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**SUBSTITUTE HOUSE BILL 2171**

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**State of Washington****63rd Legislature****2014 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Orwall, Johnson, Tarleton, Ross, Nealey, Hayes, Sullivan, Farrell, Kirby, Hansen, Chandler, Green, Shea, Moscoso, Parker, Smith, Magendanz, Klippert, Rodne, Pollet, Seaquist, Appleton, Carlyle, Stanford, Buys, Morrell, Goodman, Llias, Haigh, Short, Fagan, Bergquist, Fey, Riccelli, and Ryu; by request of Governor Inslee and Attorney General)

READ FIRST TIME 01/23/14.

1       AN ACT Relating to strengthening economic protections for veterans  
2 and military personnel; amending RCW 38.42.010, 38.42.020, and  
3 73.16.070; adding new sections to chapter 38.42 RCW; and prescribing  
4 penalties.

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

6       **Sec. 1.** RCW 38.42.010 and 2012 c 24 s 1 are each amended to read  
7 as follows:

8           The definitions in this section apply throughout this chapter.

9       (1) "Attorney general" means the attorney general of the state of  
10 Washington or any person designated by the attorney general to carry  
11 out a responsibility of the attorney general under this chapter.

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

18       ((2))) (3) "Dependent" means:

19       (a) The service member's spouse;

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

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

5                 ((+3))) (4) "Financial institution" means an institution as defined  
6 in RCW 30.22.041.

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

12                 ((+5))) (6) "Military service" means a service member:

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

16                   (b) Under a call to service authorized by the governor under RCW  
17 38.08.040 for a period of more than thirty consecutive days.

18                 ((+6))) (7) "National guard" has the meaning in RCW 38.04.010.

19                 ((+7))) (8) "Service member" means any resident of Washington state  
20 who is a member of the national guard or member of a military reserve  
21 component.

22                 **Sec. 2.** RCW 38.42.020 and 2005 c 254 s 2 are each amended to read  
23 as follows:

24                   (1) Any service member who is ordered to report for military  
25 service and his or her dependents are entitled to the rights and  
26 protections of this chapter during the period beginning on the date on  
27 which the service member receives the order and ending one hundred  
28 eighty days after termination of or release from military service.

29                   (2) This chapter applies to any judicial or administrative  
30 proceeding commenced in any court or agency in Washington state in  
31 which a service member or his or her dependent is a ((defendant))  
32 party. This chapter does not apply to criminal proceedings.

33                   (3) This chapter shall be construed liberally so as to provide  
34 fairness and do substantial justice to service members and their  
35 dependents.

1        **NEW SECTION.** **Sec. 3.** A new section is added to chapter 38.42 RCW  
2 to read as follows:

3            (1) The federal Servicemembers Civil Relief Act of 2003, P.L.  
4 108-189, as amended, is specifically declared to apply in proper cases  
5 in all the courts of this state.

6            (2) A violation of the federal Servicemembers Civil Relief Act of  
7 2003 is a violation of this chapter.

8        **NEW SECTION.** **Sec. 4.** A new section is added to chapter 38.42 RCW  
9 to read as follows:

10           (1) Any person aggrieved by a violation of this chapter may in a  
11 civil action:

12              (a) Obtain any appropriate equitable or declaratory relief with  
13 respect to the violation; and

14              (b) Recover all other appropriate relief, including monetary  
15 damages.

16           (2) The court may award to a person aggrieved by a violation of  
17 this chapter who prevails in an action brought under subsection (1)(a)  
18 of this section the costs of the action, including reasonable  
19 attorneys' fees.

20        **NEW SECTION.** **Sec. 5.** A new section is added to chapter 38.42 RCW  
21 to read as follows:

22           (1) Civil proceedings to enforce this chapter may be brought by the  
23 attorney general against any person that:

24              (a) Engages in a pattern or practice of violating this chapter; or  
25              (b) Engages in a violation of this chapter that raises an issue of  
26 significant public importance.

27           (2) In a civil action commenced under subsection (1)(a) of this  
28 section, the court may:

29              (a) Grant any appropriate equitable or declaratory relief with  
30 respect to the violation of this chapter;

31              (b) Award all other appropriate relief, including monetary damages,  
32 to any person aggrieved by the violation; and

33              (c) May, to vindicate the public interest, assess a civil penalty:  
34              (i) In an amount not exceeding fifty-five thousand dollars for a  
35 first violation; and

1               (ii) In an amount not exceeding one hundred ten thousand dollars  
2 for any subsequent violation.

