

SHB 2173 - S COMM AMD
By Committee on Judiciary

ADOPTED 04/06/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this
4 section apply throughout this chapter.

5 (1) "Dependent" means:

6 (a) The service member's spouse;

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

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

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

16 (3) "Military service" means a service member under a call to
17 active service authorized by the president of the United States or the
18 secretary of defense for a period of more than thirty consecutive days.

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

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

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

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

5 (3) This chapter shall be construed liberally so as to provide
6 fairness and do substantial justice to service members and their
7 dependents.

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

9 (1) Whenever pursuant to this chapter a court stays, postpones, or
10 suspends (a) the enforcement of an obligation or liability, (b) the
11 prosecution of a suit or proceeding, (c) the entry or enforcement of an
12 order, writ, judgment, or decree, or (d) the performance of any other
13 act, the court may likewise grant such a stay, postponement, or
14 suspension to a surety, guarantor, endorser, accommodation maker,
15 comaker, or other person who is or may be primarily or secondarily
16 subject to the obligation or liability the performance or enforcement
17 of which is stayed, postponed, or suspended.

18 (2) When a judgment or decree is vacated or set aside, in whole or
19 in part, pursuant to this chapter, the court may also set aside or
20 vacate, as the case may be, the judgment or decree as to a surety,
21 guarantor, endorser, accommodation maker, comaker, or other person who
22 is or may be primarily or secondarily liable on the contract or
23 liability for the enforcement of the judgment decree.

24 NEW SECTION. **Sec. 4.** WAIVER OF RIGHTS PURSUANT TO WRITTEN

25 AGREEMENT. (1) A service member may waive any of the rights and
26 protections provided by this chapter. In the case of a waiver that
27 permits an action described in subsection (2) of this section, the
28 waiver is effective only if made pursuant to a written agreement of the
29 parties that is executed during or after the service member's period of
30 military service. The written agreement shall specify the legal
31 instrument to which the waiver applies and, if the service member is
32 not party to that instrument, the service member concerned.

33 (2) The requirement in subsection (1) of this section for a written
34 waiver applies to the following: (a) The modification, termination, or
35 cancellation of a contract, lease, or bailment; or an obligation
36 secured by a mortgage, trust, deed, lien, or other security in the

1 nature of a mortgage; and (b) the repossession, retention, foreclosure,
2 sale, forfeiture, or taking possession of property that is security for
3 any obligation or was purchased or received under a contract, lease, or
4 bailment.

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

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

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

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

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

29 (4) In an action covered by this section in which the defendant is
30 in military service or is a dependent of a service member in military
31 service, the court shall grant a stay of proceedings until one hundred
32 eighty days after termination of or release from military service, upon
33 application of defense counsel, or on the court's own motion, if the
34 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) No bar to entry of judgment under subsection (3) of this
4 section or requirement for grant of stay under subsection (4) of this
5 section precludes the entry of temporary orders in domestic relations
6 cases. If a court or administrative tribunal enters a temporary order
7 as allowed under this subsection, it shall include a finding that
8 failure to act, despite the absence of the service member, would result
9 in manifest injustice to the other interested parties. Temporary
10 orders issued without the service member's participation shall not set
11 any precedent for the final disposition of the matters addressed
12 therein.

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

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

19 (8) If a default judgment is entered in an action covered by this
20 section against a service member or his or her dependent during the
21 service member's period of military service or within one hundred
22 eighty days after termination of or release from military service, the
23 court entering the judgment shall, upon application by or on behalf of
24 the service member or his or her dependent, reopen the judgment for the
25 purpose of allowing the service member or his or her dependent to
26 defend the action if it appears that:

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

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

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

36 NEW SECTION. **Sec. 6.** STAY OF PROCEEDINGS WHEN SERVICE MEMBER HAS

1 NOTICE. (1) This section applies to any civil action or proceeding in
2 which a defendant at the time of filing an application under this
3 section:

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

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

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

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

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

17 (a) A letter or other communication setting forth facts stating the
18 manner in which current military duty requirements materially affect
19 the service member's or dependent's ability to appear and stating a
20 date when the service member or dependent will be available to appear;
21 and

22 (b) A letter or other communication from the service member's
23 commanding officer stating that the service member's current military
24 duty prevents either the service member's or dependent's appearance and
25 that military leave is not authorized for the service member at the
26 time of the letter.

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

31 (5) A service member or dependent who is granted a stay of a civil
32 action or proceeding under subsection (2) of this section may apply for
33 an additional stay based on the continuing material affect of military
34 duty on the service member's or dependent's ability to appear. Such
35 application may be made by the service member or his or her dependent
36 at the time of the initial application under subsection (2) of this
37 section or when it appears that the service member or his or her

1 dependent is unable to prosecute or defend the action. The same
2 information required under subsection (3) of this subsection shall be
3 included in an application under this subsection.

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

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

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

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

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

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

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

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

31 NEW SECTION. Sec. 9. STATUTE OF LIMITATIONS. (1) The period of
32 a service member's military service may not be included in computing
33 any period limited by law, rule, or order, for the bringing of any
34 action or proceeding in a court, or in any board bureau, commission,
35 department, or other agency of a state, or political subdivision of a

1 state, or the United States by or against the service member or the
2 service member's dependents, heirs, executors, administrators, or
3 assigns.

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

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

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

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

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

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

22 NEW SECTION. **Sec. 14.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
27 preservation of the public peace, health, or safety, or support of the
28 state government and its existing public institutions, and takes effect
29 immediately."

ADOPTED 04/06/2005

1 On page 1, line 1 of the title, after "relief;" strike the
2 remainder of the title and insert "adding a new chapter to Title 38
3 RCW; prescribing penalties; and declaring an emergency."

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