

**2001 DRAFTING REQUEST**

**Bill**

Received: **10/15/2001**

Received By: **nelsorp1**

Wanted: **As time permits**

Identical to LRB:

For: **Rodney Moen (608) 266-8546**

By/Representing: **Terry**

This file may be shown to any legislator: **NO**

Drafter: **nelsorp1**

May Contact:

Addl. Drafters:

Subject: **Military Affairs - national guar**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Moen@legis.state.wi.us** ✓

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Soldiers and sailors relief act for state service

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**Instructions:**

See Attached same as 3971

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/2	nelsorp1	jdye	jfrantze	_____	lrb_docadmin	lrb_docadmin	S&L

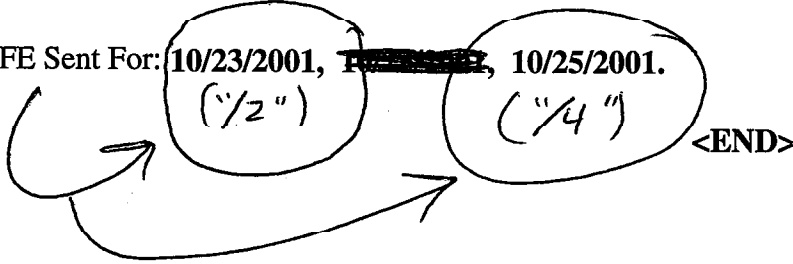
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FE Sent For: 10/23/2001, ~~10/24/2001~~, 10/25/2001.

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			Jb 10/16	Self 10/16			



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1/?	nelsorp1	10/16 jld	10/16	10/16			

FE Sent For:

<END>

SOON

D-N

**2001 BILL**

This is identical to the draft provided to Rep. Musser.

JRPV

Regen

1 AN ACT *to amend* 45.53 (title); and *to create* 21.75 of the statutes; relating to:  
2 the rights of persons who are called into state service.

***Analysis by the Legislative Reference Bureau***

Under current federal law, persons who are in active service in the U.S. armed forces and their dependents are given certain protections related to lawsuits, leases, obligations and contracts for the period that they are in active service. Generally, these protections are provided under federal law only if the service in the military materially affects the armed forces member's ability to meet the obligation. In most cases, the armed forces member may waive the protections afforded by the law if he or she does so in writing after entering the armed forces.

Under federal law, all interest on obligations incurred before entry into the armed forces is capped at six percent for the duration of the military service. The federal law tolls the running of all statutes of limitations during the period of active service with respect to civil and administrative proceedings involving the service member as either a plaintiff or a defendant. The federal law stays all civil actions affecting the service member, including actions to repossess property and garnishment actions. Under the federal law, if in a court action a default judgment is requested, the person requesting the default judgment must submit an affidavit regarding the military status of the opposing party, and the court is required to appoint an attorney for the other party if he or she may be in military service. That attorney may seek a stay of the proceedings under federal law. Federal law also allows the reopening of a default judgment if that judgment was entered against a service member during or with 30 days after his or her period of active service.

**BILL**

Under federal law, members of the U.S. armed forces and their dependents are protected from eviction from their dwelling if the monthly rent does not exceed \$1200. In addition, the federal law allows a service member to terminate a lease occupied as a dwelling or for professional, business, or agricultural purposes if the lease was entered into before the service member was called into active service. In this situation, the service member does not need to be materially affected to terminate the lease. The federal law allows a court to stay the enforcement of installment contracts, storage liens, and mortgage obligations.

This bill provides these same benefits to persons who are called into state service either as part of the state national guard or as part of the state militia.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1            <sup>X</sup>  
SECTION 1. 21.75 of the statutes is created to read:

2            **21.75 Soldiers' and sailors' relief act; state service.** (1) DEFINITIONS. In  
3 this section:

4            (a) "Active state service" means active service in the national guard or the state  
5 defense force under an order of the governor issued under this chapter or active  
6 service in the national guard under 32 USC 502 (f) or 506 that is not considered to  
7 be "service in the uniformed services," as defined in 38 USC 4303 (13).

8            (b) "Court" means a court of record.

9            (c) "Department" means the department of military affairs.

10           (d) "Service member" means a person who may be called into active state  
11 service.

12           (e) "Period of active state service" means the period beginning on the date on  
13 which the service member receives an order to enter active state service and ending  
14 on the date of the service member's release from active state service or death while  
15 in active state service.

**BILL**

1           **(2) PROTECTION OF PERSONS SECONDARILY LIABLE.** (a) If this section results in the  
2 stay or suspension of any obligation, liability, court action, order, writ, or judgment,  
3 the court that issued the stay or suspension may grant the same remedy to sureties,  
4 guarantors, endorsers, and others subject to the obligation, liability, court action,  
5 order, writ, or judgment.

6           (b) If a service member is the principal on a criminal bail bond and his or her  
7 active state service causes the surety upon the bond to be prevented from enforcing  
8 the attendance of the service member at court, the court shall not enforce the  
9 provisions of the bond during the service member's period of active state service and  
10 may either during or after the period of active service discharge the surety and  
11 exonerate the bail.

12           (c) A surety, guarantor, endorser, or other person subject to the obligation,  
13 liability, court action, order, writ, or judgment under par. (a) or (b) may waive in  
14 writing the rights afforded by this subsection, except that the waiver is not valid  
15 unless the waiver is executed as an instrument separate from the obligation, liability,  
16 court action, order, writ, or judgment. The waiver under this paragraph is not valid  
17 after the beginning of the period of active state service if executed by a service  
18 member who subsequently is called into active state service. The waiver under this  
19 paragraph is not valid if executed by a dependent of a service member unless the  
20 waiver is executed during the period of active state service.

21           **(3) EFFECT ON RIGHTS UNDER A WRITTEN AGREEMENT.** This section does not prevent  
22 the modification, termination, or cancelation of any contract, lease, bailment, or  
23 secured obligation, or the repossession, retention, foreclosure, sale, or forfeiture of  
24 property that is security for any obligation or which has been purchased or received

**BILL****SECTION 1**

1 under a contract, lease, or bailment under a written agreement of the parties if that  
2 agreement is executed during or after the period of active state service.

3 (4) EXERCISE OF RIGHTS. No person may use the fact that a service member has  
4 applied for, or received, a stay, postponement, or suspension in the payment of a tax,  
5 fine, penalty, insurance premium, or other civil obligation or liability as the basis for  
6 doing any of the following:

7 (a) If the person is a lender, determining that the service member is unable to  
8 pay any such civil obligation or liability in accordance with the terms of the obligation  
9 or liability.

10 (b) If the person is a creditor, denying or revoking any credit extended to the  
11 service member, changing the terms of a credit agreement to which the service  
12 member is a party, or refusing to grant credit to the service member in substantially  
13 the amount or on substantially the terms requested by the service member.

14 (c) If the person is in the business of assembling or evaluating consumer credit  
15 information, making an adverse report on the creditworthiness of the service  
16 member.

17 (d) If the person is an insurer, refusing to insure the service member.

18 (5) DEFAULT JUDGMENTS, AFFIDAVITS, AND ATTORNEY REPRESENTATION. (a) If, in any  
19 court action, there is a default of any appearance of the defendant, the plaintiff, when  
20 requesting a default judgment, shall file with the court an affidavit setting forth facts  
21 showing that the defendant is not in active state service. If the plaintiff is unable to  
22 file such an affidavit, the plaintiff shall, when requesting a default judgment, file an  
23 affidavit setting forth that the defendant is in active state service or that the plaintiff  
24 is unable to determine if the defendant is in active state service. If an affidavit is not  
25 filed showing that the defendant is not in active state service, a default judgment

**BILL**

1 may not be entered without a court order. A court may not order the entry of a default  
2 judgment if the defendant is in active state service until the court has appointed an  
3 attorney to represent the defendant and protect the defendant's interests. Unless  
4 the court determines that the defendant is not in active state service, the court may  
5 require, as a condition of entering judgment, the plaintiff to file a bond to indemnify  
6 the defendant, if he or she is in active state service, against any loss or damage  
7 resulting from the judgment if any part of the judgment is later set aside. The court  
8 may make any other order as may be necessary to protect the interests of the  
9 defendant under this section.

