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*** CURRENT THROUGH PL 110-353, APPROVED 10/7/2008 ***
*** WITH GAPS OF 110-343, 110-344, 110-346 and 110-351 ***

TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
SERVICEMEMBERS CIVIL RELIEF ACT

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50 USCS Appx prec § 501

Preceding § 501

HISTORY:

ACT OCT. 17, 1940, CH 888, 54 STAT. 1178

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

Provisions similar to the Servicemembers Civil Relief Act (formerly the Soldiers' and Sailors' Civil Relief Act of 1940) appeared in Act March 8, 1918, ch 20, 40 Stat. 440, popularly known as the Soldiers' and Sailors' Civil Relief Act of 1918, which was classified to former *50 USC Appx. §§ 101 et seq.*

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50 USCS Appx § 501

§ 501. Short title

This Act [*50 USCS Appx. §§ 501 et seq.*] may be cited as the Servicemembers Civil Relief Act.

HISTORY:

(Oct. 17, 1940, ch 888, § 1, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2835.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 501 (Act Oct. 17, 1940, ch 888, § 1, 54 Stat. 1178) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section provided for the Act to be cited as the Soldiers' and Sailors' Civil Relief Act of 1940.

Short titles:

Act Oct. 6, 1942, ch 581, § 1, 56 Stat. 769, provides: "This Act [for full classification of this Act, consult USCS Tables volumes] may be cited as the 'Soldiers' and Sailors' Civil Relief Act Amendments of 1942'."

Act March 18, 1991, P.L. 102-12, § 1, 105 Stat. 34, provides: "This Act may be cited as the 'Soldiers' and Sailors' Civil Relief Act Amendments of 1991'". For full classification of such Act, consult USCS Tables volumes.

Other provisions:

Application of Dec. 19, 2003 amendments. Act Dec. 19, 2003, P.L. 108-189, § 3, 117 Stat. 2866, provides: "The amendment made by section 1 [amending *50 USCS Appx §§ 501 et seq.*] shall apply to any case that is not final before the date of the enactment of this Act."

NOTES:

Code of Federal Regulations:

Bureau of Land Management, Secretary of the Interior--Waivers from annual maintenance fees, 43 CFR Part 3835.

Bureau of Land Management, Secretary of the Interior--Annual assessment work requirements for mining claims, 43 CFR Part 3836.

Bureau of Land Management, Secretary of the Interior--Acquiring a delinquent co-claimant's interests in a mining claim or site, 43 CFR Part 3837.

Research Guide:

Federal Procedure:

- 10 Moore's Federal Practice (Matthew Bender 3d ed.), ch 55, Default; Default Judgment §§ 55.25, 55.30, 55.90.
- 3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:54, 500-505, 509-512, 514, 516, 520, 522-524.
- 5 Fed Proc L Ed, Bankruptcy § 9:24.
- 11 Fed Proc L Ed, Enforcement of Judgments § 31:4.

Am Jur:

- 7A Am Jur 2d, *Automobiles and Highway Traffic* § 92.
- 9 Am Jur 2d, *Bankruptcy* § 33.
- 46 Am Jur 2d, *Judgments* § 247.
- 53A Am Jur 2d, *Military and Civil Defense* §§ 381-384, 386, 388, 389, 392-394, 397, 498, 401-409, 411, 414-418, 422, 426, 427, 429-433.
- 70B Am Jur 2d, *Social Security and Medicare* §§ 852, 870, 871, 1406.
- 77 Am Jur 2d, *Vendor and Purchaser* § 141.

Forms:

- 3 *Collier Forms Manual* (3d ed. rev), § CS2.06, Adversary Proceedings.
- 3 Fed Procedural Forms L Ed, Armed Forces, Civil Disturbances, and National Defense (2002) § 5:177.
- 15 Am Jur Pl & Pr Forms (2005), Judgments, §§ 159, 160, 167, 179, 194, 195, 374.
- 17B Am Jur Pl & Pr Forms (2000), Military; Civil Defense, §§ 39, 40, 44-53, 57-59, 62-65, 69, 72-74.

Bankruptcy:

- 10 Collier on Bankruptcy (Matthew Bender 15th ed. rev), ch 7055, Default P 7055.02.
- 4 Collier Bankruptcy Practice Guide, ch 74, Exemptions P 74.67.

Labor and Employment:

- 6 Labor and Employment Law (Matthew Bender), ch 156, Other Federal Laws Affecting Employee Welfare Benefit Plans § 156.04.

Texts:

- 1 Adoption Law and Practice (Matthew Bender), ch 4, Adoption Procedure § 4.02.
- 4 Frumer & Friedman, Products Liability (Matthew Bender), ch 26, Statutes of Limitation § 26.07.
- 4 Frumer & Friedman, Products Liability (Matthew Bender), ch 30, United States Government Liability § 30.18.

Law Review Articles:

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. *45 Judges' Journal* 27, Summer 2006.

Seganish. Civil Litigation Involving Persons in the Military. 39 Md BJ 52, July/August 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 502

§ 502. Purpose

The purposes of this Act [*50 USCS Appx §§ 501 et seq.*] are--

(1) to provide for, strengthen, and expedite the national defense through protection extended by this Act [*50 USCS Appx §§ 501 et seq.*] to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and

(2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

HISTORY:

(Oct. 17, 1940, ch 888, § 2, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2836.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Applicability of section. This section applies to any case that is not final before December 19, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

10 Moore's Federal Practice (Matthew Bender 3d ed.), ch 55, Default; Default Judgment § 55.90.

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:54, 500-505, 509-512, 514, 516, 520, 522-524.

5 Fed Proc L Ed, Bankruptcy § 9:24.

11 Fed Proc L Ed, Enforcement of Judgments § 31:4.

Am Jur:

53A Am Jur 2d, *Military and Civil Defense* §§ 381, 382, 388, 399, 402-409.

70B Am Jur 2d, *Social Security and Medicare* §§ 852, 870, 871, 1406.

Annotations:

Tolling provision of Soldiers' and Sailors' Civil Relief Act (50 USCS Appx § 525). 36 ALR Fed 420.

Law Review Articles:

Use of the Soldiers' and Sailors' Civil Relief Act to Ensure Court Participation--Where's the Relief? *Army Law* 17, June, 1986.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. *45 Judges' Journal* 27, Summer 2006.

Pottorff, Contemporary applications of the Soldiers' and Sailors' Civil Relief Act. *132 Mil L Rev* 115, Spring 1991.

Huckabee. Operations Desert Shield and Desert Storm: resurrection of the Soldiers' and Sailors' Civil Relief Act. *132 Mil L Rev* 141, Spring 1991.

Chapelle. Legal primer for advising the deployed servicemember. 34 *Res Gestae* 494, May 1991.

Thompson. The Servicemembers Civil Relief Act. 48 *Res Gestae* 13, September 2004.

Anderson; Armstrong. Soldiers' and Sailors' Civil Relief Act: a legal shield for military personnel. *4 Utah B J* 8, April 1991.

Interpretive Notes and Decisions:

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I.IN GENERAL 1. Generally

Soldiers' and Sailors' Civil Relief Act of 1940 was substantial reenactment of Act of 1918. *Boone v Lightner* (1943) 319 US 561, 87 L Ed 1587, 63 S Ct 1223, reh den (1943) 320 US 809, 88 L Ed 489, 64 S Ct 26.

Soldiers' and Sailors' Civil Relief Act [50 USCS Appx §§ 501 et seq.] was not designed to grant immunity from liability. *Graves v Bednar* (1959) 167 Neb 847, 95 NW2d 123, 75 ALR2d 1056.

2. Constitutionality

50 USCS Appx §§ 501 et seq. is constitutional. *Radding v Ninth Federal Sav. & Loan Asso.* (1944, DC NY) 55 F Supp 361.

3. Purpose

50 USCS Appx §§ 501 et seq. was prompted by at least 2 considerations, first, maintenance in armed forces of reasonable measure of that unbothered serenity and security in respect of personal responsibilities which effectively promotes military efficiency and national defense, and second, assurance that in field of individual justice, no advantage in judicial proceedings by or against soldier or sailor will result from his absorption in his country's defense. *Bowsman v Peterson* (1942, DC Neb) 45 F Supp 741; *Johnson v Johnson* (1943) 59 Cal App 2d 375, 139 P2d 33; *Koons v Nelson* (1945) 113 Colo 574, 160 P2d 367; *Semler v Oertwig* (1943) 234 Iowa 233, 12 NW2d 265; *Galanek v Guntzer* (1945) 184 Misc 485, 54 NYS2d 118.

By enacting 50 USCS Appx §§ 501 et seq., Congress intended to protect any person in military services against any personal liability where such person had no opportunity to appear in action either in person or through personal counsel,

and that where failure of person to make such appearance is due to fact that he is in military service his civil rights shall not be prejudiced. *In re Realty Associates Sec. Corp.* (1944, DC NY) 53 F Supp 1015.

Purpose of 50 USCS Appx §§ 501 et seq. is to relieve person engaged in military service from mental distress occasioned by handicap of his being in such service, resulting in his inability to function with freedom of action which he possessed prior to his induction, causing inability to meet financial and other obligations and commitments. *Reynolds v Haulcroft* (1943) 205 Ark 760, 170 SW2d 678; *Blazejowski v Stadnicki* (1944) 317 Mass 352, 58 NE2d 164; *Meyers v Schmidt* (1944) 181 Misc 589, 46 NYS2d 420; *Syracuse Sav. Bank v Brown* (1943) 181 Misc 999, 42 NYS2d 156.

Purpose of 50 USCS Appx §§ 501 et seq. is to make sure that soldiers or sailors are not distracted about personal obligations or compelled to divide their allegiance while in country's defense and to promote military efficiency by removing mental frustration that may arise from fact that some claim or cause of action is being pressed against him at home. *Shayne v Burke* (1946) 158 Fla 61, 27 So 2d 751; *Everingham v Stringer* (1946) 329 Ill App 490, 69 NE2d 348; *Laperouse v Eagle Indem. Co.* (1942) 202 La 686, 12 So 2d 680; *In re Bashor* (1943) 16 Wash 2d 168, 132 P2d 1027.

Purpose of 50 USCS Appx §§ 501 et seq. is not only to preserve rights and property interests of servicemen during their absence, but to remove every inhibition which would interfere with their full devotion to important tasks at hand. *Solomon v Solomon* (1943) 319 Ill App 618, 49 NE2d 807 (superseded by statute as stated in *Lingwall v Hoener* (1984, 4th Dist) 124 Ill App 3d 986, 80 Ill Dec 265, 464 NE2d 1248); *Register v Bourquin* (1943) 203 La 825, 14 So 2d 673.

Purpose of Soldiers' and Sailors' Civil Relief Act is to relieve person engaged in military service from mental distress occasioned by handicap of being in such service, resulting in inability to function with freedom of action possessed prior to induction into military establishment and in inability to meet financial and other obligations and commitments, and from mental distress resulting from inability adequately to protect legal rights and interests or to make proper defense to suits, since such distress has tendency to impair efficiency of soldier or sailor as well as efficiency of organization. *Hunt v Jacobson* (1942) 178 Misc 201, 33 NYS2d 661.

It was intent of Congress in enacting 50 USCS Appx §§ 501 et seq. that persons in military service should be freed from harassment and injury in connection with their civil affairs during their terms of service. *Application of Marks* (1944) 181 Misc 497, 46 NYS2d 755.

Clear intent of Soldiers and Sailors' Civil Relief Act (50 USCS Appx §§ 501 et seq.) is to afford protection of one's property during period of military service. *Hanson v Crown Toyota Motors* (1977, Utah) 572 P2d 380.

50 USCS Appx §§ 501 et seq. means that soldiers and sailors in service who are handicapped by reason of their military service, either in making valid defenses to action or in meeting their financial obligations, shall have protection of courts to prevent prejudice to their rights by reason of service. *Smith v Fitch* (1946) 25 Wash 2d 619, 171 P2d 682.

4. Nature of remedy

Intent of Soldiers' and Sailors' Civil Relief Act is to benefit party in service and grants no privilege, right, or advantage to adversary. *Hadges v Iverson* (1949) 95 Cal App 2d 436, 212 P2d 917.

50 USCS Appx §§ 501 et seq. was intended solely for benefit of those in the armed services, but it does not provide defense to actions against them. *Register v Bourquin* (1943) 203 La 825, 14 So 2d 673.

There is nothing in 50 USCS Appx §§ 501 et seq. which contemplates conferring upon soldier or sailor any privilege not enjoyed by civilian, but it is merely intended to secure him in his legal rights until he may return and defend himself. *Tolmas v Streiffer* (1945, La App, Orleans) 21 So 2d 387.

50 USCS Appx §§ 501 et seq. does not wipe out obligation, but merely suspends its enforcement. *Reid v Margolis* (1943) 181 Misc 222, 44 NYS2d 518.

