
ENGROSSED HOUSE BILL 3074

State of Washington

59th Legislature

2006 Regular Session

By Representatives Serben, Lantz, Haler, McCoy, Chase, Dunn, Green and Morrell

Read first time 01/19/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to determining the military status of defendants;
2 and amending RCW 38.42.050.

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

4 **Sec. 1.** RCW 38.42.050 and 2005 c 254 s 5 are each amended to read
5 as follows:

6 (1) This section applies to any civil action or proceeding in which
7 a service member or his or her dependent is a defendant and does not
8 make an appearance under applicable court rules or by law.

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

12 (a) Stating whether the defendant is in military service, or is a
13 dependent of a service member in military service, and showing
14 necessary facts to support the affidavit; or

15 (b) If the plaintiff is unable to determine whether the defendant
16 is in military service or is a dependent of a service member in
17 military service, stating that the plaintiff is unable to determine
18 whether the defendant is in military service or is a dependent of a
19 service member in military service.

1 (3)(a) To determine whether or not a defendant is a dependent of a
2 person in the military service under this chapter, the plaintiff may
3 serve on or mail via first-class mail to the defendant a written notice
4 in substantially the following form:

5 "NOTICE: State and federal law provide protections to defendants
6 who are on active duty in the military service, and to their
7 dependents. Dependents of a service member are the service member's
8 spouse, the service member's minor child, or an individual for whom the
9 service member provided more than one-half of the individual's support
10 for one hundred eighty days immediately preceding an application for
11 relief.

12 One protection provided is the protection against the entry of a
13 default judgment in certain circumstances. This notice only pertains
14 to a defendant who is a dependent of a member of the national guard or
15 a military reserve component under a call to active service for a
16 period of more than thirty consecutive days. Other defendants in
17 military service also have protections against default judgments not
18 covered by this notice. If you are the dependent of a member of the
19 national guard or a military reserve component under a call to active
20 service for a period of more than thirty consecutive days, you should
21 notify the plaintiff or the plaintiff's attorneys in writing of your
22 status as such within twenty days of the receipt of this notice. If
23 you fail to do so, then a court or an administrative tribunal may
24 presume that you are not a dependent of an active duty member of the
25 national guard or reserves, and proceed with the entry of an order of
26 default and/or a default judgment without further proof of your status.
27 Your response to the plaintiff or plaintiff's attorneys about your
28 status does not constitute an appearance for jurisdictional purposes in
29 any pending litigation nor a waiver of your rights."

30 (b) If the notice is either served on the defendant twenty or more
31 days prior to an application for an order of default or a default
32 judgment, or mailed to the defendant more than twenty-three days prior
33 to such application, and the defendant fails to timely respond, then
34 for purposes of entry of an order of default or default judgment, the
35 court or administrative tribunal may presume that the defendant is not
36 a dependent of a person in the military service under this chapter.

37 (c) Nothing prohibits the plaintiff from allowing a defendant more

1 than twenty days to respond to the notice, or from amending the notice
2 to so provide.

3 (4) If in an action covered by this section it appears that the
4 defendant is in military service or is a dependent of a service member
5 in military service, the court may not enter a judgment until after the
6 court appoints an attorney to represent the defendant. If an attorney
7 appointed under this section to represent a service member or his or
8 her dependent cannot locate the service member or dependent, actions by
9 the attorney in the case do not waive any defense of the service member
10 or dependent or otherwise bind the service member or dependent.

11 ((+4)) (5) In an action covered by this section in which the
12 defendant is in military service or is a dependent of a service member
13 in military service, the court shall grant a stay of proceedings until
14 one hundred eighty days after termination of or release from military
15 service, upon application of defense counsel, or on the court's own
16 motion, if the court determines that:

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

19 (b) After due diligence, counsel has been unable to contact the
20 defendant or otherwise determine if a meritorious defense exists. The
21 defendant's failure to communicate or cooperate with counsel after
22 having been contacted is not grounds to find that counsel has been
23 unable to contact the defendant or that counsel has been unable to
24 determine if a meritorious defense exists.

25 ((+5)) (6) No bar to entry of judgment under subsection ((+3))
26 (4) of this section or requirement for grant of stay under subsection
27 ((+4)) (5) of this section precludes the entry of temporary orders in
28 domestic relations cases. If a court or administrative tribunal enters
29 a temporary order as allowed under this subsection, it shall include a
30 finding that failure to act, despite the absence of the service member,
31 would result in manifest injustice to the other interested parties.
32 Temporary orders issued without the service member's participation
33 shall not set any precedent for the final disposition of the matters
34 addressed therein.

35 ((+6)) (7) If a service member or dependent who is a defendant in
36 an action covered by this section receives actual notice of the action,
37 the service member or dependent may request a stay of proceedings
38 pursuant to RCW 38.42.060.

1 (~~(7)~~) (8) A person who makes or uses an affidavit permitted under
2 this section knowing it to be false, is guilty of a class C felony.

3 (~~(8)~~) (9) If a default judgment is entered in an action covered
4 by this section against a service member or his or her dependent during
5 the service member's period of military service or within one hundred
6 eighty days after termination of or release from military service, the
7 court entering the judgment shall, upon application by or on behalf of
8 the service member or his or her dependent, reopen the judgment for the
9 purpose of allowing the service member or his or her dependent to
10 defend the action if it appears that:

11 (a) The service member or dependent was materially affected by
12 reason of that military service in making a defense to the action; and

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

15 (~~(9)~~) (10) If a court vacates, sets aside, or reverses a default
16 judgment against a service member or his or her dependent and the
17 vacating, setting aside, or reversing is because of a provision of this
18 chapter, that action does not impair a right or title acquired by a
19 bona fide purchaser for value.

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