10 (b) If a judgment is rendered in a court action against a service member during  
11 the period of active state service or within 30 days after the end of that period of active  
12 state service, and it appears that the service member was prejudiced in making a  
13 defense by reason of his or her active state service, the court may reopen that  
14 judgment if all of the following conditions exist:

15 1. The service member moves the court to reopen the judgment within 90 days  
16 after his or her period of active state service ends.

17 2. The service member has a meritorious or legal defense to the action.

18 (c) Vacating, setting aside, or reversing a judgment under this subsection does  
19 not impair any right or title acquired by a bona fide purchaser for value under the  
20 judgment.

21 (d) Any person who shall make or use an affidavit required under this  
22 subsection that he or knows to be false shall be fined not more than \$10,000 or  
23 imprisoned for not more than 9 months, or both.

24 (6) **STAY OF ACTION.** During any stage of a court action in which a service  
25 member in active state service is involved as a party, or within 60 days after the end

**BILL****SECTION 1**

1 of the period of active state service, the court in which the action is pending may on  
2 its own motion, and shall, on application of the service member or some person acting  
3 on behalf of the service member, stay the action unless the court determines that the  
4 service member's ability to represent his or her interest in the action is not materially  
5 affected by reason of his or her active state service.

6 (7) **STAY OR VACATION OF EXECUTIONS OR ATTACHMENTS.** In any court action that  
7 is commenced against a service member before or after entering active state service,  
8 or within 60 days after the period of active state service ends, the court may on its  
9 own motion, and shall, on application of the service member or some person acting  
10 on behalf of the service member, stay the execution of any judgment or order entered  
11 against the service member, or stay or vacate any attachment or garnishment  
12 regarding the service member's property, unless the court determines that the  
13 service member's ability to comply with the judgment or order is not materially  
14 affected by reason of his or her active state service.

15 (8) **DURATION AND TERMS OF STAYS.** (a) Any stay of any action, attachment,  
16 execution, or garnishment under this section may be ordered for the period of the  
17 active state service and 3 months after that period has ended, or for any part of that  
18 time.

19 (b) Any stay under par. (a) may be subject to such terms as may be just,  
20 including the payment of installments in an amount and at the times that the court  
21 determines.

22 (c) If the service member is a codefendant in an action, the plaintiff may, by  
23 leave of the court, proceed against the other codefendants.

24 (9) **STATUTES OF LIMITATIONS.** The period of active state service may not be  
25 included in computing any period for the bringing of any action or proceeding in any



**BILL**

1 court or before any public agency, as defined in s. 36.54 (2) (a) 2., by or against a  
2 person in active state service or by or against his or her heirs, executors,  
3 administrators or assigns, whether the cause of action or proceeding or the right to  
4 bring the action or proceeding accrued before or during the period of active state  
5 service.

6 (10) Notwithstanding ss. 138.04, 138.09 (7) (b), (bm), (bn), and (bp), 138.12 (10)  
7 (a), 218.0101 to 218.0163, 422.201 (2), (3), (9), and (10s), 422.205 (1), and 422.206 (2),  
8 no obligation or liability bearing interest at a rate in excess of 6 percent per year  
9 incurred by a service member in active state service before his or her entry into that  
10 service may, during any part of the period of active state service, bear interest in  
11 excess of 6 percent per year except by court order. If, upon application by an obligee,  
12 a court determines that the ability of the service member to pay interest upon the  
13 obligation or liability at a rate in excess of 6 percent per year is not materially affected  
14 by reason of his or her active state service, the court may make any order that is just.  
15 In this subsection, "interest" includes service charges, renewal charges, fees, or other  
16 charges, other than insurance, in respect to the obligation or liability.

17 (11) EVICTION STAY. (a) No eviction may be made during the period of active  
18 state service in respect to any premises for which the agreed rent does not exceed  
19 \$1,200 per month, occupied chiefly for dwelling purposes by the spouse, children, or  
20 other dependents of a service member who is in active state service, except upon  
21 order of a court in an action affecting the right of possession.

22 (b) In an action for eviction under par. (a), the court may on its own motion, and  
23 shall, on application of the service member or some person acting on behalf of the  
24 service member, stay the proceedings for not longer than 3 months unless the court  
25 determines that the ability of the tenant to pay the agreed rent is not materially

**BILL****SECTION 1**

1 affected by the active state service. The court may make any other order in the  
2 eviction action as it considers necessary and just. If a stay or order is issued under  
3 this paragraph, the court may, upon the request of the owner of the premises, make  
4 any other order as may be applicable to conserve the interests of all of the parties.

5 (c) Any person who knowingly takes part in any eviction prohibited under par.  
6 (a) except as provided in this subsection, or attempts to do so, shall be fined not more  
7 than \$10,000 or imprisoned not more than 9 months, or both.

8 **(12) ACTION TO ENFORCE OBLIGATION SECURED BY MORTGAGE.** (a) In this  
9 subsection, “obligation” means an obligation of a service member in active state  
10 service that was incurred before the service member’s period of active state service  
11 began and that is secured by a mortgage, deed of trust, or other security in the nature  
12 of a mortgage on real or personal property that is owned by the service member.

13 (b) If a court action against a service member is commenced during the service  
14 member’s period of active state service to enforce an obligation for nonpayment of  
15 any sum due or for any other breach of terms occurring before or during the service  
16 member’s period of active state service, the court shall hold a hearing on the matter.  
17 Unless the court determines that the service member’s ability to comply with the  
18 terms of the obligation is not materially affected by reason of his or her active state  
19 service, the court on its own motion may, or upon application of the service member  
20 or another person on his or her behalf shall, do any of the following:

- 21 1. Stay the action as provided in this section.
- 22 2. Make such other disposition of the case as the court determines is equitable  
23 to the interests of all parties.

24 (c) 1. Notwithstanding the times provided in ss. 846.10, 846.101, 846.102, and  
25 846.103 for sales of real property, no foreclosure, sale, or seizure of property for

**BILL**

1 nonpayment of any sum due or for any other breach of terms is valid if it occurs  
2 during or within 3 months after the service member's period of active state service,  
3 unless the court ordered the foreclosure, sale, or seizure of property before the  
4 beginning of the service member's period of active state service and approves the  
5 foreclosure, sale, or seizure after it occurs.

6 2. Any person who knowingly causes a foreclosure, sale, or seizure of property  
7 that is invalid under subd. 1. shall be fined not more than \$10,000 or imprisoned for  
8 not more than 9 months, or both.

9 (13) **PERSONAL PROPERTY CONTRACTS.** When an action to resume possession of  
10 personal property, or to rescind or terminate a contract for the purchase of personal  
11 property, has been stayed under this section, the court may appoint 3 disinterested  
12 persons to appraise the property. Based upon the report of the appraisers, and unless  
13 undue hardship would result to the dependents of the service member in active state  
14 service, the court may order that a sum be paid to the service member as a condition  
15 of resuming possession of the property or rescinding or terminating the contract.

16 (14) **TERMINATION OF LEASES BY LESSEES.** (a) This subsection applies to a lease  
17 to which all of the following apply:

18 1. The lease was executed by or on behalf of a service member who entered  
19 active state service after the lease was executed.

20 2. The lease covers premises that are occupied for dwelling, professional,  
21 business, agricultural, or similar purposes by the service member, or the service  
22 member and his or her dependents.

23 (b) A lease to which this subsection applies may be terminated by the service  
24 member at any time after the beginning of the service member's period of active state  
25 service by giving notice in writing by personal delivery or first class mail to the

**BILL****SECTION 1**

1 landlord or the person who has been receiving rent or managing the property as the  
2 landlord's agent.