Popular impression that 50 USCS Appx §§ 501 et seq. absolutely forbids legal proceedings against one in military or naval service of United States is without foundation. *Krobusek v Warwick Realty Co.* (1942, CP Ct) 24 Ohio Ops 344.

II.APPLICABILITY 5. Generally

Nothing in Act excepts proceedings in Court of Appeals and in asking for leave to take interlocutory appeal, service member waives right to stay proceedings in appellate court since he could not appeal and stay appeal at same time. *Johnson v Burken* (1991, CA7 Ill) 930 F2d 1202.

50 USCS Appx §§ 501 et seq. is applicable to all agencies of federal government and, therefore, to several lending programs of Department of Agriculture. (1941) 40 Op Atty Gen 97.

In Soldiers' and Sailors' Civil Relief Act [50 USCS Appx §§ 501 et seq.] phrase "civil rights" is to be taken in its il-limitable sense and contemplates civil and political rights. *State ex rel. Bartlett v Schneider* (1944, CP Ct) 27 Ohio Ops 474, 40 Ohio L Abs 112.

50 USCS Appx §§ 501 et seq. applies to state courts in its entirety, notwithstanding that particular provision under which relief is sought has no counterpart in analogous state acts. *State v Goldberg* (1946) 161 Kan 174, 166 P2d 664; *New York Life Ins. Co. v Litke* (1943) 181 Misc 32, 45 NYS2d 576.

Benefit extended by Soldiers' and Sailors' Civil Relief Act supersedes state law and is binding on state court, so that it may be applied in state court even though there is no similar provision in state act. *New York Life Ins. Co. v Litke* (1943) 181 Misc 32, 45 NYS2d 576; *Hempstead Bank v Gould* (1967) 54 Misc 2d 410, 282 NYS2d 602.

Provisions of 50 USCS Appx §§ 501 et seq. are binding on state courts and all people in each state. *Application of Marks* (1944) 181 Misc 497, 46 NYS2d 755.

50 USCS Appx § 501 et seq. is intended to protect a soldier or sailor in the military service during the pendency of an action before judgment and pending the determination of an appeal from said judgment. *Shisler v Becker* (1942, Sup) 38 NYS2d 60.

50 USCS Appx § 501 is for exclusive benefit of serviceman. *Pierce v Gervais* (1983, La App 4th Cir) 425 So 2d 922.

6.--Criminal proceedings

50 USCS Appx. § 501 et seq. has no application to a criminal proceeding. *Dotseth v Justice Court, Tucson Precinct* (1967) 5 Ariz App 424, 427 P2d 558.

Prosecution for being father of child born out of lawful wedlock and for willfully neglecting or refusing to contribute reasonably to the support of said child was criminal proceeding not subject to 50 USCS Appx §§ 501 et seq. *Commonwealth v Shimpeno* (1946) 160 Pa Super 104, 50 A2d 39.

7.--Service of civil process

50 USCS Appx §§ 501 et seq. does not exempt from civil process nonresident officers of armed services of United States who are temporarily in state on official business. *Tulley v Superior Court of Alameda County* (1941) 45 Cal App 2d 24, 113 P2d 477; *Kurilla v Roth* (1944, NJ Super Ct) 132 NJL 213, 38 A2d 862.

Soldiers' and Sailors' Civil Relief Act does not exempt defendant serviceman from service of civil process. *Ellerbe v Goldberg* (1948, Mun Ct App Dist Col) 60 A2d 232.

8. Miscellaneous

50 USCS Appx §§ 501 et seq. applies to proceedings for adoption of minor child of person in armed forces. *In re Adoption of a Minor* (1943, App DC) 78 US App DC 48, 136 F2d 790.

Soldier who is codefendant in civil suit is not entitled to have proceeding suspended until discharge in 1984 where fact of military service was known 7 months before trial and was subject of affidavit 2 months later but was not brought to court's attention in support of request for delay until 4 days before trial date, since purpose of Soldiers' and Sailors' Civil Relief Act (50 USCS Appx §§ 501 et seq.) is not to shield defendant from trial for such duration as voluntary, peacetime enlistment provides but to protect servicemen against creditors taking advantage of their absences and enable them to devote full time and energy to nation's defense. *Keefe v Spangenberg* (1981, WD Okla) 533 F Supp 49.

Soldiers' and Sailors' Civil Relief Act is applicable to bankruptcy proceedings. *Allfirst Bank v Lewis (In re Lewis)* (2001, BC DC Md) 257 BR 431, 37 BCD 65.

Divorce decree valid in all other respects was not entered in violation of serviceman's rights under Soldiers' and Sailors' Civil Relief Act of 1940 (50 USCS Appx §§ 501 et seq.) where serviceman signed property settlement which was ultimately incorporated into decree, filed answer to complaint and had received notice of date and time of hearing and copy of proposed decree, since purpose of Act is to protect persons in military service from having default judgments entered against them without their knowledge; it does not prevent entry of judgment against nonappearing ser-

viceman who has notice of pendency of action and adequate time and opportunity to appear and defend. *Roqueplot v Roqueplot* (1980, 2d Dist) 88 Ill App 3d 59, 43 Ill Dec 441, 410 NE2d 441.

In automobile-pedestrian accident defendant was entitled to continuance until he returned from military service in Korea under Soldiers' and Sailors' Relief Act, even though serviceman voluntarily enlisted and accepted assignment abroad when he knew case would be set for trial soon after mistrial was declared and did not cooperate with court in arranging specific time when he would be available for trial after his return. *Gross v Harrell* (1985, 3d Dist) 132 Ill App 3d 839, 87 Ill Dec 627, 477 NE2d 753.

III.CONSTRUCTION 9. Generally

50 USCS Appx §§ 501 et seq. is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation. *Boone v Lightner* (1943) 319 US 561, 87 L Ed 1587, 63 S Ct 1223, reh den (1943) 320 US 809, 88 L Ed 489, 64 S Ct 26; *Arkless v Kilstein* (1944, DC Pa) 61 F Supp 886; *Shire v Superior Court* (1945) 63 Ariz 420, 162 P2d 909; *Reynolds v Haulcroft* (1943) 205 Ark 760, 170 SW2d 678; *Winslow v Harold G. Ferguson Corp.* (1944) 25 Cal 2d 274, 153 P2d 714; *Clements v McLeod* (1945) 155 Fla 860, 22 So 2d 220; *Continental Illinois Nat'l Bank & Trust Co. v University of Notre Dame Du Lac* (1946) 394 Ill 584, 69 NE2d 301; *Semler v Oertwig* (1943) 234 Iowa 233, 12 NW2d 265; *McEndy v McEndy* (1945) 318 Mass 775, 64 NE2d 435; *Davis v Wyche* (1944) 224 NC 746, 32 SE2d 358; *State ex rel. Comm'rs of Land Office v Warden* (1946) 197 Okla 97, 168 P2d 1010; *Smith v Fitch* (1946) 25 Wash 2d 619, 171 P2d 682.

50 USCS Appx §§ 501 et seq. was intended solely for benefit of those in armed services of United States and is to be liberally construed to effectuate its purpose, but this does not mean that courts are to enter into field of speculation and go beyond plain import of language of statute. *Oliver v Oliver* (1943) 244 Ala 234, 12 So 2d 852; *McArthur v Shaffer* (1943) 59 Cal App 2d 724, 139 P2d 959.

50 USCS Appx §§ 501 et seq. must be liberally construed for benefit of serviceman, and not creditor, unless in opinion of court ability of serviceman to comply with terms of obligation is not materially affected by reason of military service; it places upon trial judge wide discretion; and, in determining whether serviceman is entitled to relief, each case must stand upon its own merits. *Brown Service Ins. Co. v King* (1945) 247 Ala 311, 24 So 2d 219; *New York Life Ins. Co. v Litke* (1943) 181 Misc 32, 45 NYS2d 576.

50 USCS Appx §§ 501 et seq. is intended to be for benefit of party in service only. *Gilbride v Algona* (1945) 237 Iowa 20, 20 NW2d 905.

50 USCS Appx §§ 501 et seq. should be liberally interpreted to protect those in armed forces. *Wuster v Levitt* (1944) 268 App Div 926, 51 NYS2d 344.

50 USCS Appx §§ 501 et seq. is intended to is for exclusive benefit of servicemen therein included, and they alone can take advantage of it. *Hynds v Ada* (1945) 195 Okla 465, 158 P2d 907; *Lyle v Haskins* (1946) 24 Wash 2d 883, 168 P2d 797.

10. Protection of dependents and others

50 USCS Appx §§ 501 et seq. must be construed to fully protect men in the service, but it cannot be utilized merely as instrument to delay proceedings for benefit of those who do not come within its protection. *Shire v Superior Court* (1945) 63 Ariz 420, 162 P2d 909.

Privileges and exemptions conferred by 50 USCS Appx §§ 501 et seq. inure to benefit of person intended, no matter how far his interest may be commingled with those of others who are not embraced either within letter or spirit of enactment, and paternal policy of act and broad spirit of gratitude towards persons in military service of; primary object of 50 USCS Appx §§ 501 et seq. is to give protection to soldier first and to his dependents next to prevent or remedy any undue hardship resulting to them. *Patrikes v J. C. H. Service Stations, Inc.* (1943) 180 Misc 917, 41 NYS2d 158, affd (1943) 180 Misc 927, 46 NYS2d 233, app den (1943) 266 App Div 924, 44 NYS2d 472.

11. Consideration of other parties' rights; substantial justice

50 USCS Appx §§ 501 et seq. does not apply merely because such person is in military service, and is not to be invoked for a needless purpose, but is to be administered as instrument to accomplish substantial justice and has application only when military service has prevented or is preventing member of military forces from meeting obligations im-

posed upon him by instrument upon which suit is brought. *Brown Service Ins. Co. v King* (1945) 247 Ala 311, 24 So 2d 219.

In applying this act, rights of civilian litigants also must be considered. *Johnson v Johnson* (1943) 59 Cal App 2d 375, 139 P2d 33.

Trial court must consider protection of rights of injured plaintiff as well as those of defendant. *Koons v Nelson* (1945) 113 Colo 574, 160 P2d 367.

Soldiers' and Sailors' Civil Relief Act must be construed as instrument of substantial justice and may not be used as means of enabling one who has flouted his obligations in civilian life to obtain indefinite delay or to cancel his just liabilities. *Semler v Oertwig* (1943) 234 Iowa 233, 12 NW2d 265; *Franklin Soc. for Home-Building & Sav. v Flavin* (1943) 265 App Div 720, 40 NYS2d 582, affd (1943) 291 NY 530, 50 NE2d 653, cert den (1943) 320 US 786, 88 L Ed 472, 64 S Ct 158; *Application of Marks* (1944) 181 Misc 497, 46 NYS2d 755.

50 USCS Appx §§ 501 et seq. is not to be employed as vehicle of oppression or abuse and its invocation is not to be permitted for any needless or unwarranted purpose; it is to be administered as instrument to accomplish substantial justice; it is clear that complete immunity was not intended. *Nassau Sav. & Loan Ass'n v Ormond* (1942) 179 Misc 447, 39 NYS2d 92.

50 USCS Appx §§ 501 et seq. is to be administered as instrument to accomplish substantial justice, and that means equitable consideration of rights of both parties to end that their respective interests may be properly conserved. *New York Life Ins. Co. v Litke* (1943) 181 Misc 32, 45 NYS2d 576.

In modification of child custody matter, Soldiers and Sailors Civil Relief Act of 1940, 50 USCS Appx §§ 501-591, was inapplicable because, even though father had made arrangements for children to stay with their grandmother while father was on active duty, children's mother's claim to temporary custody of children was superior to that of grandmother; further, situation had significantly changed since entry of original decree, and father failed to show that his substantial rights would have been affected. *In re Marriage of Grantham* (2005, Iowa) 698 NW2d 140.

12. Abuse of benefits prohibited

50 USCS Appx §§ 501 et seq. was not intended to serve as instrument by which one in military service may endanger peace, health, and lives of people by staying any proceeding brought for purpose of protecting general public. *Cedartown v Pickett* (1942) 194 Ga 508, 22 SE2d 318.

50 USCS Appx §§ 501 et seq. does not mean that persons able to meet their obligations may set up act in bar to prevent creditors from pursuing their remedies. *Semler v Oertwig* (1943) 234 Iowa 233, 12 NW2d 265; *Kentucky Unemployment Compensation Com. v Chenault & Orear* (1943) 295 Ky 562, 174 SW2d 767; *Jamaica Sav. Bank v Bryan* (1941) 175 Misc 978, 25 NYS2d 17; *Application of Marks* (1944) 181 Misc 497, 46 NYS2d 755; *Lightner v Boone* (1942) 222 NC 205, 22 SE2d 426, affd (1943) 319 US 561, 87 L Ed 1587, 63 S Ct 1223, reh den (1943) 320 US 809, 88 L Ed 489, 64 S Ct 26; *Burke v Hyde Corp.* (1943, Tex Civ App) 173 SW2d 364; *In re Bashor* (1943) 16 Wash 2d 168, 132 P2d 1027.