3               (3) Upon timely application, a person aggrieved by a violation of  
4 this chapter with respect to which the civil action is commenced may  
5 intervene in such an action and may obtain appropriate relief as the  
6 person could obtain in a civil action under section 3 of this act with  
7 respect to that violation, along with costs and reasonable attorneys'  
8 fees.

9               NEW SECTION. **Sec. 6.** A new section is added to chapter 38.42 RCW  
10 to read as follows:

11               (1) Whenever the attorney general believes that any person may:  
12               (a) Be in possession, custody, or control of any original or copy of  
13 any book, record, report, memorandum, paper, communication, tabulation,  
14 map, chart, photograph, mechanical transcription, or other tangible  
15 document or recording, wherever situated, which he or she believes to  
16 be relevant to the subject matter of an investigation of a possible  
17 violation of this chapter, or federal statutes dealing with the same or  
18 similar matters that the attorney general is authorized to enforce; or  
19               (b) have knowledge of any information that the attorney general  
20 believes relevant to the subject matter of such an investigation, he or  
21 she may, prior to the institution of a civil proceeding thereon,  
22 execute in writing and cause to be served upon such a person, a civil  
23 investigative demand requiring such a person to produce the documentary  
24 material and permit inspection and copying, to answer in writing  
25 written interrogatories, to give oral testimony, or any combination of  
26 these demands pertaining to the documentary material or information.  
27 Documents and information obtained under this section are not  
28 admissible in criminal prosecutions.

29               (2) Each demand must:

30               (a) State the statute and section or sections thereof, the alleged  
31 violation of which is under investigation, and the general subject  
32 matter of the investigation;

33               (b) If the demand is for the production of documentary material,  
34 describe the class or classes of documentary material to be produced  
35 thereunder with reasonable specificity so as fairly to indicate the  
36 material demanded;

1       (c) Prescribe a return date within which the documentary material  
2 is to be produced, the answers to written interrogatories are to be  
3 made, or a date, time, and place at which oral testimony is to be  
4 taken; and

5       (d) Identify the members of the attorney general's staff to whom  
6 the documentary material is to be made available for inspection and  
7 copying, to whom answers to written interrogatories are to be made, or  
8 who are to conduct the examination for oral testimony.

9           (3) No demand may:

10          (a) Contain any requirement that would be unreasonable or improper  
11 if contained in a subpoena duces tecum, a request for answers to  
12 written interrogatories, or a request for deposition upon oral  
13 examination issued by a court of this state; or

14          (b) Require the disclosure of any documentary material that would  
15 be privileged or which for any other reason would not be required by a  
16 subpoena duces tecum issued by a court of this state.

17           (4) Service of such a demand may be made by:

18          (a) Delivering a duly executed copy thereof to the person to be  
19 served, or, if such a person is not a natural person, to any officer or  
20 managing agent of the person to be served;

21          (b) Delivering a duly executed copy thereof to the principal place  
22 of business in this state of the person to be served; or

23          (c) Mailing by registered or certified mail a duly executed copy  
24 thereof addressed to the person to be served at the principal place of  
25 business in this state, or, if the person has no place of business in  
26 this state, to his or her principal office or place of business.

27           (5)(a) Documentary material demanded pursuant to the provisions of  
28 this section must be produced for inspection and copying during normal  
29 business hours at the principal office or place of business of the  
30 person served, or at such other times and places as may be agreed upon  
31 by the person served and the attorney general;

32           (b) Written interrogatories in a demand served under this section  
33 must be answered in the same manner as provided in the civil rules for  
34 superior court;

35           (c) The oral testimony of any person obtained pursuant to a demand  
36 served under this section must be taken in the same manner as provided  
37 in the civil rules for superior court for the taking of depositions.

38 In the course of the deposition, the assistant attorney general

1 conducting the examination may exclude from the place where the  
2 examination is held all persons other than the person being examined,  
3 the person's counsel, and the officer before whom the testimony is to  
4 be taken;

5 (d) Any person compelled to appear pursuant to a demand for oral  
6 testimony under this section may be accompanied by counsel;

7 (e) The oral testimony of any person obtained pursuant to a demand  
8 served under this section must be taken in the county within which the  
9 person resides, is found, or transacts business, or in another place as  
10 may be agreed upon between the person served and the attorney general.