3 (c) If the lease provides for monthly payment of rent, termination shall be  
4 effective 30 days after the first date on which the next rental payment is due and  
5 payable after the date on which the notice is delivered or mailed. In any other case,  
6 all of the following apply:

7 1. Termination shall be effective on the last day of the month after the month  
8 in which the notice was delivered or mailed.

9 2. Any unpaid rent for the period preceding termination shall be computed on  
10 a prorated basis.

11 3. The landlord or the landlord's agent shall refund to the service member any  
12 rent paid in advance that applies to the period after termination.

13 (d) Upon application of a landlord after receiving notice under this subsection  
14 and before the lease termination date provided for in this subsection, a court may  
15 make such modifications to or restrictions on the relief granted in this subsection as  
16 the court determines are appropriate under the circumstances.

17 (e) No person may knowingly seize or retain personal property belonging to a  
18 service member who lawfully terminates a lease under this subsection, or in any  
19 manner interfere with the removal of the service member's personal property from  
20 the premises covered by the lease, for the purpose of subjecting the personal property  
21 to a claim for rent accruing after the termination of the lease. Any person who  
22 violates this paragraph shall be fined not more than \$10,000 or imprisoned for not  
23 more than 9 months, or both.

24 (f) Section 704.29 does not apply to the termination of a lease as provided in this  
25 subsection.

**BILL**

1           **(15) STORAGE LIENS.** (a) Notwithstanding ss. 704.05 (5) and 704.90, no person  
2 may enforce a lien for storage of any household goods, furniture, or personal effects  
3 of a service member during the period in which the service member is in military  
4 service and for 90 days after the member's completion of military service, except as  
5 permitted by a court order under sub. (2).

6           (b) No person may exercise any right to foreclose or enforce a lien for the storage  
7 of household goods, furniture, or personal effects of a service member during the  
8 service member's period of active state service and for 3 months after that period  
9 ends except upon an order of the court. In an action under this paragraph, the court,  
10 after a hearing, may on its own motion, and shall, on application of the service  
11 member or some person acting on behalf of the service member, stay the proceeding  
12 or make such other order as may be equitable to conserve the interests of all parties,  
13 unless the court determines that the ability of the service member to pay storage  
14 charges due is not materially affected by his or her active state service.

15           (c) Any person who violates par. (a) may be fined not more than \$10,000 or  
16 imprisoned for not more than 9 months, or both.

17           **(16) DEPENDENT BENEFITS.** Upon application to the court, a dependent of a  
18 service member is entitled to the same benefits given to a service member while in  
19 active state service, unless the court determines that the ability of the dependent to  
20 comply with the terms of an obligation, contract, lease, or bailment is not materially  
21 impaired by reason of the service member's active state service.

22           **(17) TRANSFERS OR ACQUISITIONS.** If a court determines that any interest,  
23 property, or contract has been transferred or acquired with the intent to delay the  
24 enforcement of a civil right by taking advantage of this section, the court shall enter

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1 any judgment or make any order that is just, notwithstanding the provisions of this  
2 section.

3 (18) CERTIFICATE OF SERVICE; PERSON REPORTED MISSING. (a) In any action or  
4 proceeding under this section, a certificate signed by the adjutant general or a person  
5 designated by the adjutant general as to the period of active service of a service  
6 member shall be prima facie evidence as to any of the following facts:

7 1. That the service member named has been in active state service.

8 2. The period of the active state service, including the date the service member  
9 was ordered into active state service.

10 3. The monthly pay received by the service member in active state service at  
11 the time the certificate was issued.

12 4. If the service member died while in active state service, the date and the  
13 place where he or she died.

14 (b) The adjutant general shall provide the certificate under par. (a) upon  
15 request of the service member or of a person acting on behalf of the service member  
16 or his or her estate, and any certificate so provided shall be prima facie evidence of  
17 the facts stated in the certificate and of the authority of the signer to issue the  
18 certificate.

19 (c) When a service member in active state service has been reported missing  
20 to the department, the service member shall be presumed to continue in active state  
21 service until accounted for, and no period limited under this section which begins or  
22 ends with the death of a service member shall begin or end until the death of the  
23 service member is determined by the department or by a court.

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1           **(19) INTERLOCUTORY ORDERS.** A court may revoke, modify, or extend any  
2 interlocutory order made by the court under this section, upon the court's own motion  
3 or on the motion of a party, upon such notice to the parties as the court may require.

4           **(20) STAY OF ENFORCEMENT OF OBLIGATIONS OR LIABILITIES.** (a) A service member  
5 may, at any time during his or her period of active state service, or within 6 months  
6 after that service ends, apply to a court for relief with respect to any obligation or  
7 liability incurred by the service member before his or her period of active state  
8 service. The court, after appropriate notice and hearing, may grant the following  
9 relief unless the court determines that the ability of the service member to comply  
10 with the terms of the obligation or liability has not been materially affected by his  
11 or her state active service:

12           1. In the case of an obligation payable in installments under a contract for the  
13 purchase of real estate, or secured by a mortgage upon real estate, a stay of the  
14 enforcement of the obligation during the period of active state service and, from the  
15 date of the end of the period of active state service or from the date of requesting the  
16 relief if made after the service is ended, for a period equal to the period of the  
17 remaining life of the installment contract or instrument evidencing the obligation  
18 plus a period of time equal to the period of active state service, or any part of that  
19 combined period. The court may issue a stay under this paragraph if the service  
20 member makes payments of the balance of the principal and accumulated interest  
21 due and unpaid at the date of the end of the period of active state service or from the  
22 date of requesting the relief, whichever is appropriate, in equal installments during  
23 the combined period and at the rate of interest as is prescribed in the contract or  
24 instrument evidencing the obligation for installments paid when due. The court may  
25 order other terms under this paragraph as are just.

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1           2. In the case of any other obligation or liability, a stay of the enforcement of  
2 that obligation or liability during the service member's period of active state service  
3 and, from the date of the end of the period of active state service or from the date of  
4 requesting the relief if made after the service is ended, for a period equal to the period  
5 of active state service or any part of that period. The court may issue a stay under  
6 this paragraph if the service member makes payments of the balance of the principal  
7 and accumulated interest due and unpaid at the date of the end of the period of active  
8 state service or from the date of requesting the relief, whichever is appropriate, in  
9 equal installments during the extended period and at the rate of interest as is  
10 prescribed for the obligation or liability when due. The court may order other terms  
11 under this paragraph as are just.

12           (b) When a court has granted a stay under this subsection, no penalty may  
13 accrue during the period that the terms and conditions of the stay are complied with  
14 by reason of the failure to comply with the terms or conditions of the obligation or  
15 liability in respect to which the stay was granted.

16           **(21) POWER OF ATTORNEY EXTENSION FOR MISSING SERVICE MEMBER.** (a) A power  
17 of attorney that was duly executed by a service member that is reported missing to  
18 the department and that designates the service member's spouse, parent or named  
19 relative as his or her attorney-in-fact for specified, or all, purposes, and that expires  
20 after the service member is reported missing, is extended for the period that the  
21 service member is missing.

22           (b) No power of attorney executed after the effective date of this subsection ....  
23 [revisor inserts date], by a service member in active state service may be extended  
24 under par. (a) if the document creating the power of attorney clearly indicates that



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1 the power granted expires on the date specified even if the service member, after the  
2 date of execution of the document, is reported missing to the department.