50 USCS Appx §§ 501 et seq. is to be used as shield for defense and not as instrument for oppression of opposing parties. *State ex rel. Swanson v Heaton* (1946) 237 Iowa 564, 22 NW2d 815.

50 USCS Appx §§ 501 et seq. was neither intended as means of abuse nor to apply without restriction. *Kelley v Kelley* (1942, Sup) 38 NYS2d 344.

Soldiers' and Sailors' Civil Relief Act is not available to one who attempts to bring himself within its provisions by fraudulent design. *Lima Oil & Gas Co. v Pritchard* (1923) 92 Okla 113, 218 P 863.

13. Unreasonable delay

Serviceman who is codefendant in civil suit is not entitled to have proceeding suspended until discharge in 1984, where he is stationed in United States and may with continuance of one month arrange for leave or pass to attend trial or to be deposed by videotape deposition or otherwise, since although Soldiers' and Sailors' Civil Relief Act (50 USCS §§ 501 et seq.) is to be construed liberally for benefit of servicemen, it does not provide automatic delay in every case and may not be used for delay where trial can proceed without prejudice to civil rights of serviceman and conduct of his defense is not materially affected by reason of military service. *Keefe v Spangenberg* (1981, WD Okla) 533 F Supp 49.

50 USCS Appx § 502

50 USCS Appx §§ 501 et seq. may not be invoked for purpose of delaying or defeating orderly and expeditious trial of valid suits. *Ridley v Young* (1944) 64 Cal App 2d 503, 149 P2d 76 (superseded by statute as stated in *American Broadcasting Cos. v Walter Reade-Sterling, Inc.* (1974, 1st Dist) 43 Cal App 3d 401, 117 Cal Rptr 617).

Where delays in divorce action had all been due to conduct of serviceman, he could not rely on the benefits of 50 USCS Appx § 510. *Robbins v Robbins* (1967, Fla App D2) 193 So 2d 471.

Soldiers are not to use Soldiers' and Sailors' Civil Relief Act of 1940 when they disregard and flout civil obligations to obtain indefinite delay; when litigant has made the army his career, is ably represented by counsel, and has not used equitable remedies available, he will not be permitted to obtain further stays. *Fluhr v Fluhr* (1947) 140 NJ Eq 131, 52 A2d 847.

While trial court's refusal to grant stay of probate proceedings under Soldier's and Sailor's Relief Act (50 USCS Appx §§ 501 et seq.) due to absence of members of armed forces is not reversible error, objector to probate of will is entitled, in interests of justice, to opportunity to have issue of undue influence considered in connection with such testimony as heirs absent in armed forces may present which has not already been submitted. *In re Ehlke's Will* (1945) 247 Wis 534, 19 NW2d 888.

IV.PRACTICE AND PROCEDURE 14. Service of process

Soldiers' and Sailors' Civil Relief Act affords protection for litigant in military service after action has begun, but in no way affects method of service prescribed in *USCS Rules of Civil Procedure Rule 4(d)(1)*. *McFadden v Shore* (1945, DC Pa) 60 F Supp 8.

15. Standing

City as codefendant with serviceman in civil suit has no standing to invoke provisions of Soldiers' and Sailors' Civil Relief Act (50 USCS Appx §§ 501 et seq.), since its benefits apply to servicemen only, not city. *Keefe v Spangenberg* (1981, WD Okla) 533 F Supp 49.

16. Burden of proof

There is no rigid rule as to burden of proof on question of applicability of 50 USCS Appx §§ 501 et seq., but ultimate discretion of court includes discretion as to whom it may ask to come forward with facts necessary to allow it to make fair judgment. *Boone v Lightner* (1943) 319 US 561, 87 L Ed 1587, 63 S Ct 1223, reh den (1943) 320 US 809, 88 L Ed 489, 64 S Ct 26.

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*** WITH GAPS OF 110-343, 110-344, 110-346 and 110-351 ***

TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
SERVICEMEMBERS CIVIL RELIEF ACT
TITLE I. GENERAL PROVISIONS

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50 USCS Appx § 510

§ 510. [Omitted]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Oct. 17, 1940, ch 888, § 200, 54 Stat. 1179) was omitted in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. It provided for suspension of enforcement of civil liabilities, in certain cases, of persons in the military service of the United States. For similar provisions, see *50 USCS Appx § 502*.

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50 USCS Appx § 511

§ 511. Definitions

For the purposes of this Act [50 USCS Appx §§ 501 et seq.]:

(1) Servicemember. The term "servicemember" means a member of the uniformed services, as that term is defined in *section 101(a)(5) of title 10, United States Code*.

(2) Military service. The term "military service" means--

(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard--

(i) active duty, as defined in *section 101(d)(1) of title 10, United States Code*, and

(ii) in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under *section 502(f) of title 32, United States Code*, for purposes of responding to a national emergency declared by the President and supported by Federal funds;

(B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(3) Period of military service. The term "period of military service" means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

(4) Dependent. The term "dependent", with respect to a servicemember, means--

(A) the servicemember's spouse;

(B) the servicemember's child (as defined in *section 101(4) of title 38, United States Code*); or

(C) an individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief under this Act [50 USCS Appx §§ 501 et seq.].

(5) Court. The term "court" means a court or an administrative agency of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record.

(6) State. The term "State" includes--

(A) a commonwealth, territory, or possession of the United States; and

(B) the District of Columbia.

(7) Secretary concerned. The term "Secretary concerned"--

(A) with respect to a member of the armed forces, has the meaning given that term in *section 101(a)(9) of title 10, United States Code*;

(B) with respect to a commissioned officer of the Public Health Service, means the Secretary of Health and Human Services; and

(C) with respect to a commissioned officer of the National Oceanic and Atmospheric Administration, means the Secretary of Commerce.

(8) Motor vehicle. The term "motor vehicle" has the meaning given that term in *section 30102(a)(6) of title 49, United States Code*.

(9) Judgment. The term "judgment" means any judgment, decree, order, or ruling, final or temporary.

HISTORY:

(Oct. 17, 1940, ch 888, Title I, § 101, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2836; Dec. 10, 2004, P.L. 108-454, Title VII, § 701, 118 Stat. 3624.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 511 (Act Oct. 17, 1940, ch 888, § 101, 54 Stat. 1179; Oct. 24, 1972, P.L. 92-540, Title V, § 504(1), 86 Stat. 1098; March 18, 1991, P.L. 102-12, § 9(1), 105 Stat. 39; Dec. 6, 2002, P.L. 107-330, Title III, § 305, 116 Stat. 2826) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section contained definitions.

Amendments:

2004. Act Dec. 10, 2004, added para. (9).

Other provisions:

Applicability of section. This section applies to any case that is not final before December 19, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

10 Moore's Federal Practice (Matthew Bender 3d ed.), ch 55, Default; Default Judgment §§ 55.90, 55.91.
3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense § 5:504.

Am Jur:

53A Am Jur 2d, Military and Civil Defense §§ 384, 386.

Annotations:

Tolling provision of Soldiers' and Sailors' Civil Relief Act (*50 USCS Appx § 525*). 36 ALR Fed 420.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 Judges' Journal 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 Judges' Journal 27, Summer 2006.

Seganish. Civil Litigation Involving Persons in the Military. 39 Md BJ 52, July/August 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

Interpretive Notes and Decisions:

1. "Active service" 2. Persons covered by Act 3.--Civilians working in war-related capacity 4.--Court-martialed soldiers 5.--Enlisted persons 6.--Merchant sailors 7.--Reserve personnel 8.--Retirees

1. "Active service"

In Armed Forces, term "active service" has precise meaning not dependent upon individual conduct. *Bell v United States* (1961) 366 US 393, 6 L Ed 2d 365, 81 S Ct 1230.

Where Air National Guard officer, who had been discharged from active guard and reserve for misconduct, sued in Court of Federal Claims for back pay and allowances, running of limitations period was not tolled, under Soldiers and Sailors Civil Relief Act of 1940 for officer's local annual training occurring after discharge; training did not qualify as "active service." *Bowen v United States* (2002, CA FC) 292 F3d 1383.

Local National Guard training, conducted by state officials but with federal paycheck, does not qualify as federal service on active duty within meaning of SSCRA. *Bowen v United States* (2001) 49 Fed Cl 673, affd (2002, CA FC) 292 F3d 1383.

2. Persons covered by Act

The term "military service" as used in Soldiers' and Sailors' Relief Act of 1940 (50 USCS Appx §§ 501 et seq.) requires serviceman to be on active duty; concept includes one absent from duty for lawful cause and excludes from protection of statute one absent from duty for other than lawful cause, such as desertion. *Driver v Driver* (1980, Super Ct) 36 Conn Supp 229, 416 A2d 705.

3.--Civilians working in war-related capacity

Stevedore injured while working in hatch of government ship could not sue government under Soldiers' and Sailors' Civil Relief Act, since he was not member of military service. *Abbattista v United States* (1951, DC NJ) 95 F Supp 679.

Lieutenant Commander in United States Public Health Service assigned for duty with United States Coast Guard is "person in the Military Service" within meaning of 50 USCS Appx § 511. *Wanner v Glen Ellen Corp.* (1974, DC Vt) 373 F Supp 983.

Captain of ship engaged in carrying munitions of war and transporting soldiers from United States to ports in France and elsewhere in Europe and carrying home returning soldiers, was not engaged in performance of war duties. *Greenwood v Puget Mill Co.* (1920) 111 Wash 464, 191 P 393.

4.--Court-martialed soldiers

Benefits of 50 USCS Appx §§ 501 et seq. are extended to those who are in active service or duty and do not inure to benefit or protect those who through their voluntary aggressions and conduct remove themselves from role of soldiers and sailors in active service or duty; gravity of offense charged and sentence of court-martial are factors to be considered in determining whether violation of army's rules and regulations would divest soldier of his rights; soldier confined under general court-martial for period of 5 years and sentenced to be dishonorably discharged at termination of his sentence and to forfeit all pay and allowances due or to become due, was not soldier on active duty or service within meaning of Soldiers' and Sailors' Civil Relief Act. *Mantz v Mantz* (1946, Ohio CP Ct) 69 NE2d 637.

5.--Enlisted persons

50 USCS Appx § 511

Fact that person enters military service on his own volition, rather than waits to be drafted, does not make Soldiers' and Sailors' Civil Relief Act any less applicable to him. *Hanebuth v Patton* (1943) 111 Colo 447, 142 P2d 1010; *Hanebuth v Scott* (1943) 111 Colo 443, 142 P2d 1008.

6.--Merchant sailors

Merchant seaman was not "person in the military service" within meaning of 50 USCS Appx § 511. *Osbourne v United States* (1947, CA2 NY) 164 F2d 767.

7.--Reserve personnel

Inactive service in naval reserve does not entitle litigant to protection of provisions of Soldiers' and Sailors' Civil Relief Act. *Markowitz v Carpenter* (1949) 94 Cal App 2d 667, 211 P2d 617.

8.--Retirees

50 USCS Appx §§ 501 et seq. has no application to retired army officer who is not on active duty. *Lang v Lang* (1941) 176 Misc 213, 25 NYS2d 775.

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50 USCS Appx § 512

§ 512. Jurisdiction and applicability of Act

(a) Jurisdiction. This Act [50 USCS Appx §§ 501 et seq.] applies to--

- (1) the United States;
- (2) each of the States, including the political subdivisions thereof; and
- (3) all territory subject to the jurisdiction of the United States.

(b) Applicability to proceedings. This Act [50 USCS Appx §§ 501 et seq.] applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act [50 USCS Appx §§ 501 et seq.]. This Act [50 USCS Appx §§ 501 et seq.] does not apply to criminal proceedings.

(c) Court in which application may be made. When under this Act [50 USCS Appx §§ 501 et seq.] any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court which would otherwise have jurisdiction over the matter.

HISTORY:

(Oct. 17, 1940, ch 888, Title I, § 102, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2837.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 512 (Act Oct. 17, 1940, ch 888, § 102, 54 Stat. 1179; March 18, 1991, P.L. 102-12, § 9(2), 105 Stat. 39) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to territorial application, jurisdiction of courts, and form of procedure.

Other provisions:

Applicability of section. This section applies to any case that is not final before December 19, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as 50 USCS Appx § 501 note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:500, 504.

Am Jur:

53A Am Jur 2d, *Military and Civil Defense* § 386.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Seganish. Civil Litigation Involving Persons in the Military. 39 Md BJ 52, July/August 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

Interpretive Notes and Decisions:

Predecessor to Soldiers' and Sailors' Civil Relief Act covered suits in state, federal or territorial courts. *Clark v Mechanics' American Nat'l Bank* (1922, CA8 Ark) 282 F 589.

