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2001 BILL

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Reeg
AN ACT to amend 45.53 (title); and to create 21.75 of the statutes; relating to:
and providing penalties
the rights of persons who are called into 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.

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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.

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 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.

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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

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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

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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 ^{she} 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

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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

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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.

(CS) Maximum interest rate.

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 ^{7.25} 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 ^{7.25} 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 ^{7.25} 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

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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

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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

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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.

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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 ~~subsec.~~ *par. (b)*

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

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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.

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① (23) NOTICE OF BENEFITS UNDER THIS SECTION. The department ~~of veterans~~

② ~~affairs~~ shall provide each service member a brochure explaining this section when
3 that service member enters active state service.

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

5 45.53 (title) **Soldiers' and sailors' civil relief act; federal service.**

6 SECTION 3. **Initial applicability.**

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

9 (END)

D - Note

Terry:

¶ The main differences between LRB-4036/1 and LRB-4036/3 are as follows.

¶ 1. Persons eligible for relief under the redrafted bill are those who are in active state service for 30 days or more.

¶ 2. Some cross-references were removed in the subsection providing a cap^{of 6%} on interest accrued to clarify that the interest cap applies to the same obligations as the ~~cap~~ cap on interest in the federal law.

¶ 3. Minor drafting errors were corrected, such as removing incorrect commas.

¶ This bill, as redrafted, should be the same as AB 571, as amended in the Assembly in Oct. 23rd.

RPN

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4036/3dn
RPN.cs:jf

October 25, 2001

Terry:

The main differences between LRB-4036/1 and LRB-4036/3 are as follows:

1. Persons eligible for relief under the redrafted bill are those who are in active state service for 30 days or more.
2. Some cross-references were removed in the subsection providing a cap of 6% on interest accrued to clarify that the interest cap applies to the same obligations as the cap on interest in the federal law.
3. Minor drafting errors were corrected, such as removing incorrect commas.

This bill, as redrafted, should be the same as AB 571, as amended in the Assembly on October 23rd.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

Barman, Mike

From: White, Melissa
Sent: Thursday, October 25, 2001 1:05 PM
To: Burhop, Sarah; Barman, Mike; Uecker, Deborah

Hi all,

It's been a really busy week, so I can't remember if I already contacted you about this, but I need fiscals for these two bills. We are having a hearing on them Tuesday at 9:30 AM. The Dept. of Military Affairs is already aware that we need them.

Thanks!!
Melissa White
Office of Senator Rod Moen



01-40302.pdf



01-40362.pdf

Barman, Mike

From: Barman, Mike
Sent: Thursday, October 25, 2001 1:39 PM
To: White, Melissa
Subject: LRB-4036/3 (attached - per your request)



01-4036/3



01-4036/3dn

Fiscal Estimate - 2001 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 01-4036/3	Introduction Number
Subject	
Soldiers and sailors relief act for state service	
Fiscal Effect	
State:	
<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
Local:	
<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
5. Types of Local Government Units Affected <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	
Fund Sources Affected	
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	
Affected Ch. 20 Appropriations	
Agency/Prepared By	Authorized Signature
DVA/ Kenneth Abrahamsen (608) 266-0117	Kenneth Abrahamsen (608) 266-0117
	Date
	10/29/01

copy sent to Sen. Moen 10-29-01

FE is for old "1/3" version

Draft is now a "1/4"

Intro. as SB-297

Fiscal Estimate Narratives

DVA 10/29/01

LRB Number 01-4036/3	Introduction Number	Estimate Type	Original
Subject			
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 call 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.

Long-Range Fiscal Implications

Fiscal Estimate Narratives

DMA 10/29/01

LRB Number 01-4036/3	Introduction Number	Estimate Type Original
Subject 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



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-4036/B
RPN/PJK/RAC.cs:jj

Wanted Fri 10/26 noon

2001 SENATE BILL

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 and providing penalties.

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.

SENATE 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.

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 national guard or the state
5 defense force under an order of the governor issued under this chapter or active
6 service ^{for 30 days or more} 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.

SENATE 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

SENATE BILL

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

SENATE 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 she 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

SENATE 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

SENATE 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) MAXIMUM INTEREST RATE. No obligation or liability bearing interest at a rate
7 in excess of 6 % per year incurred by a service member in active state service before
8 his or her entry into that service may, during any part of the period of active state
9 service, bear interest in excess of 6 % per year except by court order. If, upon
10 application by an obligee, a court determines that the ability of the service member
11 to pay interest upon the obligation or liability at a rate in excess of 6 % per year is
12 not materially affected by reason of his or her active state service, the court may
13 make any order that is just. In this subsection, "interest" includes service charges,
14 renewal charges, fees, or other charges, other than insurance, in respect to the
15 obligation or liability.

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

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

SENATE BILL**SECTION 1**

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

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

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

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

20 1. Stay the action as provided in this section.

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

23 (c) 1. Notwithstanding the times provided in ss. 846.10, 846.101, 846.102, and
24 846.103 for sales of real property, no foreclosure, sale, or seizure of property for
25 nonpayment of any sum due or for any other breach of terms is valid if it occurs

SENATE BILL

1 during or within 3 months after the service member's period of active state service,
2 unless the court ordered the foreclosure, sale, or seizure of property before the
3 beginning of the service member's period of active state service and approves the
4 foreclosure, sale, or seizure after it occurs.

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

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

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

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

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

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

SENATE 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.

SENATE 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 par. (b).

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

SENATE BILL**SECTION 1**

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.

SENATE BILL

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.

SENATE BILL**SECTION 1**

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

SENATE BILL

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

SENATE 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:

SENATE BILL

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.

Barman, Mike

From: Barman, Mike
Sent: Thursday, October 25, 2001 5:11 PM
To: Tuschen, Terry
Subject: RE: lrb 4036/4

Sent out for FE on "/4" a little bit ago. Fe's were already prepared for "/2" so with any luck it should not take too long to get them back on "/4".

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

-----Original Message-----

From: Tuschen, Terry
Sent: Thursday, October 25, 2001 4:57 PM
To: Barman, Mike
Cc: Emery, Lynn
Subject: lrb 4036/4

Hi Mike, Melissa White asked me to contact you about the fiscal estimates for LRB 4036. Turns out now that there is a /4 in the works....a technical correction had to be made. The correction reflects what should have been in /3 according to Bob Nelson's drafters memo. Can you notify the appropriate agencies of this development. The bill will be formally introduced tomorrow afternoon. The public hearing / exec. session is still scheduled for Tuesday morning at 9:30 a.m.

Thanks much, Terry

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