily Liable Parties

Any relief granted under the Act may also be granted to any other person who may be primarily or secondarily liable upon the obligation at issue, such as a surety, guarantor, or endorser.

Substitute Bill Compared to Original Bill:

The original bill applied to all active duty military personnel instead of just National Guard or reserve members called to active duty. The original bill did not provide the protections of the act to the dependents of service members covered under the Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: This bill is intended to help our National Guard and reserve members who are called to active duty. These service members take a huge pay cut when they are called to active duty. One service member from the 6th District suffered an 80 percent pay cut when he was called to active duty, and he was forced into litigation to save his home.

(Proposed substitute bill) There is a proposed substitute bill that limits the bill to National Guard and reserve members, and this substitute bill addresses the concerns that have been raised about applying the bill to all active-duty military personnel.

Testimony Against: None.

Persons Testifying: (In support) Representative Serben, prime sponsor.

(In support of proposed substitute bill) Denny Eliason, Washington Bankers' Association.

Persons Signed In To Testify But Not Testifying: None.