

## 2005 SESSION

INTRODUCED

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### HOUSE BILL NO. 1757

Offered January 12, 2005

Prefiled January 3, 2005

A *BILL to amend and reenact § 8.01-15.2 of the Code of Virginia, relating to Servicemembers Civil Relief Act; attorney fees.*

Patron—Janis

Referred to Committee for Courts of Justice

#### **Be it enacted by the General Assembly of Virginia:**

#### **1. That § 8.01-15.2 of the Code of Virginia is amended and reenacted as follows:**

§ 8.01-15.2. Servicemembers Civil Relief Act, default judgment.

A. Notwithstanding the provisions of § 8.01-428, in any civil action or proceeding in which the defendant does not make an appearance, the court shall not enter a judgment by default until the plaintiff files with the court an affidavit (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service. Subject to the provisions of § 8.01-3, the Supreme Court shall prescribe the form of such affidavit, or the requirement for an affidavit may be satisfied by a written statement, declaration, verification or certificate, subscribed and certified or declared to be true under penalty of perjury. Any judgment by default entered by any court in any civil action or proceeding in violation of Title II of the Servicemembers Civil Relief Act (50 U.S.C. Appx. §§ 501 et seq.) may be set aside as provided by the Act.

B. *Where appointment of counsel is required pursuant to 50 U.S.C. Appx. § 521 or 522, the court may award attorney fees and costs on behalf of any party as the court deems appropriate based on the relative financial ability of the parties.*

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