

SENATE BILL REPORT

SHB 2173

As Reported By Senate Committee On:
Judiciary, March 30, 2005

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

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

Sponsors: House Committee on Judiciary (originally sponsored by 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: Passed House: 3/11/05, 93-0.

Committee Activity: Judiciary: 3/30/05 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Carrell, Esser, Hargrove, McCaslin, Rasmussen and Thibaudeau.

Staff: Aldo Melchiori (786-7439)

Background: During the civil war, Congress enacted a moratorium on civil actions brought against federal soldiers and sailors. The federal act has been amended a number of additional times, during WWI and thereafter, to expand its protections and respond to restrictive court decisions. In 2003, the Soldiers and Sailors Civil Relief Act was completely re-written.

The federal act currently provides that: (1) pre-service consumer debt and mortgage interest rates are reduced to 6 percent if military service materially effects the persons ability to pay; (2) active duty service members, who are unable to appear for a court or administrative proceeding, may request a stay for a mandatory minimum of 90 days; (3) active duty service members, who receive a permanent change of station, are allowed to terminate leases or pre-service automobile leases; (4) eviction actions may be stayed if certain requirements are met; (5) some protection is available against default judgments; (6) deferments of certain life insurance premiums may be allowed; (7) some protection from state income taxation is available; and (7) reinstatement of health insurance upon release from service is available.

Summary of Amended Bill: A new chapter is created and named the Washington Service Members' Civil Relief Act. It applies to any Washington resident who is a national guard or reserve service member, and his or her dependants (service member), during the period beginning on the date on which the service member receives the order to report for military service and ending 180 days after termination or release from service. The provisions apply to all Washington civil court or agency proceedings in which the service member, or a service member's dependant, is the defendant. It does not apply to criminal proceedings.

Before entering a default judgment in a civil action, in which a service member is a defendant and does not make an appearance, the court must require the plaintiff to file an affidavit, accompanied by supporting documents, stating whether the defendant is in military service or that the plaintiff is unable to determine whether the defendant is in military service. Knowingly using a false affidavit is an unranked class C felony. The court may not enter a default judgment until an attorney is appointed to represent the defendant. The court must grant a stay of 180 days if the defense cannot be presented without the presence of the defendant or the defendant has not been contacted. If the defendant receives actual notice of the action, he or she may request a stay of proceedings of up to 180 days. The stay may be extended based upon a continuing material affect of military duty on the defendant's ability to appear. If a default judgment is entered against a defendant during military service or within 180 days after release from service, the judgment must be reopened upon application, if it appears that the defense was materially affected by military service and a meritorious defense was available. Temporary orders in domestic relations cases, however, may be issued by the court.

The period of a persons military service is not included in civil periods of limitation for bringing actions in court or before any state or federal agency, regardless of whether the service member is a plaintiff or defendant. The period of military service is also not included in the period for the redemption of real property. This provision does not, however, apply to federal internal revenue laws.

Terms of contracts are stayed, including all obligations and penalties arising from non-performance if the service member was in service at the time of the penalty or fine and the member's ability to perform was materially affected by the military service.

A service member may waive the rights conferred by the chapter by written agreement. If a court determines that any interest or right has been acquired or transferred with the intent to delay the enforcement of the right by taking advantage of this chapter, the court shall enter the judgment. Plaintiffs may proceed normally against non-service member co-defendants. The protections extend to other persons who may be primarily or secondarily subject to the action.

Amended Bill Compared to Original Bill: Temporary orders in domestic relations cases may be issued by the court. A service member may waive the rights conferred by the chapter by written agreement. If a court determines that any interest or right has been acquired or transferred with the intent to delay the enforcement of the right by taking advantage of this chapter, the court shall enter the judgment.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Testimony For: None.

Testimony Against: None.

Who Testified: No one.