50 USCS Appx §§ 501 et seq. conferred jurisdiction on state courts to grant stay; federal district court is without power to interfere with state courts in their exercise of their jurisdiction under Soldiers' and Sailors' Civil Relief Act. *Radding v Ninth Federal Sav. & Loan Asso.* (1944, DC NY) 55 F Supp 361.

In claim alleging violations of, inter alia, Soldiers and Sailors Civil Relief Act, 50 USCS app. § 501 et seq., district court lacked jurisdiction to hear father's claims, that tribal courts of Seneca Nation of Indians allegedly mishandled his child custody case in violation of his civil rights, where father submitted to jurisdiction of those courts, and relief would have been equivalent of issuing writ of mandamus to tribal courts, which district court had no authority to do. *Kirkpatrick v Kirkpatrick* (2003, ND Ohio) 282 F Supp 2d 613.

Soldiers' and Sailors' Civil Relief Act applies to state courts, notwithstanding fact that particular provision under which relief is sought has no counterpart in state law. *New York Life Ins. Co. v Litke* (1943) 181 Misc 32, 45 NYS2d 576.

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50 USCS Appx § 513

§ 513. Protection of persons secondarily liable

(a) Extension of protection when actions stayed, postponed, or suspended. Whenever pursuant to this Act [*50 USCS Appx §§ 501 et seq.*] a court stays, postpones, or suspends (1) the enforcement of an obligation or liability, (2) the prosecution of a suit or proceeding, (3) the entry or enforcement of an order, writ, judgment, or decree, or (4) the performance of any other act, the court may likewise grant such a stay, postponement, or suspension to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation or liability the performance or enforcement of which is stayed, postponed, or suspended.

(b) Vacation or set-aside of judgments. When a judgment or decree is vacated or set aside, in whole or in part, pursuant to this Act [*50 USCS Appx §§ 501 et seq.*], the court may also set aside or vacate, as the case may be, the judgment or decree as to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily liable on the contract or liability for the enforcement of the judgment or decree.

(c) Bail bond not to be enforced during period of military service. A court may not enforce a bail bond during the period of military service of the principal on the bond when military service prevents the surety from obtaining the attendance of the principal. The court may discharge the surety and exonerate the bail, in accordance with principles of equity and justice, during or after the period of military service of the principal.

(d) Waiver of rights.

(1) Waivers not precluded. This Act [*50 USCS Appx §§ 501 et seq.*] does not prevent a waiver in writing by a surety, guarantor, endorser, accommodation maker, comaker, or other person (whether primarily or secondarily liable on an obligation or liability) of the protections provided under subsections (a) and (b). Any such waiver is effective only if it is executed as an instrument separate from the obligation or liability with respect to which it applies.

(2) Waiver invalidated upon entrance to military service. If a waiver under paragraph (1) is executed by an individual who after the execution of the waiver enters military service, or by a dependent of an individual who after the execution of the waiver enters military service, the waiver is not valid after the beginning of the period of such military service unless the waiver was executed by such individual or dependent during the period specified in section 106 [*50 USCS Appx § 506*].

HISTORY:

(Oct. 17, 1940, ch 888, Title I, § 103, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2838.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 513 (Act Oct. 17, 1940, ch 888, § 103, 54 Stat. 1179; Oct. 6, 1942, ch 581, §§ 2, 3, 56 Stat. 769; March 18, 1991, P.L. 102-12, § 9(3), 105 Stat. 39) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to the protection of persons secondarily liable.

Other provisions:

Applicability of section. This section applies to any case that is not final before December 19, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:503, 504.

Am Jur:

8A Am Jur 2d, Bail and Recognizance §§ 87, 136.

53A Am Jur 2d, Military and Civil Defense § 385.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

Interpretive Notes and Decisions:

1. Construction 2. "Others subject to the obligation or liability" 3. Discretion of court 4. Primary obligor as codefendant or recipient of stay 5. Bail bonds

1. Construction

In action in which armed forces members alleged that Uniformed Services Former Spouses' Protection Act, *10 USCS § 1408*, did not provide procedural due process because due process required Secretary of Defense to review whether state court complied with terms of Servicemembers Civil Relief Act, *50 USCS app. §§ 501* et seq., due process claim failed because requiring Defense Finance and Accounting Service (DFAS) to conduct additional review before complying with state court orders would have harmed government's interest in minimizing administrative expenses without demonstrably reducing error rate of existing enforcement system; due process did not require more than DFAS already provided pursuant to Act. *Adkins v Rumsfeld* (2006, CA4 Va) 464 F3d 456.

Extension of power of court and use of its discretion to sureties, guarantors, and like manifests intention not only to liberalize *50 USCS Appx §§ 501* et seq. in respect to the person in military service himself but to extend that same liber-

ality to those who had engaged themselves in his behalf as surety, guarantor, endorser, or some other capacity on any obligation he may have undertaken prior to his entry. *White System of Lafayette, Inc. v Fisher* (1943, La App 1st Cir) 16 So 2d 89.

2. "Others subject to the obligation or liability"

Phrase "others subject to the obligation or liability," used in connection with words preceding it in 50 USCS Appx. § 513 is broad enough to include all persons besides sureties, guarantors, or endorsers who are not borrowers, but who are nevertheless obligated to pay the debt depending upon future event which may not occur, namely default of borrower. *Modern Industrial Bank v Zaentz* (1941) 177 Misc 132, 29 NYS2d 969.

Words "and others subject to the obligation or liability" in 50 USCS Appx § 513 do not refer to primary obligors comaker of note executed by himself and person in the military service was not within phrase "and other subject to the obligation or liability," although he did not receive any of proceeds of loan for which note was given. *In re Itzkowitz* (1941) 177 Misc 269, 30 NYS2d 336.

3. Discretion of court

In action against accommodation makers and endorsers on note executed by person who subsequently entered armed forces, stay of proceedings under 50 USCS Appx §§ 501 et seq. was matter within sound discretion of the court. *White System of Lafayette, Inc. v Fisher* (1943, La App 1st Cir) 16 So 2d 89.

4. Primary obligor as codefendant or recipient of stay

Where holder of promissory note sued one of sureties thereon alone, such defendant could not have action stayed on ground that maker or principal of note, who was not party to action, was in military service of United States, especially where it does not appear that rights of defendant were in any way prejudiced by such action. *Hartsfield Co. v Whitfield* (1944) 71 Ga App 257, 30 SE2d 648.

Where primary maker of accommodation instalment note offered to keep up payments at reduced rate when he went into army, but payee ignored his communication in this respect, and accommodation makers and endorsers, his father and sister, were not able to keep up payments and did not own any property that would be subject to execution under judgment, court properly exercised its discretion in staying proceedings in suit on note. *White System of Lafayette, Inc. v Fisher* (1943, La App 1st Cir) 16 So 2d 89.

Where paper before court on motion for stay filed by defendants who did not participate in consideration for which note was given did not show whether obligor who received consideration was party defendant or recipient of stay under 50 USCS Appx §§ 501 et seq., there was no basis for exercise or denial of discretion in favor of movant parties. *Modern Industrial Bank v Zaentz* (1941) 177 Misc 132, 29 NYS2d 969.

Before accommodation maker can secure stay, it must first appear that stay is already operative in favor of obligor in military service. *Modern Industrial Bank v Zaentz* (1941) 177 Misc 132, 29 NYS2d 969; *Modern Industrial Bank v Grossman* (1943) 180 Misc 415, 40 NYS2d 628.

5. Bail bonds

Court is without authority to order forfeiture of criminal bail bond where accused was inducted and sent to military camp subsequently to being admitted to bail and before date to which his case was adjourned for trial, where his counsel made statement orally to court, which went unquestioned, as to absence of accused and reason therefor. *United States v Jeffries* (1944, CA7 Ill) 140 F2d 745.

Sureties on bail bond of defendants in criminal action were not entitled to benefits of Soldiers' and Sailors' Civil Relief Act with reference to entry or enforcement of any order, writ, judgment, or decree, or to stay, suspension, or postponement of any suit or proceeding in discretion of court, where it was found that they were tendered passes by federal authority to enable them to attend trial of such actions against them. *Briggs v Commonwealth* (1919) 185 Ky 340, 214 SW 975, 8 ALR 363.

Showing that accused was in military service when judgment nisi, forfeiting recognizance bond, was entered, standing alone was insufficient to invoke relief under Soldiers' and Sailors' Civil Relief Act, and sureties were also required to show unsuccessful efforts to secure appearance of accused before court and prevention thereof by active military service. *Cumbie v State* (1963, Tex Crim) 367 SW2d 693.

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50 USCS Appx § 514

§ 514. Extension of protections to citizens serving with allied forces

A citizen of the United States who is serving with the forces of a nation with which the United States is allied in the prosecution of a war or military action is entitled to the relief and protections provided under this Act [*50 USCS Appx §§ 501 et seq.*] if that service with the allied force is similar to military service as defined in this Act [*50 USCS Appx §§ 501 et seq.*]. The relief and protections provided to such citizen shall terminate on the date of discharge or release from such service.

HISTORY:

(Oct. 17, 1940, ch 888, Title I, § 104, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2839.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 514 (Act Oct. 17, 1940, ch 888, § 104, as added Oct. 6, 1942, ch 581, § 4, 56 Stat. 770) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to the extension of benefits to citizens serving with forces of war allies.

Other provisions:

Applicability of section. This section applies to any case that is not final before December 19, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Related Statutes & Rules:

This section is referred to in *5 USCS § 5569*.

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense § 5:504.

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 385.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 515

§ 515. Notification of benefits

The Secretary concerned shall ensure that notice of the benefits accorded by this Act [*50 USCS Appx §§ 501 et seq.*] is provided in writing to persons in military service and to persons entering military service.

HISTORY:

(Oct. 17, 1940, ch 888, Title I, § 105, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2839.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 515 (Act Oct. 17, 1940, ch 888, § 105, as added Oct. 6, 1942, ch 581, § 4, 56 Stat. 770; March 18, 1991, P.L. 102-12, § 9(4), 105 Stat. 39) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to notice of benefits to persons in and persons entering military service.

Other provisions:

Applicability of section. This section applies to any case that is not final before December 19, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense § 5:504.

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 385.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 515a

§ 515a. Information for members of the Armed Forces and their dependents on rights and protections of the Servicemembers Civil Relief Act

(a) Outreach to members. The Secretary concerned shall provide to each member of the Armed Forces under the jurisdiction of the Secretary pertinent information on the rights and protections available to members and their dependents under the Servicemembers Civil Relief Act (*50 U.S.C. App. 501* et seq.).

(b) Time of provision. The information required to be provided under subsection (a) to a member shall be provided at the following times:

- (1) During the initial orientation training of the member.
- (2) In the case of a member of a reserve component, during the initial orientation training of the member and when the member is mobilized or otherwise individually called or ordered to active duty for a period of more than one year.
- (3) At such other times as the Secretary concerned considers appropriate.

(c) Outreach to dependents. The Secretary concerned may provide to the adult dependents of members under the jurisdiction of the Secretary pertinent information on the rights and protections available to members and their dependents under the Servicemembers Civil Relief Act [*50 USCS Appx §§ 501* et seq.].

(d) Definitions. In this section, the terms "dependent" and "Secretary concerned" have the meanings given such terms in section 101 of the Servicemembers Civil Relief Act (*50 U.S.C. App. 511*).

HISTORY:

(Jan. 6, 2006, P.L. 109-163, Div A, Title VI, Subtitle F, § 690, 119 Stat. 3337.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section was enacted as part of Act Jan. 6, 2006, P.L. 109-163, and not as part of Act Oct. 17, 1940, ch 888, the Servicemembers Civil Relief Act, which generally comprises this chapter.

NOTES:

Research Guide:

Law Review Articles:

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. *45 Judges' Journal* 27, Summer 2006.

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50 USCS Appx § 516

§ 516. Extension of rights and protections to reserves ordered to report for military service and to persons ordered to report for induction

(a) Reserves ordered to report for military service. A member of a reserve component who is ordered to report for military service is entitled to the rights and protections of this title and titles II and III [*50 USCS Appx §§ 511 et seq., 521 et seq., 531 et seq.*] during the period beginning on the date of the member's receipt of the order and ending on the date on which the member reports for military service (or, if the order is revoked before the member so reports, or the date on which the order is revoked).

(b) Persons ordered to report for induction. A person who has been ordered to report for induction under the Military Selective Service Act (*50 U.S.C. App. 451 et seq.*) is entitled to the rights and protections provided a servicemember under this title and titles II and III [*50 USCS Appx §§ 511 et seq., 521 et seq., 531 et seq.*] during the period beginning on the date of receipt of the order for induction and ending on the date on which the person reports for induction (or, if the order to report for induction is revoked before the date on which the person reports for induction, on the date on which the order is revoked).

