

SENATE BILL REPORT

EHB 3074

As Reported By Senate Committee On:
Judiciary, February 23, 2006

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: Passed House: 2/07/06, 98-0.

Committee Activity: Judiciary: 2/23/06 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

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

Staff: Aldo Melchiori (786-7439)

Background: In 2005, 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 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. If 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, or states that the plaintiff is unable to determine whether the defendant is in military service or is a dependent. The court may not enter a judgment against an absent defendant who is in military service, or who is a dependent, 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 him or her.

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 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 burden of proving that a defendant is a dependant of a service member in military service is shifted to the defendant. A court or administrative tribunal may presume that an absent defendant is not a dependant of a service member if the defendant fails to timely respond to a notice that is either served at least 20 days prior to or mailed to the defendant at least 23 days prior to an application for a default judgment. The contents of the notice must be substantially the same as the notice set forth in the Act and must include provisions notifying the defendant of the rights available to the dependent of the service member, and the consequences of failing to notify the plaintiff of his or her status as a dependant of the service member.

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.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill makes a small correction that makes court administration easier. It is often very difficult to determine whether a person is a dependant. The language is permissive, not mandatory. It is not intended, nor should it be interpreted to alter the time requirements prescribed by law or court rule for civil actions. That includes, but is not limited to, eviction or unlawful detainer actions.

Testimony Against: None.

Who Testified: PRO: Representative Serben, prime sponsor.

Signed in, Unable to Testify & Submitted Written Testimony: Patrick Layman, citizen.