11 (6) If, after prior court approval, a civil investigative demand  
12 specifically prohibits disclosure of the existence or content of the  
13 demand, unless otherwise ordered by a superior court for good cause  
14 shown, it is a misdemeanor for any person if not a bank, trust company,  
15 mutual savings bank, credit union, or savings and loan association  
16 organized under the laws of the United States or of any one of the  
17 states to disclose to any other person the existence or content of the  
18 demand, except for disclosure to counsel for the recipient of the  
19 demand or unless otherwise required by law.

20 (7) No documentary material, answers to written interrogatories, or  
21 transcripts of oral testimony produced pursuant to a demand, or copies  
22 thereof, shall, unless otherwise ordered by a superior court for good  
23 cause shown, be produced for inspection or copying by, nor may the  
24 contents thereof be disclosed to, other than an authorized employee of  
25 the attorney general, without the consent of the person who produced  
26 the material, answered written interrogatories, or gave oral testimony,  
27 except as otherwise provided in this section: PROVIDED, That:

28 (a) Under the reasonable terms and conditions as the attorney  
29 general prescribes, the copies of the documentary material, answers to  
30 written interrogatories, or transcripts of oral testimony must be  
31 available for inspection and copying by the person who produced the  
32 material, answered written interrogatories, or gave oral testimony, or  
33 any duly authorized representative of such a person;

34 (b) The attorney general or any assistant attorney general may use  
35 the copies of documentary material, answers to written interrogatories,  
36 or transcripts of oral testimony as he or she determines necessary in  
37 the enforcement of this chapter, including presentation before any  
38 court: PROVIDED, That any material, answers to written

1 interrogatories, or transcripts of oral testimony that contain trade  
2 secrets may not be presented except with the approval of the court in  
3 which action is pending after adequate notice to the person furnishing  
4 the material, answers to written interrogatories, or oral testimony.

5 (8) At any time before the return date specified in the demand, or  
6 within twenty days after the demand has been served, whichever period  
7 is shorter, a petition to extend the return date for, or to modify or  
8 set aside a demand issued pursuant to subsection (1) of this section,  
9 stating good cause, may be filed in the superior court for Thurston  
10 county, or in another county where the parties reside. A petition, by  
11 the person on whom the demand is served, stating good cause, to require  
12 the attorney general or any person to perform any duty imposed by the  
13 provisions of this section, and all other petitions in connection with  
14 a demand, may be filed in the superior court for Thurston county, or in  
15 the county where the parties reside. The court has jurisdiction to  
16 impose such sanctions as are provided for in the civil rules for  
17 superior court with respect to discovery motions.

18 (9) Whenever any person fails to comply with any civil  
19 investigative demand for documentary material, answers to written  
20 interrogatories, or oral testimony duly served upon him or her under  
21 this section, or whenever satisfactory copying or reproduction of any  
22 such material cannot be done and the person refuses to surrender the  
23 material, the attorney general may file, in the trial court of general  
24 jurisdiction of the county in which the person resides, is found, or  
25 transacts business, and serve upon the person a petition for an order  
26 of the court for the enforcement of this section, except that if the  
27 person transacts business in more than one county the petition must be  
28 filed in the county in which the person maintains his or her principal  
29 place of business, or in another county as may be agreed upon by the  
30 parties to the petition. Whenever any petition is filed in the trial  
31 court of general jurisdiction of any county under this section, the  
32 court has jurisdiction to hear and determine the matter so presented  
33 and to enter such an order or orders as may be required to carry into  
34 effect the provisions of this section, and may impose such sanctions as  
35 are provided for in the civil rules for superior court with respect to  
36 discovery motions.

1       **Sec. 7.** RCW 73.16.070 and 2001 c 133 s 11 are each amended to read  
2 as follows:

3       The federal ((soldiers' and sailors' civil relief act of 1940,  
4 Public Act No. 861)) Uniformed Services Employment and Reemployment  
5 Rights Act, P.L. 103-353, as amended, is hereby specifically declared  
6 to apply in proper cases in all the courts of this state.

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