HISTORY:

(Oct. 17, 1940, ch 888, Title I, § 106, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2839.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 516 (Act Oct. 17, 1940, ch 888, § 106, as added Oct. 6, 1942, ch 581, § 4, 56 Stat. 770; March 18, 1991, P.L. 102-12, § 9(5), 105 Stat. 39) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to the extension of benefits to persons ordered to report for induction or military service.

Other provisions:

Applicability of section. This section applies to any case that is not final before December 19, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:501, 503, 504.

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 385.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 Judges' Journal 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 Judges' Journal 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

Interpretive Notes and Decisions:

Where, at commencement of foreclosure suit, defendant had been selected as inductee for military service and was under orders to report for induction into military forces and when he reported he was accepted and sworn into service, where he remained throughout entire proceeding, he was person in military service and entitled to relief under 50 USCS Appx §§ 501 et seq. *Clements v McLeod* (1945) 155 Fla 860, 22 So 2d 220.

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50 USCS Appx § 517

§ 517. Waiver of rights pursuant to written agreement.

(a) In general. A servicemember may waive any of the rights and protections provided by this Act [*50 USCS Appx §§ 501 et seq.*]. Any such waiver that applies to an action listed in subsection (b) of this section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies. In the case of a waiver that permits an action described in subsection (b), the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the servicemember is not a party to that instrument, the servicemember concerned.

(b) Actions requiring waivers in writing. The requirement in subsection (a) for a written waiver applies to the following:

- (1) The modification, termination, or cancellation of--
 - (A) a contract, lease, or bailment; or
 - (B) an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.
- (2) The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that--
 - (A) is security for any obligation; or
 - (B) was purchased or received under a contract, lease, or bailment.

(c) Prominent display of certain contract rights waivers. Any waiver in writing of a right or protection provided by this Act [*50 USCS Appx §§ 501 et seq.*] that applies to a contract, lease, or similar legal instrument must be in at least 12 point type.

(d) Coverage of periods after orders received. For the purposes of this section--

- (1) a person to whom section 106 [*50 USCS Appx § 506*] applies shall be considered to be a servicemember; and
- (2) the period with respect to such a person specified in subsection (a) or (b), as the case may be, of section 106 [*50 USCS Appx § 506*] shall be considered to be a period of military service.

HISTORY:

(Oct. 17, 1940, ch 888, Title I, § 107, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2839; Dec. 10, 2004, P.L. 108-454, Title VII, § 702, 118 Stat. 3624.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 517 (Act Oct. 17, 1940, ch 888, § 107, as added Oct. 6, 1942, ch 581, § 4, 56 Stat. 770) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to the effect of this Act [50 USCS Appx §§ 501 et seq.] on rights, remedies, etc., pursuant to written agreements entered after commencement of military service.

Amendments:

2004. Act Dec. 10, 2004, in subsec. (a), inserted the sentence beginning "Any such waiver . . ."; redesignated subsec. (c) as subsec. (d); and inserted new subsec. (c).

Other provisions:

Applicability of section. This section applies to any case that is not final before December 19, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as 50 USCS Appx § 501 note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:501, 504, 519.

Am Jur:

53A Am Jur 2d, *Military and Civil Defense* §§ 388, 413.

Annotations:

Tolling provision of Soldiers' and Sailors' Civil Relief Act (50 USCS Appx § 525). 36 ALR Fed 420.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

Interpretive Notes and Decisions:

1. Foreclosure of mortgage 2. Waiver

1. Foreclosure of mortgage

There could be no relief from mortgage foreclosure made without court order where mortgage authorizing such procedure was executed during mortgagor's military service, foreclosure being had after he defaulted in his payments on being transferred to foreign duty; Civil Relief Act by its plain terms did not prevent foreclosure of security for any obligation pursuant to written agreement of parties executed during period of military service. *Whitaker v Hearnberger* (1951) 123 Colo 545, 233 P2d 389.

Former 50 USCS Appx § 517 expressly stated that foreclosure of trust deed was not prevented where obligation under deed of trust commenced during period of military service. *Brown v Gerber* (1972, Colo App) 495 P2d 1160.

2. Waiver

Execution by serviceman of authorization to chattel mortgagee to sell mortgaged property without legal process did not prevent mortgagor from relying upon Soldiers' and Sailors' Civil Relief Act to extend period of limitations for bringing action for illegal seizure and sale; waiver of benefits of former 50 USCS Appx § 517 protecting serviceman against seizure of mortgaged property did not constitute waiver of benefits of former 50 USCS Appx § 525. *Harris v Stem* (1947, La App, Orleans) 30 So 2d 889.

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50 USCS Appx § 518

§ 518. Exercise of rights under Act not to affect certain future financial transactions

Application by a servicemember for, or receipt by a servicemember of, a stay, postponement, or suspension pursuant to this Act [50 USCS Appx §§ 501 et seq.] in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability of that servicemember shall not itself (without regard to other considerations) provide the basis for any of the following:

- (1) A determination by a lender or other person that the servicemember is unable to pay the civil obligation or liability in accordance with its terms.
- (2) With respect to a credit transaction between a creditor and the servicemember--
 - (A) a denial or revocation of credit by the creditor;
 - (B) a change by the creditor in the terms of an existing credit arrangement; or
 - (C) a refusal by the creditor to grant credit to the servicemember in substantially the amount or on substantially the terms requested.
- (3) An adverse report relating to the creditworthiness of the servicemember by or to a person engaged in the practice of assembling or evaluating consumer credit information.
- (4) A refusal by an insurer to insure the servicemember.
- (5) An annotation in a servicemember's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information, identifying the servicemember as a member of the National Guard or a reserve component.
- (6) A change in the terms offered or conditions required for the issuance of insurance.

HISTORY:

(Oct. 17, 1940, ch 888, Title I, § 108, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2840.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 518 (Act Oct. 17, 1940, ch 888, § 108, as added March 18, 1991, P.L. 102-12, § 7, 105 Stat. 38) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section provided that the exercise of rights under this Act [50 USCS Appx §§ 501 et seq.] should not affect certain future financial transactions.

Other provisions:

Applicability of section. This section applies to any case that is not final before December 19, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 389.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Advocate (Boise Id) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kans Bar Assoc 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 Judges' Journal 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 Judges' Journal 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 519

§ 519. Legal representatives

(a) Representative. A legal representative of a servicemember for purposes of this Act [*50 USCS Appx §§ 501 et seq.*] is either of the following:

- (1) An attorney acting on the behalf of a servicemember.
- (2) An individual possessing a power of attorney.

(b) Application. Whenever the term "servicemember" is used in this Act [*50 USCS Appx §§ 501 et seq.*], such term shall be treated as including a reference to a legal representative of the servicemember.

HISTORY:

(Oct. 17, 1940, ch 888, Title I, § 109, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2840.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Applicability of section. This section applies to any case that is not final before December 19, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 520

§ 520. [Omitted]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Oct. 17, 1940, ch 888, § 200, 54 Stat. 1180; Sept. 8, 1960, P.L. 86-721, §§ 1, 2, 74 Stat. 820) was omitted in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. It related to default judgments, affidavits, bonds, and attorneys for persons in military service. For similar provisions, see *50 USCS Appx § 521*.

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50 USCS Appx § 521

§ 521. Protection of servicemembers against default judgments

(a) Applicability of section. This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.

(b) Affidavit requirement.

(1) Plaintiff to file affidavit. In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit--

(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit;
or

(B) 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.

(2) Appointment of attorney to represent defendant in military service. If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

(3) Defendant's military status not ascertained by affidavit. If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act [*50 USCS Appx §§ 501 et seq.*].

(4) Satisfaction of requirement for affidavit. The requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

(c) Penalty for making or using false affidavit. A person who makes or uses an affidavit permitted under subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection (b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

50 USCS Appx § 521

(d) Stay of proceedings. In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that--

- (1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or
- (2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(e) Inapplicability of section 202 procedures. A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 202 [50 USCS Appx § 522].

(f) Section 202 protection. If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of proceeding under section 202 [50 USCS Appx § 522].

(g) Vacation or setting aside of default judgments.

(1) Authority for court to vacate or set aside judgment. If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the servicemember, reopen the judgment for the purpose of allowing the servicemember to defend the action if it appears that--

(A) the servicemember was materially affected by reason of that military service in making a defense to the action; and

(B) the servicemember has a meritorious or legal defense to the action or some part of it.

(2) Time for filing application. An application under this subsection must be filed not later than 90 days after the date of the termination of or release from military service.

(h) Protection of bona fide purchaser. If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of this Act [50 USCS Appx §§ 501 et seq.], that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

HISTORY:

(Oct. 17, 1940, ch 888, Title II, § 201, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2840; Jan. 28, 2008, P.L. 110-181, Div A, Title V, Subtitle H, § 584(a), 122 Stat. 128.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 521 (Act Oct. 17, 1940, ch 888, § 201, 54 Stat. 1181) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to stay of proceedings where military service affects the conduct thereof. For similar provisions, see 50 USCS Appx § 522.

Amendments:

2008. Act Jan. 28, 2008, in subsec. (a), inserted ", including any child custody proceeding,".

Other provisions:

Applicability of section. This section applies to any case that is not final before December 19, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as 50 USCS Appx § 501 note.

NOTES:

Research Guide:

Federal Procedure:

10 Moore's Federal Practice (Matthew Bender 3d ed.), ch 55, Default; Default Judgment §§ 55.12, 55.25, 55.30, 55.90, 55.91.

12 Moore's Federal Practice (Matthew Bender 3d ed.), ch 60, Relief From a Judgment or Order § 60.21.

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:54, 500-505, 507, 509-512, 514, 516, 520, 522-524.

Am Jur:

9 *Am Jur 2d, Bankruptcy* § 33.

9A *Am Jur 2d, Bankruptcy* § 1096.

46 *Am Jur 2d, Judgments* § 247.

53A *Am Jur 2d, Military and Civil Defense* §§ 387, 429-432.

Forms:

10 *Bender's Federal Practice Forms, Forms* 55:60, 55:61, 55:62, 55:63, 55:64, 55:70, Federal Rules of Civil Procedure.

3 Fed Procedural Forms L Ed, Armed Forces, Civil Disturbances, and National Defense (2002) §§ 5:194-198.

4B Fed Procedural Forms L Ed, Bankruptcy (2004) § 9:1315.

17B *Am Jur Pl & Pr Forms* (2000), Military; Civil Defense, § 64.

Bankruptcy:

3 *Collier on Bankruptcy* (Matthew Bender 15th ed. rev), ch 343, Examination of the Debtor P 343.09.

1 *Collier Bankruptcy Manual*, ch 343, Examination of the Debtor P 343.09.

Annotations:

Construction and application of § 200 of Soldiers' and Sailors' Civil Relief Act of 1940, as amended (*50 USCS Appx* § 520), relating to default judgment against member of Armed Forces. 35 ALR Fed 649.

Appealability of order granting or refusing stay or continuance under Soldiers' and Sailors' Civil Relief Act because of litigant's service. 34 ALR2d 1149.

Texts:

1 *Adoption Law and Practice* (Matthew Bender), ch 4, Adoption Procedure § 4.02.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 *Advoc* (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 *J Kan BA* 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. *45 Judges' Journal* 27, Summer 2006.
 Pottorff. Contemporary applications of the Soldiers' and Sailors' Civil Relief Act. *132 Mil L Rev* 115, Spring 1991.
 Huckabee. Operations Desert Shield and Desert Storm: resurrection of the Soldiers' and Sailors' Civil Relief Act. *132 Mil L Rev* 141, Spring 1991.
 Kerig. The Absent Defendant and the Federal Soldiers' and Sailors' Civil Relief Act. *33 NYU L Rev* 975.
 Chapelle. Legal primer for advising the deployed servicemember. *34 Res Gestae* 494, May 1991.
 Thompson. The Servicemembers Civil Relief Act. *48 Res Gestae* 13, September 2004.
 Skilton. The Soldiers' and Sailors' Civil Relief Act of 1940 and the Amendments of 1942. *91 U Pa L Rev* 177.
 Anderson; Armstrong. Soldiers' and Sailors' Civil Relief Act: a legal shield for military personnel. *4 Utah BJ* 8, April 1991.

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I.IN GENERAL 1. Generally

Purpose of Soldiers' and Sailors' Civil Relief Act was to protect interests of persons in military service and to relieve them from mental distress occasioned by handicap of their response to call of their country, and to meet this situation and to give such persons in military service protection and degree of mental repose, courts were authorized and directed to intervene to end that rights and remedies of such defendants should not be impaired or jeopardized in consequence of such military service. *Syracuse Sav. Bank v Brown (1943) 181 Misc 999, 42 NYS2d 156.*

2. Purpose

Provision of former *50 USCS Appx § 520(1)* providing for appointment of counsel to represent person in military service against whom default judgment was sought to be entered was consistent with general purpose of Soldiers' and Sailors' Civil Relief Act to protect any person in military service against any personal liability where such person had no opportunity to appear in action either in person or through personal counsel; where failure of person to make such appearance was due to fact that he was in military service, his civil rights should not be prejudiced. *Re Realty Associates Secur. In re Realty Associates Sec. Corp. (1944, DC NY) 53 F Supp 1015.*

50 USCS Appx § 521

Purpose of former 50 USCS Appendix § 520(1) was to protect persons in military service from having default judgments entered against them without their knowledge. *Title Guarantee & Trust Co. v Duffy* (1944) 267 App Div 444, 46 NYS2d 441.