3 **(22) PROFESSIONAL LIABILITY PROTECTION.** (a) 1. If a service member who is called  
4 into active state service has coverage under a professional liability insurance policy  
5 that does not cover claims filed with respect to the service member during the period  
6 of active state service unless the premiums are paid for the coverage for that period,  
7 the insurer that provides the coverage shall suspend the service member's coverage  
8 under the policy upon receipt of a written request from the service member to do so.  
9 The insurer may not require that premiums be paid for the suspended coverage. The  
10 insurer shall refund any premium amount already paid for coverage of the service  
11 member for the period after the coverage is suspended or shall, at the option of the  
12 service member, apply such amount to payment of any premium that becomes due  
13 upon reinstatement of the coverage.

14 2. Subdivision 1. does not require the suspension of coverage for any other  
15 person who has coverage under the policy and who is not a service member called into  
16 active state service or relieve any person of the obligation to pay premiums for  
17 coverage that is not required to be suspended under subd. 1.

18 (b) 1. Subject to subd. 2., an insurer that suspends coverage under par. (a) is  
19 not liable with respect to any claim that is based on the professional conduct,  
20 including the failure to take an action in a professional capacity, of the service  
21 member that occurs while the service member's professional liability coverage is  
22 suspended under this subsection.

23 2. For purposes of subd. 1., a claim that is based on the failure of a professional  
24 to make adequate provision for the care of patients during the professional's period  
25 of active state service shall be considered to be based on an action or the failure to

**BILL****SECTION 1**

1 take action before the beginning of the period during which coverage is suspended  
2 under this subsection, unless professional services were provided after the date on  
3 which the suspension of coverage began.

4 (c) 1. If a service member whose professional liability insurance coverage is  
5 suspended under par. (a) transmits to the insurer, within 30 days after the date on  
6 which the service member is released from active state service, a written request for  
7 reinstatement of his or her professional liability insurance coverage, the insurer  
8 must reinstate the coverage as of the date on which the insurer receives the written  
9 request. The period for which the coverage must be reinstated may not be less than  
10 the balance of the period for which the coverage would have continued under the  
11 policy had the coverage not been suspended.

12 2. Upon receipt of the written request under subd. 1., the insurer shall notify  
13 the service member of the due date for paying the premium for the insurance, and  
14 the service member shall pay the premium within 30 days after receiving the notice.  
15 For the minimum period of reinstatement required under subd. 1., the insurer may  
16 not increase the amount of the premium over the amount that was chargeable before  
17 the suspension of the coverage for that period, except to the extent of any general  
18 increase in premiums charged by the insurer for the same professional liability  
19 coverage for persons similarly covered by such insurance during the period of the  
20 suspension.

21 (d) 1. Any action or proceeding in any court or before any public agency, as  
22 defined in s. 36.54 (2) (a) 2., based on the alleged professional negligence or other  
23 professional liability of a service member whose professional liability insurance  
24 coverage has been suspended under par. (a) shall be stayed until the end of the period  
25 of suspension if all of the following apply:

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1 a. The action or proceeding was commenced during the period of suspension.

2 b. The action or proceeding is based on an act or omission that occurred before  
3 the date on which the period of suspension began.

4 c. The professional liability insurance policy would, except for the suspension,  
5 on its face cover the alleged professional negligence or other professional liability of  
6 the service member.

7 2. Whenever an action or proceeding is stayed under subd. 1., the action or  
8 proceeding shall be considered to have been filed on the date on which the service  
9 member's coverage is reinstated under par. (c) 1.

10 3. In any action or proceeding in which a stay may be granted under subd. 1.,  
11 the period during which the professional liability insurance coverage is suspended  
12 may not be included in computing any limitations period for commencing the action  
13 or proceeding.

14 (e) If a service member whose professional liability insurance coverage is  
15 suspended under par. (a) dies during the period of suspension, all of the following  
16 apply:

17 1. The requirement to stay any action or proceeding under par. (d) 1. terminates  
18 on the date of the service member's death.

19 2. The insurer that suspended the coverage is liable for any claim for damages  
20 for the professional negligence or other professional liability of the deceased service  
21 member in the same manner and to the same extent as the insurer would be liable  
22 if the service member had died while covered by the insurance but before the claim  
23 was filed.



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4036/1dn  
RPN:cs:kjf

October 16, 2001

This is identical to the draft provided to Rep. Musser.

Robert P. Nelson  
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TODAY

2001 ~~ASSEMBLY~~ BILL

Regen

- 1 AN ACT *to amend* 45.53 (title); and *to create* 21.75 of the statutes; **relating to:**  
2 the rights of persons who are called into active state service.

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***Analysis by the Legislative Reference Bureau***

Under current federal law, persons who are in active service in the U.S. armed forces and their dependents are given certain protections related to lawsuits, leases, obligations and contracts for the period that they are in active service. Generally, these protections are provided under federal law only if the service in the military materially affects the armed forces member's ability to meet the obligation. In most cases, the armed forces member may waive the protections afforded by the law if he or she does so in writing after entering the armed forces.

Under federal law, all interest on obligations incurred before entry into the armed forces is capped at six percent for the duration of the military service. The federal law tolls the running of all statutes of limitations during the period of active service with respect to civil and administrative proceedings involving the service member as either a plaintiff or a defendant. The federal law stays all civil actions affecting the service member, including actions to repossess property and garnishment actions. Under the federal law, if in a court action a default judgment is requested, the person requesting the default judgment must submit an affidavit regarding the military status of the opposing party, and the court is required to appoint an attorney for the other party if he or she may be in military service. That attorney may seek a stay of the proceedings under federal law. Federal law also allows the reopening of a default judgment if that judgment was entered against a service member during or with 30 days after his or her period of active service.

**ASSEMBLY BILL**

Under federal law, members of the U.S. armed forces and their dependents are protected from eviction from their dwelling if the monthly rent does not exceed \$1200. In addition, the federal law allows a service member to terminate a lease occupied as a dwelling or for professional, business, or agricultural purposes if the lease was entered into before the service member was called into active service. In this situation, the service member does not need to be materially affected to terminate the lease. The federal law allows a court to stay the enforcement of installment contracts, storage liens, and mortgage obligations.

This bill provides these same benefits to persons who are called into state service either as part of the state national guard or as part of the state militia.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 21.75 of the statutes is created to read:

2           **21.75 Soldiers' and sailors' relief act; state service.** (1) **DEFINITIONS.** In  
3 this section:

4           (a) "Active state service" means active service for 30 days or more in the  
5 national guard or the state defense force under an order of the governor issued under  
6 this chapter or active service for 30 days or more in the national guard under 32 USC  
7 502 (f) or 506 that is not considered to be "service in the uniformed services," as  
8 defined in 38 USC 4303 (13).

9           (b) "Court" means a court of record.

10           (c) "Department" means the department of military affairs.

11           (d) "Service member" means a person who may be called into active state  
12 service.

13           (e) "Period of active state service" means the period beginning on the date on  
14 which the service member receives an order to enter active state service and ending

**ASSEMBLY BILL**

1 on the date of the service member's release from active state service or death while  
2 in active state service.

3 (2) PROTECTION OF PERSONS SECONDARILY LIABLE. (a) If this section results in the  
4 stay or suspension of any obligation, liability, court action, order, writ, or judgment,  
5 the court that issued the stay or suspension may grant the same remedy to sureties,  
6 guarantors, endorsers, and others subject to the obligation, liability, court action,  
7 order, writ, or judgment.

8 (b) If a service member is the principal on a criminal bail bond and his or her  
9 active state service causes the surety upon the bond to be prevented from enforcing  
10 the attendance of the service member at court, the court shall not enforce the  
11 provisions of the bond during the service member's period of active state service and  
12 may either during or after the period of active service discharge the surety and  
13 exonerate the bail.

14 (c) A surety, guarantor, endorser, or other person subject to the obligation,  
15 liability, court action, order, writ, or judgment under par. (a) or (b) may waive in  
16 writing the rights afforded by this subsection, except that the waiver is not valid  
17 unless the waiver is executed as an instrument separate from the obligation, liability,  
18 court action, order, writ, or judgment. The waiver under this paragraph is not valid  
19 after the beginning of the period of active state service if executed by a service  
20 member who subsequently is called into active state service. The waiver under this  
21 paragraph is not valid if executed by a dependent of a service member unless the  
22 waiver is executed during the period of active state service.

