

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2173

59th Legislature
2005 Regular Session

Passed by the House April 19, 2005
Yeas 96 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 6, 2005
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2173** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2173

AS AMENDED BY THE SENATE

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By 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)

READ FIRST TIME 03/04/05.

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 minor 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) "Judgment" does not include temporary orders as issued by a
14 judicial court or administrative tribunal in domestic relations cases
15 under Title 26 RCW, including but not limited to establishment of a
16 temporary child support obligation, creation of a temporary parenting
17 plan, or entry of a temporary protective or restraining order.

18 (3) "Military service" means a service member under a call to

1 active service authorized by the president of the United States or the
2 secretary of defense for a period of more than thirty consecutive days.

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

4 (5) "Service member" means any resident of Washington state that is
5 a member of the national guard or member of a military reserve
6 component.

7 NEW SECTION. **Sec. 2.** APPLICABILITY OF CHAPTER. (1) Any service
8 member who is ordered to report for military service and his or her
9 dependents are entitled to the rights and protections of this chapter
10 during the period beginning on the date on which the service member
11 receives the order and ending one hundred eighty days after termination
12 of or release from military service.

13 (2) This chapter applies to any judicial or administrative
14 proceeding commenced in any court or agency in Washington state in
15 which a service member or his or her dependent is a defendant. This
16 chapter does not apply to criminal proceedings.

17 (3) This chapter shall be construed liberally so as to provide
18 fairness and do substantial justice to service members and their
19 dependents.

20 NEW SECTION. **Sec. 3.** PROTECTION OF PERSONS SECONDARILY LIABLE.

21 (1) Whenever pursuant to this chapter a court stays, postpones, or
22 suspends (a) the enforcement of an obligation or liability, (b) the
23 prosecution of a suit or proceeding, (c) the entry or enforcement of an
24 order, writ, judgment, or decree, or (d) the performance of any other
25 act, the court may likewise grant such a stay, postponement, or
26 suspension to a surety, guarantor, endorser, accommodation maker,
27 comaker, or other person who is or may be primarily or secondarily
28 subject to the obligation or liability the performance or enforcement
29 of which is stayed, postponed, or suspended.

30 (2) When a judgment or decree is vacated or set aside, in whole or
31 in part, pursuant to this chapter, the court may also set aside or
32 vacate, as the case may be, the judgment or decree as to a surety,
33 guarantor, endorser, accommodation maker, comaker, or other person who
34 is or may be primarily or secondarily liable on the contract or
35 liability for the enforcement of the judgment decree.

1 NEW SECTION. **Sec. 4.** WAIVER OF RIGHTS PURSUANT TO WRITTEN
2 AGREEMENT. (1) A service member may waive any of the rights and
3 protections provided by this chapter. In the case of a waiver that
4 permits an action described in subsection (2) of this section, the
5 waiver is effective only if made pursuant to a written agreement of the
6 parties that is executed during or after the service member's period of
7 military service. The written agreement shall specify the legal
8 instrument to which the waiver applies and, if the service member is
9 not party to that instrument, the service member concerned.

10 (2) The requirement in subsection (1) of this section for a written
11 waiver applies to the following: (a) The modification, termination, or
12 cancellation of a contract, lease, or bailment; or an obligation
13 secured by a mortgage, trust, deed, lien, or other security in the
14 nature of a mortgage; and (b) the repossession, retention, foreclosure,
15 sale, forfeiture, or taking possession of property that is security for
16 any obligation or was purchased or received under a contract, lease, or
17 bailment.

18 NEW SECTION. **Sec. 5.** PROTECTION OF SERVICE MEMBERS AGAINST
19 DEFAULT JUDGMENTS. (1) This section applies to any civil action or
20 proceeding in which a service member or his or her dependent is a
21 defendant and does not make an appearance under applicable court rules
22 or by law.

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

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

29 (b) If the plaintiff is unable to determine whether the defendant
30 is in military service or is a dependent of a service member in
31 military service, stating that the plaintiff is unable to determine
32 whether the defendant is in military service or is a dependent of a
33 service member in military service.

34 (3) If in an action covered by this section it appears that the
35 defendant is in military service or is a dependent of a service member
36 in military service, the court may not enter a judgment until after the
37 court appoints an attorney to represent the defendant. If an attorney

1 appointed under this section to represent a service member or his or
2 her dependent cannot locate the service member or dependent, actions by
3 the attorney in the case do not waive any defense of the service member
4 or dependent or otherwise bind the service member or dependent.

