
HOUSE BILL 2173

State of Washington

59th Legislature

2005 Regular Session

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

Read first time 02/22/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to service members' civil relief; adding a new
2 chapter to Title 38 RCW; prescribing penalties; and declaring an
3 emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this
6 section apply throughout this chapter.

7 (1) "Dependent" means:

8 (a) The service member's spouse;

9 (b) The service member's child; or

10 (c) An individual for whom the service member provided more than
11 one-half of the individual's support for one hundred eighty days
12 immediately preceding an application for relief under this chapter.

13 (2) "Military service" means:

14 (a) In the case of a member of the United States army, navy, air
15 force, marine corps, or coast guard, full-time duty in the active
16 military service of the United States. "Military service" includes
17 full-time training duty, annual training duty, and attendance, while in
18 the active military service, at a school designated as a service school

1 by law or by the secretary of the military department concerned.
2 "Military service" does not include full-time national guard duty.

3 (b) In the case of a member of the national guard or military
4 reserve component, "military service" means service under a call to
5 active service authorized by the president of the United States or the
6 secretary of defense for a period of more than thirty consecutive days.

7 (3) "National guard" has the meaning in RCW 38.04.010.

8 (4) "Service member" means any member of the United States army,
9 navy, air force, marine corps, coast guard, national guard, or member
10 of a military reserve component.

11 NEW SECTION. **Sec. 2.** APPLICABILITY OF CHAPTER. (1) Any service
12 member who is ordered to report for military service is entitled to the
13 rights and protections of this chapter during the period beginning on
14 the date on which the service member reports for service and ending one
15 hundred eighty days after termination of or release from military
16 service.

17 (2) This chapter applies to any judicial or administrative
18 proceeding commenced in any court or agency in Washington state in
19 which a service member is a defendant. This chapter does not apply to
20 criminal proceedings.

21 (3) This chapter shall be construed liberally so as to provide
22 fairness and do substantial justice to service members.

23 NEW SECTION. **Sec. 3.** EXTENSION OF RIGHTS AND PROTECTIONS--PERSONS
24 ORDERED TO REPORT FOR SERVICE--PERSONS ORDERED TO REPORT FOR INDUCTION.
25 A member of a reserve component who is ordered to report for military
26 service is entitled to the rights and protections of this chapter
27 during the period beginning on the date of the member's receipt of the
28 order and ending one hundred eighty days after termination of or
29 release from military service.

30 NEW SECTION. **Sec. 4.** PROTECTION OF PERSONS SECONDARILY LIABLE.
31 (1) Whenever pursuant to this chapter a court stays, postpones, or
32 suspends (a) the enforcement of an obligation or liability, (b) the
33 prosecution of a suit or proceeding, (c) the entry or enforcement of an
34 order, writ, judgment, or decree, or (d) the performance of any other
35 act, the court may likewise grant such a stay, postponement, or

1 suspension to a surety, guarantor, endorser, accommodation maker,
2 comaker, or other person who is or may be primarily or secondarily
3 subject to the obligation or liability the performance or enforcement
4 of which is stayed, postponed, or suspended.

5 (2) When a judgment or decree is vacated or set aside, in whole or
6 in part, pursuant to this chapter, the court may also set aside or
7 vacate, as the case may be, the judgment or decree as to a surety,
8 guarantor, endorser, accommodation maker, comaker, or other person who
9 is or may be primarily or secondarily liable on the contract or
10 liability for the enforcement of the judgment decree.

11 NEW SECTION. **Sec. 5.** PROTECTION OF SERVICE MEMBERS AGAINST
12 DEFAULT JUDGMENTS. (1) This section applies to any civil action or
13 proceeding in which a service member is a defendant and does not make
14 an appearance.

15 (2) In any action or proceeding covered by this section, the court,
16 before entering judgment for the plaintiff, shall require the plaintiff
17 to file with the court an affidavit:

18 (a) Stating whether the defendant is in military service and
19 showing necessary facts to support the affidavit; or

20 (b) If the plaintiff is unable to determine whether the defendant
21 is in military service, stating that the plaintiff is unable to
22 determine whether the defendant is in military service.

23 (3) If in an action covered by this section it appears that the
24 defendant is in military service, the court may not enter a judgment
25 until after the court appoints an attorney to represent the defendant.
26 If an attorney appointed under this section to represent a service
27 member cannot locate the service member, actions by the attorney in the
28 case do not waive any defense of the service member or otherwise bind
29 the service member.

30 (4) In an action covered by this section in which the defendant is
31 in military service, the court shall grant a stay of proceedings until
32 one hundred eighty days after termination of or release from military
33 service, upon application of defense counsel, or on the court's own
34 motion, if the court determines that:

35 (a) There may be a defense to the action and a defense cannot be
36 presented without presence of the defendant; or

1 (b) After due diligence, counsel has been unable to contact the
2 defendant or otherwise determine if a meritorious defense exists.

3 (5) If a service member who is a defendant in an action covered by
4 this section receives actual notice of the action, the service member
5 may request a stay of proceedings pursuant to section 6 of this act.