23 (3) EFFECT ON RIGHTS UNDER A WRITTEN AGREEMENT. This section does not prevent  
24 the modification, termination, or cancelation of any contract, lease, bailment, or  
25 secured obligation, or the repossession, retention, foreclosure, sale, or forfeiture of



**ASSEMBLY BILL****SECTION 1**

1 property that is security for any obligation or which has been purchased or received  
2 under a contract, lease, or bailment under a written agreement of the parties if that  
3 agreement is executed during or after the period of active state service.

4 (4) EXERCISE OF RIGHTS. No person may use the fact that a service member has  
5 applied for, or received, a stay, postponement, or suspension in the payment of a tax,  
6 fine, penalty, insurance premium, or other civil obligation or liability as the basis for  
7 doing any of the following:

8 (a) If the person is a lender, determining that the service member is unable to  
9 pay any such civil obligation or liability in accordance with the terms of the obligation  
10 or liability.

11 (b) If the person is a creditor, denying or revoking any credit extended to the  
12 service member, changing the terms of a credit agreement to which the service  
13 member is a party, or refusing to grant credit to the service member in substantially  
14 the amount or on substantially the terms requested by the service member.

15 (c) If the person is in the business of assembling or evaluating consumer credit  
16 information, making an adverse report on the creditworthiness of the service  
17 member.

18 (d) If the person is an insurer, refusing to insure the service member.

19 (5) DEFAULT JUDGMENTS, AFFIDAVITS, AND ATTORNEY REPRESENTATION. (a) If, in any  
20 court action, there is a default of any appearance of the defendant, the plaintiff, when  
21 requesting a default judgment, shall file with the court an affidavit setting forth facts  
22 showing that the defendant is not in active state service. If the plaintiff is unable to  
23 file such an affidavit, the plaintiff shall, when requesting a default judgment, file an  
24 affidavit setting forth that the defendant is in active state service or that the plaintiff  
25 is unable to determine if the defendant is in active state service. If an affidavit is not

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1 filed showing that the defendant is not in active state service, a default judgment  
2 may not be entered without a court order. A court may not order the entry of a default  
3 judgment if the defendant is in active state service until the court has appointed an  
4 attorney to represent the defendant and protect the defendant's interests. Unless  
5 the court determines that the defendant is not in active state service, the court may  
6 require, as a condition of entering judgment, the plaintiff to file a bond to indemnify  
7 the defendant, if he or she is in active state service, against any loss or damage  
8 resulting from the judgment if any part of the judgment is later set aside. The court  
9 may make any other order as may be necessary to protect the interests of the  
10 defendant under this section.

11 (b) If a judgment is rendered in a court action against a service member during  
12 the period of active state service or within 30 days after the end of that period of active  
13 state service, and it appears that the service member was prejudiced in making a  
14 defense by reason of his or her active state service, the court may reopen that  
15 judgment if all of the following conditions exist:

16 1. The service member moves the court to reopen the judgment within 90 days  
17 after his or her period of active state service ends.

18 2. The service member has a meritorious or legal defense to the action.

19 (c) Vacating, setting aside, or reversing a judgment under this subsection does  
20 not impair any right or title acquired by a bona fide purchaser for value under the  
21 judgment.

22 (d) Any person who shall make or use an affidavit required under this  
23 subsection that he or knows to be false shall be fined not more than \$10,000 or  
24 imprisoned for not more than 9 months, or both.

**ASSEMBLY BILL****SECTION 1**

1           **(6) STAY OF ACTION.** During any stage of a court action in which a service  
2 member in active state service is involved as a party, or within 60 days after the end  
3 of the period of active state service, the court in which the action is pending may on  
4 its own motion, and shall, on application of the service member or some person acting  
5 on behalf of the service member, stay the action unless the court determines that the  
6 service member's ability to represent his or her interest in the action is not materially  
7 affected by reason of his or her active state service.

8           **(7) STAY OR VACATION OF EXECUTIONS OR ATTACHMENTS.** In any court action that  
9 is commenced against a service member before or after entering active state service,  
10 or within 60 days after the period of active state service ends, the court may on its  
11 own motion, and shall, on application of the service member or some person acting  
12 on behalf of the service member, stay the execution of any judgment or order entered  
13 against the service member, or stay or vacate any attachment or garnishment  
14 regarding the service member's property, unless the court determines that the  
15 service member's ability to comply with the judgment or order is not materially  
16 affected by reason of his or her active state service.

17           **(8) DURATION AND TERMS OF STAYS.** (a) Any stay of any action, attachment,  
18 execution, or garnishment under this section may be ordered for the period of the  
19 active state service and 3 months after that period has ended, or for any part of that  
20 time.

21           (b) Any stay under par. (a) may be subject to such terms as may be just,  
22 including the payment of installments in an amount and at the times that the court  
23 determines.

24           (c) If the service member is a codefendant in an action, the plaintiff may, by  
25 leave of the court, proceed against the other codefendants.

**ASSEMBLY BILL**

1           **(9) STATUTES OF LIMITATIONS.** The period of active state service may not be  
2 included in computing any period for the bringing of any action or proceeding in any  
3 court or before any public agency, as defined in s. 36.54 (2) (a) 2., by or against a  
4 person in active state service or by or against his or her heirs, executors,  
5 administrators or assigns, whether the cause of action or proceeding or the right to  
6 bring the action or proceeding accrued before or during the period of active state  
7 service.

8           **(10) MAXIMUM INTEREST RATE.** Notwithstanding ss. 138.04, 138.09 (7) (b), (bm),  
9 (bn), and (bp), 138.12 (10) (a), 218.0101 to 218.0163, 422.201 (2), (3), (9), and (10s),  
10 422.205 (1), and 422.206 (2), no obligation or liability bearing interest at a rate in  
11 excess of 6 percent per year incurred by a service member in active state service  
12 before his or her entry into that service may, during any part of the period of active  
13 state service, bear interest in excess of 6 percent per year except by court order. If,  
14 upon application by an obligee, a court determines that the ability of the service  
15 member to pay interest upon the obligation or liability at a rate in excess of 6 percent  
16 per year is not materially affected by reason of his or her active state service, the  
17 court may make any order that is just. In this subsection, “interest” includes service  
18 charges, renewal charges, fees, or other charges, other than insurance, in respect to  
19 the obligation or liability.

20           **(11) EVICTION STAY.** (a) No eviction may be made during the period of active  
21 state service in respect to any premises for which the agreed rent does not exceed  
22 \$1,200 per month, occupied chiefly for dwelling purposes by the spouse, children, or  
23 other dependents of a service member who is in active state service, except upon  
24 order of a court in an action affecting the right of possession.

**ASSEMBLY BILL****SECTION 1**

1 (b) In an action for eviction under par. (a), the court may on its own motion, and  
2 shall, on application of the service member or some person acting on behalf of the  
3 service member, stay the proceedings for not longer than 3 months unless the court  
4 determines that the ability of the tenant to pay the agreed rent is not materially  
5 affected by the active state service. The court may make any other order in the  
6 eviction action as it considers necessary and just. If a stay or order is issued under  
7 this paragraph, the court may, upon the request of the owner of the premises, make  
8 any other order as may be applicable to conserve the interests of all of the parties.

9 (c) Any person who knowingly takes part in any eviction prohibited under par.  
10 (a) except as provided in this subsection, or attempts to do so, shall be fined not more  
11 than \$10,000 or imprisoned not more than 9 months, or both.

12 (12) ACTION TO ENFORCE OBLIGATION SECURED BY MORTGAGE. (a) In this  
13 subsection, “obligation” means an obligation of a service member in active state  
14 service that was incurred before the service member’s period of active state service  
15 began and that is secured by a mortgage, deed of trust, or other security in the nature  
16 of a mortgage on real or personal property that is owned by the service member.

