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SENATE BILL NO. 27

Offered January 13, 2016

Prefiled December 10, 2015

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

Patrons—Reeves; Delegates: Cole and Simon

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; appointment of counsel.

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 ~~Article 2 Title II~~ of the Servicemembers Civil Relief Act (50 U.S.C. app. § 527 521 et seq.) may be set aside as provided by the Act. Failure to file an affidavit shall not constitute grounds to set aside an otherwise valid default judgment against a defendant who was not, at the time of service of process or entry of default judgment, a servicemember ~~for the purposes of as defined in~~ 50 U.S.C. app. § 502 511.

B. Where appointment of counsel is required pursuant to 50 U.S.C. app. § 521 or 522 or another section of the Servicemembers Civil Relief Act, the court may assess ~~attorneys'~~ reasonable attorney fees and costs against any party as the court deems appropriate, including a party aggrieved by a violation of the Act, and shall direct in its order which of the parties to the case shall pay such fees and costs. Such fees and costs shall not be assessed against the Commonwealth unless it is the party that obtains the judgment.

C. *Where the appointment of counsel to represent a servicemember is required by the Servicemembers Civil Relief Act, the appointed counsel shall exercise due diligence to (i) faithfully represent the interests of the servicemember, (ii) locate and communicate with the servicemember, (iii) conduct an investigation of the reasonably discoverable facts in the case, (iv) determine whether or not the servicemember has a defense to any of the allegations in the suit, and (v) present such information to the court.*

D. *Upon request by the appointed counsel, the plaintiff in a civil action shall promptly deliver all discoverable electronic and print files, records, documents, and memoranda regarding the transactional basis for the suit. The plaintiff shall also deliver all documents or information concerning the location of the servicemember.*

E. *Counsel appointed pursuant to the Servicemembers Civil Relief Act shall not be selected by the plaintiff or have any affiliation with the plaintiff.*

INTRODUCED

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