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HOUSE BILL NO. 1495

Offered January 11, 2017

Prefiled December 15, 2016

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

Patron—Lindsey (By Request)

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 subchapter II of the Servicemembers Civil Relief Act (50 U.S.C. § 3901 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 as defined in 50 U.S.C. § 3911.

B. Where appointment of counsel is required pursuant to 50 U.S.C. § 3931 or 3932 or another section of the Servicemembers Civil Relief Act, the court may assess 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. *Any attorney fees assessed pursuant to this subsection shall not exceed \$125.*

C. The appointed counsel may issue a subpoena duces tecum for all discoverable electronic and print files, records, documents, and memoranda regarding the transactional basis for the suit. If requested in the subpoena, the plaintiff shall also deliver all documents or information concerning the location of the servicemember.

D. Counsel appointed pursuant to the Servicemembers Civil Relief Act shall not be selected by the plaintiff or have any affiliation with the plaintiff. However, counsel for the plaintiff may provide a list of attorneys familiar with the provisions of the Servicemembers Civil Relief Act upon the request of the court.

INTRODUCED

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