3. Construction

Former 50 USCS Appx § 520 was to be liberally construed to effectuate its purpose, but this did not mean that courts were to enter into field of speculation and go beyond plain import of language of statute. *Oliver v Oliver* (1943) 244 Ala 234, 12 So 2d 852.

Former 50 USCS Appx § 520 was to be liberally construed so as to insure to those in armed services a state of mind relatively at peace so far as vexations and burdens of civil litigation were concerned. *In re Larson* (1947) 81 Cal App 2d 258, 183 P2d 688.

II. REQUIREMENTS UPON DEFAULT

A. In General 4. Mandatory nature of requirements

In case against individual defendant in military service it was clear that provision of former 50 USCS Appx § 520(1) was mandatory upon court and restricted court's power to enter judgment until there had been full conformity with provisions of statute. *In re Realty Associates Sec. Corp.* (1944, DC NY) 53 F Supp 1015.

Signing and entry of judgment in condemnation action was refused where number of defendants had defaulted, until affidavit that defaulting defendants were not in military service, as required by former 50 USCS Appx § 520(1), had been filed, since such statute was mandatory on court and application of provision was not up to court's discretion. *United States v 293.530 Acres of Land, etc.* (1955, DC Utah) 127 F Supp 205.

Requirements of former 50 USCS Appx § 520(1) were mandatory and restricted court's power to render default-judgment until they had been met. *Akers v Bonifasi* (1984, MD Tenn) 629 F Supp 1212.

5. What constitutes appearance of defendant

Word "appearance" as used in former 50 USCS Appendix § 520 embraced concept of voluntary submission to jurisdiction in whatever form manifested. *Case v Case* (1955, Prob Ct) 55 Ohio Ops 317, 70 Ohio L Abs 2, 124 NE2d 856.

6.--Representation by counsel

Former 50 USCS Appx § 520, being predicated upon default of appearance by defendant, was not applicable where defendant was represented by counsel. *Shaffer v Shaffer* (1941, Montgomery Co) 69 Ohio App 447, 24 Ohio Ops 183, 35 Ohio L Abs 441, 42 NE2d 176.

Provisions of former 50 USCS Appx § 520 were not applicable in divorce action where attorney for respondent, who was serving in military service, had power of attorney, and final decree of divorce could be entered under such circumstances. *Augustine v Augustine* (1973, Pa) 32 Del Co 211.

B. Applicability to Particular Proceedings 7. In rem proceedings

Former 50 USCS Appx § 520 applied to in rem proceeding where there were number of defaulting defendants, and where no affidavit that defendants were not in military service had been filed; if § 520 did not apply to actions in rem or to those involving service of summons or publication, maximum prejudice which Act was especially intended to avoid would have been invited since servicemen out of state or otherwise in poor position to have knowledge of, or means to defend against, claims of others, would have been finally cut off in their rights without notice of proceedings or benefit of Act in any respect. *United States v 293.530 Acres of Land, etc.* (1955, DC Utah) 127 F Supp 205.

Action in rem was proper action in which to require filing of affidavit as to defendants' military service. *Kirby v Holman* (1947) 238 Iowa 355, 25 NW2d 664.

Former 50 USCS Appx § 520(1) was not applicable to foreclosure proceeding, which was one strictly in rem. *East Rutherford v Sisselman* (1953) 26 NJ Super 133, 97 A2d 431.

Former 50 USCS Appx § 520 applied only where soldiers and sailors were sued as defendants, and not to "in rem" proceedings not against named defendant. *Case v Case* (1955, Prob Ct) 55 Ohio Ops 317, 70 Ohio L Abs 2, 124 NE2d 856.

8. Petition for ex parte sequestration order

Requirement of former 50 USCS Appx § 520(1) that affidavit as to defendant's military service be filed prior to entry of default judgment was not applicable to ex parte order of sequestration, since there was nothing in Soldiers' and Sailors' Civil Relief Act which required filing of affidavit under any circumstances other than default judgment; consequently, writ of sequestration should not have been declared illegal because no affidavit was furnished by plaintiff before issuance of writ. *Holtzman's Furniture Store v Schrapf* (1949, La App, Orleans) 39 So 2d 450.

9. Probate of will

Since in Maryland, probate of will in common form was not judgment, action, or proceeding against any of next of kin, affidavit as required in former 50 USCS Appx § 520(1) was not necessary. *McLaughlin v McLaughlin* (1946) 186 Md 165, 46 A2d 307.

10. Writ of prohibition

Provisions of former 50 USCS Appx § 520(1), including affidavit requirement, did not apply to original proceeding for writ of prohibition to prohibit respondent, as special judge, from trying case in which relator was defendant. *State ex rel. McGaughey v Grayston* (1942) 349 Mo 700, 163 SW2d 335.

C.Affidavit 11. Applicability to judgment by confession

Former 50 USCS Appx § 520(1), requiring affidavit if there were default of any appearance by defendant, did not apply in case where there had been confession of judgment on behalf of defendant by attorney authorized to do so by defendant himself in writing. *Arthur v Gardner* (1941) 42 Pa D & C 549.

Affidavit requirement of former 50 USCS Appx § 520(1) was not applicable to judgment entered on mortgage bond by virtue of warrant of attorney to confess judgment contained therein. *First Federal Sav. & Loan Asso. v White* (1943) 48 Pa D & C 532.

Judgment entered by confession would not be stricken because of plaintiff's failure to comply with affidavit requirement of former 50 USCS Appx § 520(1), where affidavit was filed plainly showing that neither defendant was in military service and where such affidavit was filed on same date that defendants raised their objections to judgment and sought to have it set aside for failure of compliance with Soldiers' and Sailors' Civil Relief Act. *Industrial Fibre Products Co. v Arters* (1943) 49 Pa D & C 304.

12. Oath requirement

No proof was required that affidavit of non-military service was actually made under oath, where defendant knowingly and falsely signed instrument, with representations therein that he had sworn to its validity before a subscribing notary public. *United States v Kaufman* (1971, CA2 NY) 453 F2d 306, 35 ALR Fed 639.

Former 50 USCS Appx § 520(1) provided for showing under oath, and it was neither important nor material whether showing was made by affidavit or by complaint, where complaint was duly sworn to, since essential thing under statute appeared to be that showing was made under oath. *Bedwell v Bedwell* (1948) 68 Idaho 405, 195 P2d 1001.

13. Timeliness of affidavit

Affidavit setting forth facts showing that defendant was not in military service should have been made at time of making and entry of default judgment. *B & B Sulphur Co. v Kelley* (1943) 61 Cal App 2d 3, 141 P2d 908.

Required affidavit should as nearly as practicable have been made contemporaneously with making and entry of decree and should have set forth facts relating to military service of party as of day of judgment, and decree should have contained recital as to method of compliance with former 50 USCS Appx §§ 501 et seq. *In re Cool's Estate* (1941) 19 NJ Misc 236, 18 A2d 714.

Default judgments could not occur until expiration of time after service of process in which defendant had to appear or answer, and any affidavit made prior to such default clearly failed to meet requirements of statute. *National Bank of Far Rockaway v Van Tassell* (1942) 178 Misc 776, 36 NYS2d 478.

What was required in all cases in which no appearance had been entered, was proof by affidavit of facts filed with court before judge made final decree in matter. *Shipley v Shipley* (1942) 45 Pa D & C 286.

14. Sufficiency of affidavit

In order to comply with Soldiers' and Sailors' Civil Relief Act (SSCRA), moving party must review debtor's petition to determine debtor's occupation; this is not to say that such review would satisfy movant's responsibility with regard to SSCRA, it clearly would not, but such review is essential step in process of determining debtor's military status. *In re Templehoff* (2005, BC SD NY) 339 BR 49.

Former 50 USCS Appx § 520 did not require that certificate of chief of bureaus of several branches of military service be furnished, and where complainant could well know that defendant was exempt from military service by reason of physical incapacity, and at same time be unable to ascertain his present residence, affidavit which stated that she did not know defendant's whereabouts and was unable to locate him after diligent search was sufficient. *Oliver v Oliver* (1943) 244 Ala 234, 12 So 2d 852.

Certificate signed by Adjutant General of Army or Chief of Bureau of Navigation of Navy Department, or other proper officer, would be prima facie evidence that defendant was in military service. *Van Doeren v Pelt* (1945, Mo App) 184 SW2d 744.

15.--Statement that defendant was not in military service

Affidavit filed by assistant United States Attorney which makes no reference specifically to whether defendant is in military service, and which alludes only to "affiant's best information and belief" and sets forth no facts showing that defendant is not in military service, and contains no hint as to upon what facts that affiant's stated "best information and belief" was acquired, is insufficient, and default judgment cannot be granted thereon. *United States v Simmons* (1980, ED Tenn) 508 F Supp 552.

Copyright owners, who alleged and produced evidence that lounge owner/operator used their copyrighted musical compositions for unauthorized public performance, satisfied necessary procedural elements for obtaining default judgment by filing affidavit pursuant to 50 USCS app. § 521 attesting that lounge owner/operator was not in military service, and established to court's satisfaction that he was not infant or incompetent person. *Twist & Shout Music v Longneck Xpress, N.P.* (2006, ED Tex) 441 F Supp 2d 782.

Affidavit by process server that at time of service of process defendant was not engaged in military service of United States in any capacity, and that such information and belief as to defendant's military service was based on defendant's answer to inquiries in that respect and upon fact that at time of service, defendant was dressed in civilian clothes, was insufficient under former 50 USCS Appx § 520(1); defaults could not occur until expiration of time after service of process in which defendant had to appear or answer, and any affidavit made prior to such default clearly failed to meet requirements of statute. *National Bank of Far Rockaway v Van Tassell* (1942) 178 Misc 776, 36 NYS2d 478.

Affidavit filed under former 50 USCS Appx § 520(1) was required to set forth facts to effect that respondent was not in military service. *Wiltse v Wiltse* (1946) 159 Pa Super 131, 47 A2d 540.

Wife's affidavit, filed in divorce action, which merely stated that defendant was not member of Armed Forces was insufficient where wife's testimony indicated she had no knowledge as to her husband's whereabouts since his departure some years earlier, and under former 50 USCS Appx § 520(1) affidavit of nonmilitary service was required to set forth "facts" showing military status of absent defendant. *Melotti v Melotti* (1942) 44 Pa D & C 514.

Mere affidavit that defendant was not in military service was insufficient; affidavit had to contain facts which showed that person making affidavit knew that defendant was not in military service. *Shipley v Shipley* (1942) 45 Pa D & C 286.

Simple statement that defendant wife was not in military service was insufficient. *Patterson v Patterson* (1942) 46 Pa D & C 150; *Brown v Brown* (1942) 46 Pa D & C 701.

Wife's affidavit in action for divorce, stating that her husband was not in military service, was insufficient for failure to state facts sufficient to justify her conclusion of husband's nonmilitary status; if she was unable to obtain necessary information, she should have filed affidavit to that effect and then produced certificates from Army and Navy showing that husband was not in service. *Haws v Haws* (1943) 48 Pa D & C 294.

16. Filing of false affidavit

Period for redemption from mortgage foreclosure sale was extended by period of mortgagor's military service, where it appeared that in foreclosure proceeding mortgagee's attorney had made false affidavit of his inability to deter-

mine whether or not mortgagor was in military service. *Wilkin v Shell Oil Co.* (1951, CA10 Okla) 197 F2d 42, 1 OGR 1301, cert den (1952) 344 US 854, 97 L Ed 663, 73 S Ct 92, reh den (1952) 344 US 888, 97 L Ed 687, 73 S Ct 183 and cert den (1952) 344 US 854, 97 L Ed 663, 73 S Ct 95.

Affidavits were false, in violation of former 50 USCS Appx § 520(2), where affidavits that defendants were not in military service, although allegedly not sworn to, stated on their face that they had been sworn to and were notarized. *United States v Kaufman* (1971, CA2 NY) 453 F2d 306, 35 ALR Fed 639.

Husband who was himself attorney and who had negotiated property settlement in amicable divorce with his wife, communicating with her during proceedings and indicating her approval of default decree which was to have been entered, was not entitled to have decree set aside because of falsity of wife's affidavit stating he was not in military service at time, since terms of property settlement agreement which defendant had negotiated and signed, were strictly followed. *Wilterdink v Wilterdink* (1947) 81 Cal App 2d 526, 184 P2d 527.

