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**SUBSTITUTE SENATE BILL 6028**

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**State of Washington****59th Legislature****2005 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators Benson, Brown, Deccio, Poulsen, Brandland, Keiser, Parlette, Schoesler, Oke, Esser, Haugen, Swecker, Jacobsen, Schmidt, Kohl-Welles and Rasmussen)

READ FIRST TIME 03/03/05.

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

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

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

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

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

11        (3) This chapter shall be construed liberally so as to provide  
12 fairness and do substantial justice to service members and their  
13 dependents.

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

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

24        (2) When a judgment or decree is vacated or set aside, in whole or  
25 in part, pursuant to this chapter, the court may also set aside or  
26 vacate, as the case may be, the judgment or decree as to a surety,  
27 guarantor, endorser, accommodation maker, comaker, or other person who  
28 is or may be primarily or secondarily liable on the contract or  
29 liability for the enforcement of the judgment decree.

30        NEW SECTION. **Sec. 4.** PROTECTION OF SERVICE MEMBERS AGAINST  
31 DEFAULT JUDGMENTS. (1) This section applies to any civil action or  
32 proceeding in which a service member or his or her dependent is a  
33 defendant and does not make an appearance.

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

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

4       (b) If the plaintiff is unable to determine whether the defendant  
5 is in military service or is a dependent of a service member in  
6 military service, stating that the plaintiff is unable to determine  
7 whether the defendant is in military service or is a dependent of a  
8 service member in military service.

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

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

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

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

27       (5) If a service member or dependent who is a defendant in an  
28 action covered by this section receives actual notice of the action,  
29 the service member or dependent may request a stay of proceedings  
30 pursuant to section 5 of this act.

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

33       (7) If a default judgment is entered in an action covered by this  
34 section against a service member or his or her dependent during the  
35 service member's period of military service or within one hundred  
36 eighty days after termination of or release from military service, the  
37 court entering the judgment shall, upon application by or on behalf of

1 the service member or his or her dependent, reopen the judgment for the  
2 purpose of allowing the service member or his or her dependent to  
3 defend the action if it appears that:

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

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

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

13       NEW SECTION. **Sec. 5.** STAY OF PROCEEDINGS WHEN SERVICE MEMBER HAS  
14 NOTICE. (1) This section applies to any civil action or proceeding in  
15 which a defendant at the time of filing an application under this  
16 section:

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

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

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

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

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

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

35       (b) A letter or other communication from the service member's  
36 commanding officer stating that the service member's current military

1 duty prevents either the service member's or dependent's appearance and  
2 that military leave is not authorized for the service member at the  
3 time of the letter.

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

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

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

22 (7) A service member or dependent who applies for a stay under this  
23 section and is unsuccessful may not seek the protections afforded by  
24 section 4 of this act.

25 NEW SECTION. **Sec. 6. FINES AND PENALTIES UNDER CONTRACTS.** (1) If  
26 an action for compliance with the terms of a contract is stayed  
27 pursuant to this chapter, a penalty shall not accrue for failure to  
28 comply with the terms of the contract during the period of the stay.

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

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

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

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

3       NEW SECTION. **Sec. 7.** CODEFENDANTS. If the service member or his  
4 or her dependent is a codefendant with others who are not in military  
5 service and who are not entitled to the relief and protections provided  
6 under this chapter, the plaintiff may proceed against those other  
7 defendants with the approval of the court.

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

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

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

21       NEW SECTION. **Sec. 9.** This chapter may be known and cited as the  
22 Washington service members' civil relief act.

23       NEW SECTION. **Sec. 10.** Captions used in this act are no part of  
24 the law.

25       NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act  
26 constitute a new chapter in Title 38 RCW.

27       NEW SECTION. **Sec. 12.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

1        NEW SECTION. **Sec. 13.** This act is necessary for the immediate  
2 preservation of the public peace, health, or safety, or support of the  
3 state government and its existing public institutions, and takes effect  
4 immediately.

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