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**SUBSTITUTE SENATE BILL 6266**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Hobbs, Kilmer, Shin, and McCaslin)

READ FIRST TIME 02/05/10.

1 AN ACT Relating to service members' civil relief; and amending RCW  
2 38.42.010 and 38.42.050.

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

4 **Sec. 1.** RCW 38.42.010 and 2006 c 253 s 1 are each amended to read  
5 as follows:

6 The definitions in this section apply throughout this chapter.

7 (1) "Business loan" means a loan or extension of credit granted to  
8 a business entity that: (a) Is owned and operated by a service member,  
9 in which the service member is either (i) a sole proprietor, or (ii)  
10 the owner of at least fifty percent of the entity; and (b) experiences  
11 a material reduction in revenue due to the service member's military  
12 service.

13 (2) "Dependent" means:

14 (a) The service member's spouse;

15 (b) The service member's minor child; or

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

1 (3) "Financial institution" means an institution as defined in RCW  
2 30.22.041.

3 (4) "Judgment" does not include temporary orders as issued by a  
4 judicial court or administrative tribunal in domestic relations cases  
5 under Title 26 RCW, including but not limited to establishment of a  
6 temporary child support obligation, creation of a temporary parenting  
7 plan, or entry of a temporary protective or restraining order.

8 (5) "Military service" means a service member:

9 (a) Under a call to active service authorized by the president of  
10 the United States or the secretary of defense for a period of more than  
11 thirty consecutive days; or

12 (b) Under a call to emergency service authorized by the governor  
13 under RCW 38.08.040 for a period of more than thirty consecutive days.

14 (6) "National guard" has the meaning in RCW 38.04.010.

15 (7) "Service member" means any resident of Washington state that is  
16 a member of the national guard or member of a military reserve  
17 component.

18 **Sec. 2.** RCW 38.42.050 and 2006 c 80 s 1 are each amended to read  
19 as follows:

20 (1) This section applies to any civil action or proceeding in which  
21 a service member or his or her dependent is a defendant and does not  
22 make an appearance under applicable court rules 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)(a) To determine whether or not a defendant is a dependent of a  
35 person in the military service under this chapter, or is a national  
36 guard member under a call to active service authorized by the governor

1 of the state of Washington, the plaintiff may serve on or mail via  
2 first-class mail to the defendant a written notice in substantially the  
3 following form:

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

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

34 (b) If the notice is either served on the defendant twenty or more  
35 days prior to an application for an order of default or a default  
36 judgment, or mailed to the defendant more than twenty-three days prior  
37 to such application, and the defendant fails to timely respond, then  
38 for purposes of entry of an order of default or default judgment, the

1 court or administrative tribunal may presume that the defendant is not  
2 a dependent of a person in the military service under this chapter or  
3 a national guard member under a call to active service authorized by  
4 the governor of the state of Washington.

5 (c) Nothing prohibits the plaintiff from allowing a defendant more  
6 than twenty days to respond to the notice, or from amending the notice  
7 to so provide.

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

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

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

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

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

1 any precedent for the final disposition of the matters addressed  
2 therein.

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

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

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

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

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

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

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