Filing of false affidavit in forcible entry and detainer action, stating that defendant was not in military service of United States, did not give rise to cause of action against landlord for damages for expenses necessitated by such action or for mental anguish or for damages in nature of punitive damages. *Krobusek v Warwick Realty Co.* (1942, CP Ct) 24 Ohio Ops 344.

17. Effect of failure to comply with affidavit requirements

Plaintiff's entry of judgment in proceeding for confession of judgment on mortgage bond and warrant prior to filing of affidavit as required by former 50 USCS Appx § 520 could be neither justified nor condoned. *Federal Deposit Ins. Corp. v Steinman* (1943, DC Pa) 53 F Supp 644.

Invalid judgment under Soldiers' and Sailors' Civil Relief Act was considered voidable, but not void. *Davidson v General Finance Corp.* (1968, ND Ga) 295 F Supp 878.

All Soldiers' and Sailors' Civil Relief Act affidavits must comply not only with Bankr. S.D.N.Y. R. 7055-1, but also with 50 USCS app. § 521(b)(1). *In re Templehoff* (2005, BC SD NY) 339 BR 49.

Default judgment against serviceman was at most voidable, and therefore subject to regular reversal on appeal had he proceeded within 90 days of his discharge and demonstrated injury to himself, where judgment had been entered against him while he was in military service and without proper affidavit being filed, and where servicemen had not complied with requirement that he file application within 90 days after discharge. *Hudson v Hightower* (1948) 307 Ky 295, 210 SW2d 933.

Filing of military affidavit was not made jurisdictional matter, since Soldiers' and Sailors' Civil Relief Act authorized entry of judgment notwithstanding absence of affidavit when order of court directing such entry had been secured; thus, failure to file such affidavit did not affect judgment, which was not void, but only voidable, subject to being vacated at instance of serviceman, such failure being only irregularity. *Thompson v Lowman* (1958, Fayette Co) 108 Ohio App 453, 9 Ohio Ops 2d 407, 80 Ohio L Abs 213, 155 NE2d 258; *Hynds v Ada* (1945) 195 Okla 465, 158 P2d 907.

18.--Title to property

Fact that affidavit that defendant was not in military service was not made until after default decree was entered did not render title to property involved in action unmerchantable; whether or not affidavit was filed, judgment was voidable in sense that it could have been set aside in proper case on showing of prejudice from military service, but this possibility was not such defect in title as to render it unmerchantable. *Bristow v Pagano* (1947) 238 Iowa 1075, 29 NW2d 423.

19. Standing to assert noncompliance

Requirement of former 50 USCS Appx § 520(1) with respect to filing of affidavit showing that defendant was not in military service was solely for protection of members of military forces, and thus defendant, who was not in military service, was without standing to complain because there was not affidavit by the plaintiff setting forth facts showing that defendant was not in military service. *Arenstein v Jencks* (1944, Tex Civ App) 179 SW2d 831.

D.Appointment of Attorney

1.In General 20. Necessity of appointment

By barring entry of judgment against person in military service who was defendant, unless counsel was designated by court, Congress provided in former 50 USCS § 520(1) that legal requirement should have been followed prior to entry of any judgment, and thereby made provision mandatory on court and restricted court's power to enter judgment until there had been full conformity with provisions of statute in cases in which statute was applicable. *In re Realty Associates Sec. Corp.* (1944, DC NY) 53 F Supp 1015.

There was no exception anywhere in former 50 USCS Appx § 520 to requirement that attorney be appointed to represent defendant in military service. *General Motors Acceptance Corp. v Wooden* (1963, Civ Ct of Record) 21 Fla Supp 36.

Appointment of attorney to represent party in military service should be made whenever any question arises which makes it imperative that rights of all parties be protected. *In re Cool's Estate* (1941) 19 NJ Misc 236, 18 A2d 714.

Appointment of attorney under former 50 USCS Appx § 520 to represent absent defendant serving in Armed Forces was discretionary with court; such discretion could not be reviewed absent showing of material injury to defendant's interests. *Mims Bros. v N. A. James, Inc.* (1943, Tex Civ App) 174 SW2d 276.

21.--Entry of appearance by service member

In failing to appoint attorney to represent defaulting defendant, who was in military service at time, trial court erred, since defendant had not been notified of hearing, and was not "represented" at time of hearing, within meaning of Act; mere service of process upon attorneys of record in divorce action was not sufficient to make defendant "represented" as provided in statute so as to make it unnecessary for court to appoint attorney for him before default judgment could be entered. *Allen v Allen* (1947) 30 Cal 2d 433, 182 P2d 551.

Appointment of counsel need not be made under Soldiers' and Sailors' Civil Relief Act prior to entry of default judgment where defendant has entered appearance. *Allain v Allain* (1960, 3d Dist) 24 Ill App 2d 400, 164 NE2d 611.

Soldiers' and Sailors' Civil Relief Act does not require appointment of attorney to represent all persons in military service who become defendants in civil actions, but only those who are in default of appearance; there was in no sense default or failure of appearance where defendant husband voluntarily appeared in his wife's divorce action; fact that he thereafter failed to defend and waived pleading did not bring him within provisions of Soldiers' and Sailors' Civil Relief Act relating to default judgments. *Koser v Koser* (1947) 148 Neb 277, 27 NW2d 162.

It was not error for court to proceed without appointing attorney to represent defendant in civil action for accounting of trust funds, where there had been no default of any appearance by defendant, since he had duly filed answer, depositions had been taken, his counsel appeared and moved for continuance, which was granted, and defendant again appeared at later date and moved for another continuance. *Lightner v Boone* (1942) 222 NC 205, 22 SE2d 426, affd (1943) 319 US 561, 87 L Ed 1587, 63 S Ct 1223, reh den (1943) 320 US 809, 88 L Ed 489, 64 S Ct 26.

22.----Retention of own attorney

Provision of former 50 USCS Appx § 520 for appointment of counsel to represent person in military service did not apply where defendant had appointed his own attorney to protect his interests. *Reynolds v Reynolds* (1943) 21 Cal 2d 580, 134 P2d 251.

Husband's rights under Soldiers' and Sailors' Civil Relief Act had not been violated, although neither he nor any attorney for him appeared, where notice of wife's motion for modification of support order was served upon husband's attorney of record; provisions for appointment of attorney to represent absent defendant have no application where defendant already has attorney of record. *Russ v Russ* (1945) 68 Cal App 2d 400, 156 P2d 767.

Fact that guardian ad litem was appointed to represent defendant did not affect question, since former 50 USCS Appx § 520(3) provided that "no attorney appointed under this Act to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts," so that guardian ad litem could not waive any rights of defendant either by his appearance or by any other action. *Rutherford v Bentz* (1952) 345 Ill App 532, 104 NE2d 343.

Acceptance of service papers by attorney appointed under Soldiers' and Sailors' Civil Relief Act to represent person in military service was not equivalent either of personal service on respondent or of entry of appearance by attorney for respondent; it simply served as notice to appointed attorney that he had task to perform, that is, to protect interests of serviceman. *Heimbach v Heimbach* (1944) 53 Pa D & C 350.

Protection afforded serviceman under former 50 USCS Appx § 520(3) from any waiver of his rights by legal counsel was intended to apply only where attorney acted under authority of court rather than authority of serviceman. *Sanders v Sanders* (1964) 63 Wash 2d 709, 388 P2d 942.

23. Persons entitled to appointment of attorney

Former 50 USCS Appx § 520(3) applied only to case where it was defendant who was person in "military service," and did not apply to cases where attorney was representing plaintiffs and not defendant. *Spampinato v M. Breger & Co.* (1955, CA2 NY) 226 F2d 742, cert den (1956) 350 US 973, 100 L Ed 844, 76 S Ct 449, reh den (1956) 350 US 1009, 100 L Ed 871, 76 S Ct 652.

Provisions of former 50 USCS Appx § 520 for appointment of attorney for defendant in military service applied only to defendant in "active service" or "on active duty" and to those training or studying under supervision of United States preliminary to induction into military service, and did not apply to retired army officer. *Lang v Lang* (1941) 176 Misc 213, 25 NYS2d 775.

Proceeding on petition for determination of heirship and final distribution in which defendant obtained his deeds from heirs, conveying land to him, was not invalid because of failure to appoint attorney to represent heir at law of decedent who might have been in military service; former 50 USCS Appx § 520 did not require appointment of attorney for defendant who might be in military service, but only for defendant who actually was in military service, and then only upon application for order. *Snapp v Scott* (1946) 196 Okla 658, 167 P2d 870.

24.--Partnership

Relief provided by former 50 USCS Appx § 520, dealing with appointment of attorney for defendant in military service, was available in cases of partnership, when one of defendants was member of partnership against which judgment was sought, only when presence of partner in military service was necessary in contesting action. *New York C. R. Co. v Cassler* (1945) 54 Pa D & C 562.

25. Timeliness

Suggestion for appointment of counsel to represent holders of securities affected by adjustment plan who might be in Armed Forces was not timely, having been made only at beginning of final hearing, and such appointment made at that late date, without adequate time for preparation, would have been substantially futile. *In re Baltimore & O. R. Co.* (1945, DC Md) 63 F Supp 542, cert den (1946) 328 US 871, 90 L Ed 1641, 66 S Ct 1375, reh den (1946) 329 US 821, 91 L Ed 699, 67 S Ct 34 and cert den (1946) 328 US 871, 90 L Ed 1641, 66 S Ct 1375, reh den (1946) 329 US 823, 91 L Ed 700, 67 S Ct 108.

26. Authority of attorney appointed by court

Under former 50 USCS Appendix §§ 520 and 521, most that attorney appointed to represent defendant in Armed Forces could do was to move for temporary stay of proceedings, where soldier was living within jurisdiction and was sui juris at time that probate proceedings were instituted, he had interposed no objection to probate of will, his sister had interest in estate which was identical to his, and she alone objected to probate of will and appeared by attorney and in person at first trial. *In re Ehlke's Estate* (1947) 250 Wis 583, 27 NW2d 754, amd (1947) 250 Wis 591, 28 NW2d 884.

27. Compensation of attorney

State human services officials were entitled to qualified immunity on servicemember's claim that they failed to inform her of her right to counsel in abuse and neglect proceedings involving her daughter who was abused by stepfather, since SSCRA imposed no obligation on officials to inform her of her right to attorney or to request stay of action. *Garramone v Romo* (1996, CA10 NM) 94 F3d 1446.

Serviceman could not recover fees for unsuccessful motion by attorney appointed under former 50 USCS Appendix § 520 where, subsequent to motion, serviceman agreed to pay fees and cost under stipulation of dismissal. *United States v Henagan* (1982, MD Ala) 552 F Supp 350.

With respect to attorney appointed under former 50 USCS § 520(1) or (3), although ordinarily services rendered by counsel so appointed were to be regarded as patriotic duty for which no compensation would be expected, in cases in which allowances were commonly made according to usual probate practice, there seemed no good reason why reasonable compensation should not be awarded. *In re Cool's Estate* (1941) 19 NJ Misc 236, 18 A2d 714.

Although Soldiers' and Sailors' Civil Relief Act did not specifically or expressly mention matter of compensation, within inherent power of court, independent of act or rule, court could properly allow attorney appointed to represent defendant in military service in mortgage foreclosure action taxable costs, since country was not at war; in case of state of war, attorney appointed to represent absent military defendant under former 50 USCS Appx § 520 should have regarded it as patriotic duty to act regardless of compensation. *Weynberg v Downey* (1941) 176 Misc 196, 25 NYS2d 600.

Attorneys appointed to represent defendants in military service under former 50 USCS Appx § 520 accepted such positions during wartime without hope of compensation, as their contribution to protection of servicemen. *Heimbach v Heimbach* (1944) 53 Pa D & C 350.

Compensation for attorney appointed by court to represent person in military service to be measured by compensation commonly allowed those in public service, will contest necessitating such compensation on same basis as that of guardian ad litem; most that attorney appointed could recover as attorneys' fees was reasonable compensation for making appearance requesting stay, since that was extent of his power to act on behalf of serviceman. *In re Ehlke's Estate* (1947) 250 Wis 583, 27 NW2d 754, and (1947) 250 Wis 591, 28 NW2d 884.

2. Particular Proceedings 28. Bankruptcy

Proceeding for reorganization under Chapter X of Bankruptcy Act did not fall into category of cases contemplated by "mandatory" provisions regarding appointment of counsel under former 50 USCS Appx § 520. *In re Realty Associates Sec. Corp.* (1944, DC NY) 53 F Supp 1015.