6 (6) A person who makes or uses an affidavit permitted under this
7 section knowing it to be false, is guilty of a class C felony.

8 (7) If a default judgment is entered in an action covered by this
9 section against a service member during the service member's period of
10 military service or within one hundred eighty days after termination of
11 or release from military service, the court entering the judgment
12 shall, upon application by or on behalf of the service member, reopen
13 the judgment for the purpose of allowing the service member to defend
14 the action if it appears that:

15 (a) The service member was materially affected by reason of that
16 military service in making a defense to the action; and

17 (b) The service member has a meritorious or legal defense to the
18 action or some part of it.

19 (8) If a court vacates, sets aside, or reverses a default judgment
20 against a service member and the vacating, setting aside, or reversing
21 is because of a provision of this chapter, that action does not impair
22 a right or title acquired by a bona fide purchaser for value.

23 NEW SECTION. **Sec. 6.** STAY OF PROCEEDINGS WHEN SERVICE MEMBER HAS
24 NOTICE. (1) This section applies to any civil action or proceeding in
25 which a defendant at the time of filing an application under this
26 section:

27 (a) Is in military service, or it is within one hundred eighty days
28 after termination of or release from military service; and

29 (b) Has received actual notice of the action or proceeding.

30 (2) At any stage before final judgment in a civil action or
31 proceeding in which a service member described in subsection (1)(a) of
32 this section is a party, the court may on its own motion and shall,
33 upon application by the service member, stay the action until one
34 hundred eighty days after termination of or release from military
35 service, if the conditions in subsection (3) of this section are met.

36 (3) An application for a stay under subsection (2) of this section
37 shall include the following:

1 (a) A letter or other communication setting forth facts stating the
2 manner in which current military duty requirements materially affect
3 the service member's ability to appear and stating a date when the
4 service member will be available to appear; and

5 (b) A letter or other communication from the service member's
6 commanding officer stating that the service member's current military
7 duty prevents appearance and that military leave is not authorized for
8 the service member at the time of the letter.

9 (4) An application for a stay under this section does not
10 constitute an appearance for jurisdictional purposes and does not
11 constitute a waiver of any substantive or procedural defense, including
12 a defense relating to lack of personal jurisdiction.

13 (5) A service member who is granted a stay of a civil action or
14 proceeding under subsection (2) of this section may apply for an
15 additional stay based on the continuing material affect of military
16 duty on the service member's ability to appear. Such application may
17 be made by the service member at the time of the initial application
18 under subsection (2) of this section or when it appears that the
19 service member is unable to prosecute or defend the action. The same
20 information required under subsection (3) of this subsection shall be
21 included in an application under this subsection.

22 (6) If the court refuses to grant an additional stay of proceedings
23 under subsection (2) of this section, the court shall appoint counsel
24 to represent the service member in the action or proceeding.

25 (7) A service member who applies for a stay under this section and
26 is unsuccessful may not seek the protections afforded by section 5 of
27 this act.

28 NEW SECTION. **Sec. 7. FINES AND PENALTIES UNDER CONTRACTS.** (1) If
29 an action for compliance with the terms of a contract is stayed
30 pursuant to this chapter, a penalty shall not accrue for failure to
31 comply with the terms of the contract during the period of the stay.

32 (2) If a service member fails to perform an obligation arising
33 under a contract and a penalty is incurred arising from that
34 nonperformance, a court may reduce or waive the fine or penalty if:

35 (a) The service member was in military service at the time the fine
36 or penalty was incurred; and

1 (b) The ability of the service member to perform the obligation was
2 materially affected by the military service.

3 NEW SECTION. **Sec. 8.** CODEFENDANTS. If the service member is a
4 codefendant with others who are not in military service and who are not
5 entitled to the relief and protections provided under this chapter, the
6 plaintiff may proceed against those other defendants with the approval
7 of the court.

8 NEW SECTION. **Sec. 9.** STATUTE OF LIMITATIONS. (1) The period of
9 a service member's military service may not be included in computing
10 any period limited by law, rule, or order, for the bringing of any
11 action or proceeding in a court, or in any board bureau, commission,
12 department, or other agency of a state, or political subdivision of a
13 state, or the United States by or against the service member or the
14 service member's heirs, executors, administrators, or assigns.

15 (2) A period of military service may not be included in computing
16 any period provided by law for the redemption of real property sold or
17 forfeited to enforce an obligation, tax, or assessment.

18 (3) This section does not apply to any period of limitation
19 prescribed by or under the internal revenue laws of the United States.

20 NEW SECTION. **Sec. 10.** This chapter may be known and cited as the
21 Washington service members' civil relief act.

22 NEW SECTION. **Sec. 11.** Captions used in this act are no part of
23 the law.

24 NEW SECTION. **Sec. 12.** Sections 1 through 11 of this act
25 constitute a new chapter in Title 38 RCW.

26 NEW SECTION. **Sec. 13.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 14.** This act is necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the
2 state government and its existing public institutions, and takes effect
3 immediately.

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