

HOUSE BILL REPORT

HB 3074

As Reported by House Committee On:
Judiciary

Title: An act relating to determining the military status of defendants.

Brief Description: Concerning default judgments against service members.

Sponsors: Representatives Serben, Lantz, Haler, McCoy, Chase, Dunn, Green and Morrell.

Brief History:

Committee Activity:

Judiciary: 1/31/06 [DP].

Brief Summary of Bill

- Amends the Washington Service Members' Civil Relief Act (Act) to create a process for determining whether a defendant who does not make an appearance in a civil action or proceeding is in the military service or a dependant of a person in the military service.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Lantz, Chair; Flannigan, Vice 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:

Last session the Legislature enacted the Washington Service Members' Civil Relief Act (Act) to provide certain rights and protections in civil proceedings to service members during their military service or within 180 days after termination of their military service. The Act was modeled on the federal Servicemembers' Civil Relief Act, and provides similar rights to those provided under the federal law.

The Act contains numerous protections for service members, and their dependents, whose financial and legal obligations may be adversely impacted by active military duty. The Act applies to a Washington resident who is a member of the National Guard or a military reserve component and is under a call to service for a period of more than 30 consecutive days.

One of the provisions of the Act protects a service member or dependent from default judgments. In a civil action or proceeding where a defendant does not make an appearance, the plaintiff must file an affidavit, before a judgment is rendered, that states whether the defendant is in military service or is a dependent of a person in military service, or states that the plaintiff is unable to determine whether the defendant is in military service or is a dependent of a person in military service.

The court may not enter a judgment against an absent defendant who is in military service, or who is a dependent of a person 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.

If 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.

Summary of Bill:

The Washington Service Members' Civil Relief Act (Act) is amended to create a process for determining whether a defendant who does not make an appearance in a civil action or proceeding is in the military service or a dependant of a service member in the military service. In such an action, the plaintiff may serve on or mail via first-class mail to the defendant a written notice. The contents of the notice must be substantially the same as the notice set forth in the statute and must include provisions notifying the defendant of the rights available to a person in the military service or a dependent of a person in the military service, and the consequences of failing to notify the plaintiff of his or her status as a person in the military service or a dependant of a person in the military service.

For the purposes of entering a default judgment, a court may presume that an absent defendant is not in the military service or a dependant of a person in the military service if the defendant fails to timely respond to a notice that is either served on the defendant at least 20 days, or mailed to the defendant at least 23 days, before an application for a default judgment.

The stay of proceedings provision of the Act is amended to provide that the failure of a defendant who is protected under the Act to communicate or cooperate with counsel after having been contacted is not grounds to find that counsel has been unable to contact the defendant to determine whether there is a valid defense.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The underlying law is a good law but there is a problem with inconsistency in how it is being implemented. Some jurisdictions are assuming that any absent defendant is in the military service and therefore that a default judgment can't be entered. This bill will create a process to serve a notice on the defendant, which will give a service member an opportunity to assert his or her rights. This bill also addresses the issue of a service member who is uncooperative with the efforts of his or her attorney to make contact with the service member. The bill clarifies that if a service member is uncooperative, the action won't be stayed for the whole term of military service. A service member who is deployed and cannot be contacted by the attorney would still have the protections of the Act.

Testimony Against: None.

Persons Testifying: Representative John Serben, prime sponsor; Patrick Layman, Bishop White and Marshall, P.S.; and Troy Peterson, Washington Collectors Association.

Persons Signed In To Testify But Not Testifying: None.