17 (b) If a court action against a service member is commenced during the service  
18 member’s period of active state service to enforce an obligation for nonpayment of  
19 any sum due or for any other breach of terms occurring before or during the service  
20 member’s period of active state service, the court shall hold a hearing on the matter.  
21 Unless the court determines that the service member’s ability to comply with the  
22 terms of the obligation is not materially affected by reason of his or her active state  
23 service, the court on its own motion may, or upon application of the service member  
24 or another person on his or her behalf shall, do any of the following:

- 25 1. Stay the action as provided in this section.

**ASSEMBLY BILL**

1           2. Make such other disposition of the case as the court determines is equitable  
2 to the interests of all parties.

3           (c) 1. Notwithstanding the times provided in ss. 846.10, 846.101, 846.102, and  
4 846.103 for sales of real property, no foreclosure, sale, or seizure of property for  
5 nonpayment of any sum due or for any other breach of terms is valid if it occurs  
6 during or within 3 months after the service member's period of active state service,  
7 unless the court ordered the foreclosure, sale, or seizure of property before the  
8 beginning of the service member's period of active state service and approves the  
9 foreclosure, sale, or seizure after it occurs.

10           2. Any person who knowingly causes a foreclosure, sale, or seizure of property  
11 that is invalid under subd. 1. shall be fined not more than \$10,000 or imprisoned for  
12 not more than 9 months, or both.

13           **(13) PERSONAL PROPERTY CONTRACTS.** When an action to resume possession of  
14 personal property, or to rescind or terminate a contract for the purchase of personal  
15 property, has been stayed under this section, the court may appoint 3 disinterested  
16 persons to appraise the property. Based upon the report of the appraisers, and unless  
17 undue hardship would result to the dependents of the service member in active state  
18 service, the court may order that a sum be paid to the service member as a condition  
19 of resuming possession of the property or rescinding or terminating the contract.

20           **(14) TERMINATION OF LEASES BY LESSEES.** (a) This subsection applies to a lease  
21 to which all of the following apply:

22           1. The lease was executed by or on behalf of a service member who entered  
23 active state service after the lease was executed.

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1           2. The lease covers premises that are occupied for dwelling, professional,  
2 business, agricultural, or similar purposes by the service member, or the service  
3 member and his or her dependents.

4           (b) A lease to which this subsection applies may be terminated by the service  
5 member at any time after the beginning of the service member's period of active state  
6 service by giving notice in writing by personal delivery or first class mail to the  
7 landlord or the person who has been receiving rent or managing the property as the  
8 landlord's agent.

9           (c) If the lease provides for monthly payment of rent, termination shall be  
10 effective 30 days after the first date on which the next rental payment is due and  
11 payable after the date on which the notice is delivered or mailed. In any other case,  
12 all of the following apply:

13           1. Termination shall be effective on the last day of the month after the month  
14 in which the notice was delivered or mailed.

15           2. Any unpaid rent for the period preceding termination shall be computed on  
16 a prorated basis.

17           3. The landlord or the landlord's agent shall refund to the service member any  
18 rent paid in advance that applies to the period after termination.

19           (d) Upon application of a landlord after receiving notice under this subsection  
20 and before the lease termination date provided for in this subsection, a court may  
21 make such modifications to or restrictions on the relief granted in this subsection as  
22 the court determines are appropriate under the circumstances.

23           (e) No person may knowingly seize or retain personal property belonging to a  
24 service member who lawfully terminates a lease under this subsection, or in any  
25 manner interfere with the removal of the service member's personal property from

**ASSEMBLY BILL**

1 the premises covered by the lease, for the purpose of subjecting the personal property  
2 to a claim for rent accruing after the termination of the lease. Any person who  
3 violates this paragraph shall be fined not more than \$10,000 or imprisoned for not  
4 more than 9 months, or both.

5 (f) Section 704.29 does not apply to the termination of a lease as provided in this  
6 subsection.

7 **(15) STORAGE LIENS.** (a) Notwithstanding ss. 704.05 (5) and 704.90, no person  
8 may enforce a lien for storage of any household goods, furniture, or personal effects  
9 of a service member during the period in which the service member is in military  
10 service and for 90 days after the member's completion of military service, except as  
11 permitted by a court order under sub. (2).

12 (b) No person may exercise any right to foreclose or enforce a lien for the storage  
13 of household goods, furniture, or personal effects of a service member during the  
14 service member's period of active state service and for 3 months after that period  
15 ends except upon an order of the court. In an action under this paragraph, the court,  
16 after a hearing, may on its own motion, and shall, on application of the service  
17 member or some person acting on behalf of the service member, stay the proceeding  
18 or make such other order as may be equitable to conserve the interests of all parties,  
19 unless the court determines that the ability of the service member to pay storage  
20 charges due is not materially affected by his or her active state service.

21 (c) Any person who violates par. (a) may be fined not more than \$10,000 or  
22 imprisoned for not more than 9 months, or both.

23 **(16) DEPENDENT BENEFITS.** Upon application to the court, a dependent of a  
24 service member is entitled to the same benefits given to a service member while in  
25 active state service, unless the court determines that the ability of the dependent to



**ASSEMBLY BILL****SECTION 1**

1 comply with the terms of an obligation, contract, lease, or bailment is not materially  
2 impaired by reason of the service member's active state service.

3 (17) TRANSFERS OR ACQUISITIONS. If a court determines that any interest,  
4 property, or contract has been transferred or acquired with the intent to delay the  
5 enforcement of a civil right by taking advantage of this section, the court shall enter  
6 any judgment or make any order that is just, notwithstanding the provisions of this  
7 section.

8 (18) CERTIFICATE OF SERVICE; PERSON REPORTED MISSING. (a) In any action or  
9 proceeding under this section, a certificate signed by the adjutant general or a person  
10 designated by the adjutant general as to the period of active service of a service  
11 member shall be prima facie evidence as to any of the following facts:

- 12 1. That the service member named has been in active state service.
- 13 2. The period of the active state service, including the date the service member  
14 was ordered into active state service.
- 15 3. The monthly pay received by the service member in active state service at  
16 the time the certificate was issued.
- 17 4. If the service member died while in active state service, the date and the  
18 place where he or she died.

19 (b) The adjutant general shall provide the certificate under par. (a) upon  
20 request of the service member or of a person acting on behalf of the service member  
21 or his or her estate, and any certificate so provided shall be prima facie evidence of  
22 the facts stated in the certificate and of the authority of the signer to issue the  
23 certificate.

24 (c) When a service member in active state service has been reported missing  
25 to the department, the service member shall be presumed to continue in active state

**ASSEMBLY BILL**

1 service until accounted for, and no period limited under this section which begins or  
2 ends with the death of a service member shall begin or end until the death of the  
3 service member is determined by the department or by a court.

4 (19) INTERLOCUTORY ORDERS. A court may revoke, modify, or extend any  
5 interlocutory order made by the court under this section, upon the court's own motion  
6 or on the motion of a party, upon such notice to the parties as the court may require.

7 (20) STAY OF ENFORCEMENT OF OBLIGATIONS OR LIABILITIES. (a) A service member  
8 may, at any time during his or her period of active state service, or within 6 months  
9 after that service ends, apply to a court for relief with respect to any obligation or  
10 liability incurred by the service member before his or her period of active state  
11 service. The court, after appropriate notice and hearing, may grant the following  
12 relief unless the court determines that the ability of the service member to comply  
13 with the terms of the obligation or liability has not been materially affected by his  
14 or her state active service:

15 1. In the case of an obligation payable in installments under a contract for the  
16 purchase of real estate, or secured by a mortgage upon real estate, a stay of the  
17 enforcement of the obligation during the period of active state service and, from the  
18 date of the end of the period of active state service or from the date of requesting the  
19 relief if made after the service is ended, for a period equal to the period of the  
20 remaining life of the installment contract or instrument evidencing the obligation  
21 plus a period of time equal to the period of active state service, or any part of that  
22 combined period. The court may issue a stay under this paragraph if the service  
23 member makes payments of the balance of the principal and accumulated interest  
24 due and unpaid at the date of the end of the period of active state service or from the  
25 date of requesting the relief, whichever is appropriate, in equal installments during

**ASSEMBLY BILL****SECTION 1**

1 the combined period and at the rate of interest as is prescribed in the contract or  
2 instrument evidencing the obligation for installments paid when due. The court may  
3 order other terms under this paragraph as are just.

