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**SUBSTITUTE HOUSE BILL 1615**

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**State of Washington                      62nd Legislature                      2011 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Ladenburg, Kelley, Rodne, Moscoso, Kirby, Appleton, and Stanford)

READ FIRST TIME 02/17/11.

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 service authorized by the governor under RCW  
13 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  
16 (~~that~~) who is a member of the national guard or member of a military  
17 reserve 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~~) service member in the military service under this chapter,  
36 the plaintiff may serve on or mail via first-class mail to the  
37 defendant a written notice in substantially the following form:

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

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

31           (b) If the notice is either served on the defendant twenty or more  
32 days prior to an application for an order of default or a default  
33 judgment, or mailed to the defendant more than twenty-three days prior  
34 to such application, and the defendant fails to timely respond, then  
35 for purposes of entry of an order of default or default judgment, the  
36 court or administrative tribunal may presume that the defendant is not  
37 a dependent of a (~~person~~) service member in the military service  
38 under this chapter.

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

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

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

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

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

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

36 (7) If a service member or dependent who is a defendant in an  
37 action covered by this section receives actual notice of the action,

1 the service member or dependent may request a stay of proceedings  
2 pursuant to RCW 38.42.060.

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

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

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

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

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

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