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

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

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

15 (5) No bar to entry of judgment under subsection (3) of this
16 section or requirement for grant of stay under subsection (4) of this
17 section precludes the entry of temporary orders in domestic relations
18 cases. If a court or administrative tribunal enters a temporary order
19 as allowed under this subsection, it shall include a finding that
20 failure to act, despite the absence of the service member, would result
21 in manifest injustice to the other interested parties. Temporary
22 orders issued without the service member's participation shall not set
23 any precedent for the final disposition of the matters addressed
24 therein.

25 (6) If a service member or dependent who is a defendant in an
26 action covered by this section receives actual notice of the action,
27 the service member or dependent may request a stay of proceedings
28 pursuant to section 6 of this act.

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

31 (8) If a default judgment is entered in an action covered by this
32 section against a service member or his or her dependent during the
33 service member's period of military service or within one hundred
34 eighty days after termination of or release from military service, the
35 court entering the judgment shall, upon application by or on behalf of
36 the service member or his or her dependent, reopen the judgment for the
37 purpose of allowing the service member or his or her dependent to
38 defend the action if it appears that:

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

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

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

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

14 (a)(i) Is in military service, or it is within one hundred eighty
15 days after termination of or release from military service; or

16 (ii) Is a dependent of a service member in military service; and

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

18 (2) At any stage before final judgment in a civil action or
19 proceeding in which a service member or his or her dependent described
20 in subsection (1) of this section is a party, the court may on its own
21 motion and shall, upon application by the service member or his or her
22 dependent, stay the action until one hundred eighty days after
23 termination of or release from military service, if the conditions in
24 subsection (3) of this section are met.

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

27 (a) A letter or other communication setting forth facts stating the
28 manner in which current military duty requirements materially affect
29 the service member's or dependent's ability to appear and stating a
30 date when the service member or dependent will be available to appear;
31 and

32 (b) A letter or other communication from the service member's
33 commanding officer stating that the service member's current military
34 duty prevents either the service member's or dependent's appearance and
35 that military leave is not authorized for the service member at the
36 time of the letter.

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

5 (5) A service member or dependent who is granted a stay of a civil
6 action or proceeding under subsection (2) of this section may apply for
7 an additional stay based on the continuing material affect of military
8 duty on the service member's or dependent's ability to appear. Such
9 application may be made by the service member or his or her dependent
10 at the time of the initial application under subsection (2) of this
11 section or when it appears that the service member or his or her
12 dependent is unable to prosecute or defend the action. The same
13 information required under subsection (3) of this subsection shall be
14 included in an application under this subsection.

15 (6) If the court refuses to grant an additional stay of proceedings
16 under subsection (2) of this section, the court shall appoint counsel
17 to represent the service member or his or her dependent in the action
18 or proceeding.

19 (7) A service member or dependent who applies for a stay under this
20 section and is unsuccessful may not seek the protections afforded by
21 section 5 of this act.

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

26 (2) If a service member or his or her dependent fails to perform an
27 obligation arising under a contract and a penalty is incurred arising
28 from that nonperformance, a court may reduce or waive the fine or
29 penalty if:

30 (a)(i) The service member was in military service at the time the
31 fine or penalty was incurred; or

32 (ii) The action is against a dependent of the service member and
33 the service member was in military service at the time the fine or
34 penalty was incurred; and

35 (b) The ability of the service member or dependent to perform the
36 obligation was materially affected by the military service.

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

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

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

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

19 NEW SECTION. **Sec. 10.** INAPPROPRIATE USE OF CHAPTER. If a court
20 determines, in any proceeding to enforce a civil right, that any
21 interest, property, or contract has been transferred or acquired with
22 the intent to delay the just enforcement of such right by taking
23 advantage of this chapter, the court shall enter such judgment or make
24 such order as might lawfully be entered or made concerning such
25 transfer or acquisition.

26 NEW SECTION. **Sec. 11.** This chapter may be known and cited as the
27 Washington service members' civil relief act.

28 NEW SECTION. **Sec. 12.** Captions used in this act are no part of
29 the law.

30 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act
31 constitute a new chapter in Title 38 RCW.

1 NEW SECTION. **Sec. 14.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and takes effect
8 immediately.

--- END ---