4 2. In the case of any other obligation or liability, a stay of the enforcement of  
5 that obligation or liability during the service member's period of active state service  
6 and, from the date of the end of the period of active state service or from the date of  
7 requesting the relief if made after the service is ended, for a period equal to the period  
8 of active state service or any part of that period. The court may issue a stay under  
9 this paragraph if the service member makes payments of the balance of the principal  
10 and accumulated interest due and unpaid at the date of the end of the period of active  
11 state service or from the date of requesting the relief, whichever is appropriate, in  
12 equal installments during the extended period and at the rate of interest as is  
13 prescribed for the obligation or liability when due. The court may order other terms  
14 under this paragraph as are just.

15 (b) When a court has granted a stay under this subsection, no penalty may  
16 accrue during the period that the terms and conditions of the stay are complied with  
17 by reason of the failure to comply with the terms or conditions of the obligation or  
18 liability in respect to which the stay was granted.

19 **(21) POWER OF ATTORNEY EXTENSION FOR MISSING SERVICE MEMBER.** (a) A power  
20 of attorney that was duly executed by a service member that is reported missing to  
21 the department and that designates the service member's spouse, parent or named  
22 relative as his or her attorney-in-fact for specified, or all, purposes, and that expires  
23 after the service member is reported missing, is extended for the period that the  
24 service member is missing.

**ASSEMBLY BILL**

1 (b) No power of attorney executed after the effective date of this subsection ....  
2 [revisor inserts date], by a service member in active state service may be extended  
3 under par. (a) if the document creating the power of attorney clearly indicates that  
4 the power granted expires on the date specified even if the service member, after the  
5 date of execution of the document, is reported missing to the department.

6 (22) PROFESSIONAL LIABILITY PROTECTION. (a) 1. If a service member who is called  
7 into active state service has coverage under a professional liability insurance policy  
8 that does not cover claims filed with respect to the service member during the period  
9 of active state service unless the premiums are paid for the coverage for that period,  
10 the insurer that provides the coverage shall suspend the service member's coverage  
11 under the policy upon receipt of a written request from the service member to do so.  
12 The insurer may not require that premiums be paid for the suspended coverage. The  
13 insurer shall refund any premium amount already paid for coverage of the service  
14 member for the period after the coverage is suspended or shall, at the option of the  
15 service member, apply such amount to payment of any premium that becomes due  
16 upon reinstatement of the coverage.

17 2. Subdivision 1. does not require the suspension of coverage for any other  
18 person who has coverage under the policy and who is not a service member called into  
19 active state service or relieve any person of the obligation to pay premiums for  
20 coverage that is not required to be suspended under subd. 1.

21 (b) 1. Subject to subd. 2., an insurer that suspends coverage under par. (a) is  
22 not liable with respect to any claim that is based on the professional conduct,  
23 including the failure to take an action in a professional capacity, of the service  
24 member that occurs while the service member's professional liability coverage is  
25 suspended under this subsection.

**ASSEMBLY BILL****SECTION 1**

1           2. For purposes of subd. 1., a claim that is based on the failure of a professional  
2 to make adequate provision for the care of patients during the professional's period  
3 of active state service shall be considered to be based on an action or the failure to  
4 take action before the beginning of the period during which coverage is suspended  
5 under this subsection, unless professional services were provided after the date on  
6 which the suspension of coverage began.

7           (c) 1. If a service member whose professional liability insurance coverage is  
8 suspended under par. (a) transmits to the insurer, within 30 days after the date on  
9 which the service member is released from active state service, a written request for  
10 reinstatement of his or her professional liability insurance coverage, the insurer  
11 must reinstate the coverage as of the date on which the insurer receives the written  
12 request. The period for which the coverage must be reinstated may not be less than  
13 the balance of the period for which the coverage would have continued under the  
14 policy had the coverage not been suspended.

15           2. Upon receipt of the written request under subd. 1., the insurer shall notify  
16 the service member of the due date for paying the premium for the insurance, and  
17 the service member shall pay the premium within 30 days after receiving the notice.  
18 For the minimum period of reinstatement required under subd. 1., the insurer may  
19 not increase the amount of the premium over the amount that was chargeable before  
20 the suspension of the coverage for that period, except to the extent of any general  
21 increase in premiums charged by the insurer for the same professional liability  
22 coverage for persons similarly covered by such insurance during the period of the  
23 suspension.

24           (d) 1. Any action or proceeding in any court or before any public agency, as  
25 defined in s. 36.54 (2) (a) 2., based on the alleged professional negligence or other

**ASSEMBLY BILL**

1 professional liability of a service member whose professional liability insurance  
2 coverage has been suspended under par. (a) shall be stayed until the end of the period  
3 of suspension if all of the following apply:

4 a. The action or proceeding was commenced during the period of suspension.

5 b. The action or proceeding is based on an act or omission that occurred before  
6 the date on which the period of suspension began.

7 c. The professional liability insurance policy would, except for the suspension,  
8 on its face cover the alleged professional negligence or other professional liability of  
9 the service member.

10 2. Whenever an action or proceeding is stayed under subd. 1., the action or  
11 proceeding shall be considered to have been filed on the date on which the service  
12 member's coverage is reinstated under par. (c) 1.

13 3. In any action or proceeding in which a stay may be granted under subd. 1.,  
14 the period during which the professional liability insurance coverage is suspended  
15 may not be included in computing any limitations period for commencing the action  
16 or proceeding.

17 (e) If a service member whose professional liability insurance coverage is  
18 suspended under par. (a) dies during the period of suspension, all of the following  
19 apply:

20 1. The requirement to stay any action or proceeding under par. (d) 1. terminates  
21 on the date of the service member's death.

22 2. The insurer that suspended the coverage is liable for any claim for damages  
23 for the professional negligence or other professional liability of the deceased service  
24 member in the same manner and to the same extent as the insurer would be liable

**ASSEMBLY BILL****SECTION 1**

1 if the service member had died while covered by the insurance but before the claim  
2 was filed.

3 **(23) NOTICE OF BENEFITS UNDER THIS SECTION.** The department of veterans  
4 affairs shall provide each service member a brochure explaining this section when  
5 that service member enters active state service.

6 **SECTION 2.** 45.53 (title) of the statutes is amended to read:

7 **45.53 (title) Soldiers' and sailors' civil relief act; federal service.**

8 **SECTION 3. Initial applicability.**

9 (1) This act first applies to service members who enter active state service on  
10 September 12, 2001.

11 **(END)**

**Nelson, Robert P.**

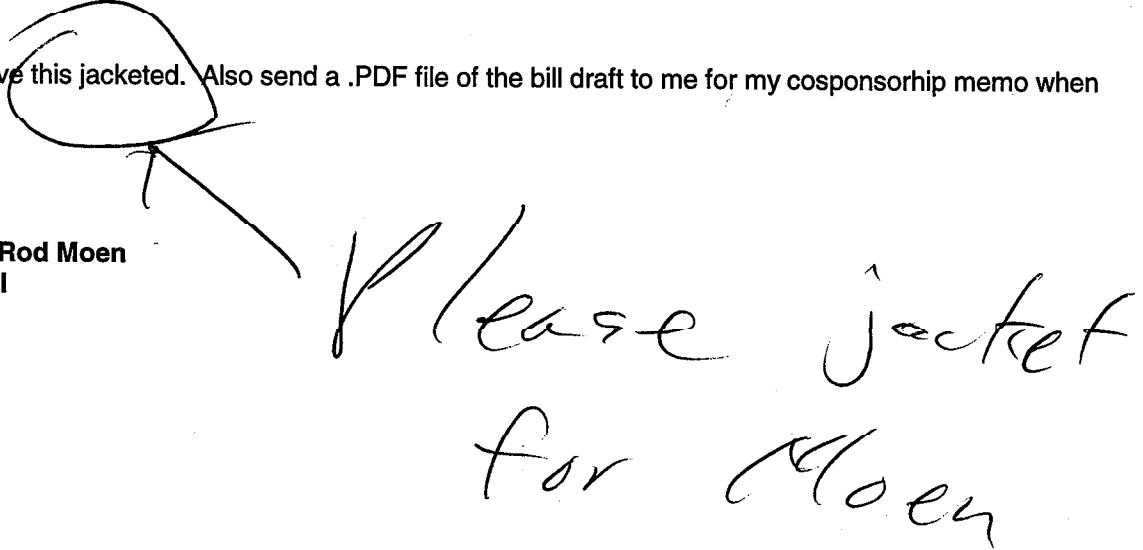
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**From:** Tuschen, Terry  
**Sent:** Friday, October 19, 2001 9:13 AM  
**To:** Nelson, Robert P.  
**Subject:** LRB 4036/1dn

Hi Bob, go ahead and have this jacketed. Also send a .PDF file of the bill draft to me for my cosponsorship memo when you get a moment.

Thanks, Terry

**Terry E. Tuschen Jr.**  
**Office of State Senator Rod Moen**  
**122 South, State Capitol**  
**(608) 266-8546**  
**(608) 267-2871 (fax)**



Please jacket  
for Moen



**Nelson, Robert P.**

---

**From:** Tuschen, Terry  
**Sent:** Monday, October 22, 2001 4:02 PM  
**To:** Nelson, Robert P.  
**Subject:** fiscals for lrb 4036

Hi Bob, looks like we're fast-tracking these bills...could you contact the appropriate people to begin the fiscal estimate process for lrb 4036. Thanks again, Terry

**Terry E. Tuschen Jr.**  
**Office of State Senator Rod Moen**  
**122 South, State Capitol**  
**(608) 266-8546**  
**(608) 267-2871 (fax)**

**ASSEMBLY AMENDMENT 1,  
TO 2001 ASSEMBLY BILL 571**

October 23, 2001 – Offered by Representative MUSSER.

1 At the locations indicated, amend the bill as follows:

2 ✓ **1.** Page 1, line 2: after “service” insert “and providing penalties”.

3 ✓ **2.** Page 5, line 23: after “he or” insert “she”.

4 ✓ **3.** Page 5, line 24: delete “months,” and substitute “months”.

5 ✓ **4.** Page 7, line 8: delete the material beginning with “Notwithstanding” and  
6 ending with “no” on line 10 and substitute “No”.

7 ✓ **5.** Page 7, line 11: on lines 11, 13 and 15, delete “6 percent” and substitute “6%”.

8 ✓ **6.** Page 8, line 11: delete “months,” and substitute “months”.

9 ✓ **7.** Page 9, line 12: delete “months,” and substitute “months”.

10 ✓ **8.** Page 11, line 4: on lines 4 and 22, delete “months,” and substitute “months”.

11 ✓ **9.** Page 11, line 11: delete “sub. (2)” and substitute “par. (b)”.

12 ✓ **10.** Page 18, line 3: delete “of veterans”.

1 ✓ **11.** Page 18, line 4: delete “affairs”.

2 (END)

### Fiscal Estimate - 2001 Session

Original       Updated       Corrected       Supplemental

<b>LRB Number</b> <b>01-4036/2</b>	<b>Introduction Number</b>	
<b>Subject</b> Soldiers and sailors relief act for state service		
<b>Fiscal Effect</b>		
<b>State:</b>		
<input checked="" type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs		
<b>Local:</b>		
<input checked="" type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs      3. <input type="checkbox"/> Increase Revenue      5. Types of Local Government Units Affected <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities 2. <input type="checkbox"/> Decrease Costs      4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts		
<b>Fund Sources Affected</b>		
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS		
<b>Affected Ch. 20 Appropriations</b>		
<b>Agency/Prepared By</b>	<b>Authorized Signature</b>	<b>Date</b>
DMA/ Lucinda Fritchen (608) 242-3156	Lucinda Fritchen (608) 242-3156	10/25/01

Copy sent to Rep. Moen (10-25-01)

FE is for old "12" version

Draft is now "13"

**Fiscal Estimate Narratives**

**DMA 10/25/01**

LRB Number <b>01-4036/2</b>	Introduction Number	Estimate Type <b>Original</b>
<b>Subject</b> Soldiers and sailors relief act for state service		

**Assumptions Used in Arriving at Fiscal Estimate**

As far as the Department of Military Affairs is able to ascertain, this bill will have no fiscal impact on this agency.

**Long-Range Fiscal Implications**

### Fiscal Estimate - 2001 Session

Original       Updated       Corrected       Supplemental

<b>LRB Number</b> 01-4036/2		<b>Introduction Number</b>	
<b>Subject</b>			
Soldiers and sailors relief act for state service			
<b>Fiscal Effect</b>			
<b>State:</b>			
<input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate			
<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs	
<b>Local:</b>			
<input checked="" type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate			
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<b>5. Types of Local Government Units Affected</b> <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
<b>Fund Sources Affected</b>		<b>Affected Ch. 20 Appropriations</b>	
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS			
<b>Agency/Prepared By</b>		<b>Authorized Signature</b>	<b>Date</b>
DVA/ Kenneth Abrahamsen (608) 266-0117		Kenneth Abrahamsen (608) 266-0117	10/25/01

Copy To  
 Senator Moen  
 10-25-2001  
 ↪ FE is for old "1/2" version  
 ↪ draft is now a "1/3"

## Fiscal Estimate Narratives

DVA 10/25/01

LRB Number 01-4036/2	Introduction Number	Estimate Type	Original
<b>Subject</b>			
Soldiers and sailors relief act for state service			

### Assumptions Used in Arriving at Fiscal Estimate

This bill would provide the same benefits of the Soldiers' and sailors' relief act under Wis. Stats. 45.53 to members of the National Guard or the state defense force called up to state service under an order of the governor. Under the provisions of the bill, interest on obligations incurred before entry into state service would be capped at 6-percent.

The Wisconsin Department of Veterans (WDVA) provides both home loans and personal loans to qualified veterans. It is possible that individuals called up to state service could have a home loan and/or a personal loan from the WDVA. If the interest rate on any such loan was greater than 6-percent, then the rate would be reduced to 6-percent. Several factors suggest that the fiscal impact from such reductions in the interest rate would be minimal. First, the interest reductions for persons called up to active service in the U.S. armed forces during the Persian Gulf War total about 120 for home loans and less than 10 for personal loans. Any call up of National Guard or state defense force personnel is likely to be significantly less in number than the number called up for the Persian Gulf War. Another factor is that more than 80 percent of the personal loans made by the WDVA are at 6-percent. Likewise, most of the home loans made by the WDVA have an interest rate of less than 8-percent. As a result of both of these factors, the savings from any interest rate reduction would be minimal. Because it is not known how many persons would be activated for state service and then how many of those individuals would have loans with the WDVA, it is not possible to provide an accurate estimate of the fiscal impact of this bill.

This bill also requires that the WDVA provide each individual who may be called up to state service with a brochure explaining the benefits provided under this bill. The cost to produce such a brochure would be minimal and could be absorbed within the departments existing budget.

### Long-Range Fiscal Implications