With respect to petition for railroad adjustment under Bankruptcy Act, in which counsel for 2 small bondholders suggested that court should, under Soldiers' and Sailors' Civil Relief Act, appoint counsel to represent holders of securities affected by plan who might be in Armed Forces, there was no necessity for such appointment, since very nature of case required careful independent consideration by court with respect to rights and interests of all security holders affected by plan who might be in Armed Forces and not represented by counsel. *In re Baltimore & O. R. Co.* (1945, DC Md) 63 F Supp 542, cert den (1946) 328 US 871, 90 L Ed 1641, 66 S Ct 1375, reh den (1946) 329 US 821, 91 L Ed 699, 67 S Ct 34 and cert den (1946) 328 US 871, 90 L Ed 1641, 66 S Ct 1375, reh den (1946) 329 US 823, 91 L Ed 700, 67 S Ct 108.

Appearances in reorganization proceeding by bondholders having interests identical with those of other bondholders in Armed Forces rendered appointment of attorney to represent bondholders in military service unnecessary. *Irving Trust Co. v Fifteen Park Row Corp.* (1944) 182 Misc 1044, 51 NYS2d 724, affd (1946) 270 App Div 920, 62 NYS2d 607, app den (1946) 270 App Div 999, 63 NYS2d 826.

29. Mortgage foreclosure

Court had right and duty, under former 50 USCS Appx § 520(1), to appoint attorney to represent and protect interests of any defendant who might be in military service and could not be found, where it appeared in mortgage foreclosure action that there were unknown defendants, some of whom might be engaged in military service. *Syracuse Sav. Bank v Brown* (1943) 181 Misc 999, 42 NYS2d 156.

30. Probate

Since presentation of will for probate was not adversary proceeding, and since surviving spouse or other next of kin were not required under state statute to enter any appearance before will could be admitted to probate, provisions of former 50 USCS Appx § 520 for appointment of attorney to represent person in military service did not have to be complied with on part of executor or anyone else as condition precedent to issuing of letters testamentary. *Case v Case* (1955, Prob Ct) 55 Ohio Ops 317, 70 Ohio L Abs 2, 124 NE2d 856.

31. Miscellaneous

It was court's duty, under former 50 USCS Appx § 520, to appoint attorney to represent defendant, where defendant, military officer on active duty, did not appear, and employed no counsel, but indicated his willingness to permit defaults to be taken against him. *United States v Bennett* (1944, DC Wash) 57 F Supp 670.

Inasmuch as judgment was taken subsequent to date for filing answer, it was valid, since, under Soldiers' and Sailors' Civil Relief Act, there was no legal requirement that 10 days must elapse after appointment of attorney for defendants before default judgment could be taken, and no authority had been cited by defendants to that effect. *Kirby v Agra Gin Co.* (1959, Okla) 347 P2d 223.

III.SETTING ASIDE JUDGMENT

A.In General 32. "Judgment"

Definition of "judgment" as final determination of rights of parties in former 50 USCS Appx § 520(4) included decrees of equity and probate courts. *Winslow v Harold G. Ferguson Corp. (1944) 25 Cal 2d 274, 153 P2d 714.*

Confirmation sale in mortgage foreclosure action was judgment within meaning of former 50 USCS Appx § 520(4), and petition to set aside sale on ground that one of defendants was in military service stated cause of action under former 50 USCS Appx § 520(4). *State ex rel. Comm'rs of Land Office v Warden (1946) 197 Okla 97, 168 P2d 1010.*

In order to effectuate aims and purposes of former 50 USCS Appx § 520(4), decree changing name of minor child had to be classified as "judgment" under definition of that term, because it was final determination of rights of all persons interested. *In re Larson (1947) 81 Cal App 2d 258, 183 P2d 688.*

33. Persons entitled to claim benefits of provision; "military service"

Protection afforded nonappearing defendant serviceman by former 50 USCS Appx § 520 did not apply to one who had deserted from armed forces, since deserter did not qualify as one in military service and entitled to protection of statute. *Driver v Driver (1980, Super Ct) 36 Conn Supp 229, 416 A2d 705.*

Defendant who was not at time of trial in military service could not have default judgment against her declared null and void on basis of affidavit by plaintiff who admitted he had no personal knowledge that defendant was not in military service, since protection of 50 USCS Appx § 520 extended only to defendant in active service. *Hernandez v King (1982, La App 4th Cir) 411 So 2d 758.*

Provisions of former 50 USCS Appx § 520 for opening default judgment for defendant who was at time of entry of judgment in military service, applied only to defendant "in active service" or "on active duty" and to those training or studying under supervision of United States preliminary to induction into military service, and did not apply to retired army officer. *Lang v Lang (1941) 176 Misc 213, 25 NYS2d 775.*

34.--Interested party to proceedings

While defendant, who was in Armed Forces and incarcerated in prisoner of war camp overseas at time of lower court decree, was not necessary party to proceeding to have minor's name changed, because appellant was divorced from his daughter's mother, he was certainly, as father of child, "an interested party" whose interests would be materially affected by proceeding in question, and if broad and sweeping relief provisions of Soldiers' and Sailors' Civil Relief Act were to be liberally construed to effectuate its purpose, appellant as such "interested party" had status of "defendant" under terms of Act, and thus was entitled to have default judgment opened. *In re Larson (1947) 81 Cal App 2d 258, 183 P2d 688.*

35. Validity of judgment until challenged

Because of provision of former 50 USCS Appx § 520(4) for opening default judgment entered without compliance with other provisions of former § 520, proceedings contrary to § 520 were valid until properly attacked, since § 520(4), prescribing procedure to be followed by serviceman whose defense had been prejudiced by reason of his military service, would have been mere surplusage had Congress intended to condemn as void those judgments and orders entered contrary to other provisions of former § 520. *Allen v Allen (1947) 30 Cal 2d 433, 182 P2d 551; People v Vogel (1956) 46 Cal 2d 798, 299 P2d 850.*

Inasmuch as default judgment rendered without compliance with provisions of former 50 USCS Appx § 520 was not void, but merely voidable, such judgment, sought to be enforced in another state, was, until vacated, entitled to recognition under principles of full faith and credit. *Courtney v Warner (1974, Fla App D4) 290 So 2d 101.*

Defendant's petition to set aside sale under foreclosure was filed in apt time where petition was filed within 90 days from time defendants first learned of foreclosure proceeding. *Kramer v Ginger (1950) 341 Ill App 368, 93 NE2d 437.*

Judgment against serviceman was at most voidable and therefore subject to regular reversal on appeal. *Hudson v Hightower (1948) 307 Ky 295, 210 SW2d 933.*

36. Waiver

Defendant's motion to have default judgment opened was properly refused, where it appeared that, having ample time and full opportunity to defend, he chose not to do so, so that he had not been prejudiced by taking of decree against him, and his conduct constituted waiver of his rights under Soldiers' and Sailors' Civil Relief Act. *Bedwell v Bedwell* (1948) 68 Idaho 405, 195 P2d 1001.

B.Particular Factors and Circumstances 37. Default for want of appearance

Defendant was not entitled to benefit from provisions of former 50 USCS Appx § 520(1) where defendant was not defaulted for want of any appearance, but, on contrary, cause was regularly set for trial and was submitted, and evidence was taken upon issues joined by parties. *Sharp v Grip Nut Co.* (1945) 116 Ind App 106, 62 NE2d 774.

Former 50 USCS Appx § 520(4) was not intended to prevent judgment by default against person in military service where defendant was fully informed of pendency of action and had adequate time and opportunity to appear and defend, or otherwise protect his right. *Burgess v Burgess* (1962, Sup) 234 NYS2d 87.

Former 50 USCS Appx § 520(4) was limited by its express terms to judgments entered on default of any appearance by defendant, and where there was no such default, defendant could not have judgment reopened under former § 520(4). *Lightner v Boone* (1947) 228 NC 199, 45 SE2d 261.

38. Meritorious defense

By providing in former 50 USCS Appx § 520(4) opportunity for application to be made by person in military service on his return to civilian life to reopen proceeding if he had meritorious defense, Congress provided against any possible miscarriage of justice if facts which might be solely in knowledge of defendant justified different judgment. *In re Realty Associates Sec. Corp.* (1944, DC NY) 53 F Supp 1015.

Defendant alleged in his answer meritorious defense where motion to set aside default judgment was accompanied by required affidavits setting forth facts upon which defendant based his claim of excusable neglect, and where it incorporated by reference answer to complaint, which answer set forth facts on which defendant based his claim of meritorious defense, including denial of material allegations of complaint and pleading of full satisfaction and discharge of plaintiff's claim. *Gray v Dillon* (1964) 97 Ariz 16, 396 P2d 251.

Phrase in former 50 USCS Appx § 520(4), "provided it is made to appear that the defendant has a meritorious or legal defense", meant that persons seeking to have default judgment opened "must" have been made to appear to have meritorious or legal defense; denial of defendant's petition to open default judgment was proper where motion to vacate was deficient as to requirement of showing existence of meritorious defense, where defendant failed to set out what defense was, and mere statement that meritorious defense existed was not sufficient to meet requirements of statute. *La Mar v La Mar* (1973) 19 Ariz App 128, 505 P2d 566.

Where only asserted meritorious defense to action had been refuted, there did not exist one of essential grounds required by Soldiers' and Sailors' Relief Act to authorize setting aside and reopening of judgment, and motion would be denied. *Strother v Kennedy* (1962) 106 Ga App 381, 127 SE2d 25.

Fact that defendant wife was deprived of aid and assistance of defendant husband in operation of business was meritorious defense under former 50 USCS Appx § 520(4) entitling defendants to order vacating judgment in rem against them. *Kirby v Holman* (1947) 238 Iowa 355, 25 NW2d 664.

Defendant was not entitled to relief by way of having judgment vacated where it was not made to appear that he had meritorious or legal defense to action or some part thereof; any legal defense was meritorious defense, and consequently, finding that defendant had no meritorious defense was finding that he had "no meritorious or legal defense" within meaning of former 50 USCS Appx § 520(4). *Lightner v Boone* (1947) 228 NC 199, 45 SE2d 261.

Trial court properly overruled defendant's motion for leave to file answer, where defendant had not made proper showing of meritorious or legal defense to action, as required by former 50 USCS Appx § 520(4) before reopening of default judgment could be granted. *Thompson v Lowman* (1958, Fayette Co) 108 Ohio App 453, 9 Ohio Ops 2d 407, 80 Ohio L Abs 213, 155 NE2d 258.

Under provisions of former 50 USCS Appx § 520(4), it was necessary not only that defendant plead meritorious defense, but also that he prove such defense. *Flagg v Sun Inv. & Loan Corp.* (1962, Okla) 373 P2d 226.

Court erred in refusing to permit defendant to have judgment opened where he had meritorious defense within meaning of former 50 USCS Appx § 520(4) in that his petition alleged that he had been unable to look after his interests

while he was in service because he was away from home, engaged in training of troops and stationed in Philippines; decree in question failed to comply with Soldier's and Sailors' Civil Relief Act, in that no affidavit was filed showing that defendant was member of Armed Forces although complainants well knew this to be the case, and court was not apprised of fact, and consequently attorney was not appointed to defend defendant, with result that his interests were greatly prejudiced. *Mitchell v Richardson* (1948) 187 Tenn 189, 213 SW2d 111.

Order vacating judgment in rem in chattel mortgage foreclosure action on ground of irregularity or fraud practiced in obtaining decree and unavoidable casualty or misfortune preventing defendants from defending, was granted, where there was complete showing that case should and probably would have been disposed of without decree and foreclosure sale if court had been apprised of fact that one of defendants was in military service, and where business property in question had been voluntarily turned over to plaintiffs before judgment was taken, thus being perfect case for receiver-ship without foreclosure sale. *Kirby v Holman* (1947) 238 Iowa 355, 25 NW2d 664.

Defendant was not entitled to have judgment entered against him while he was serving in Armed Forces reopened under former 50 USCS Appx § 520(4) where there was no legal defense shown. *Feick v Allison* (1945) 54 Pa D & C 618; *Commercial Credit Corp. v Smith* (1945) 143 Tex 612, 187 SW2d 363.

39. Prejudice

Final order of dissolution of marriage, entered on default judgment against serviceman, was improperly set aside where defendant serviceman and his attorney received notice of hearing and failed to appear and defendant made no effort to preserve his rights at proper times, although he received prior notice of every step taken in proceeding, since defendant's rights were not prejudicially affected as result of his military service, but from his own intentional and informed actions. *Swartz v Swartz* (1982, Fla App D2) 412 So 2d 461.

Term "prejudiced" in former 50 USCS Appx § 520 had same meaning as term "materially affected" in former § 521; fact of notice and service to defendant did not alone overcome prima facie prejudice shown by absence of defendant in military service, nor was prima facie prejudice overcome by showing that defendant had liability insurance in amount of default judgment taken against him, since evidence did not show that defendant's insurer had notice of suit before judgment or that insurer would necessarily be liable for judgment under its insurance contract. *Saborit v Welch* (1963) 108 Ga App 611, 133 SE2d 921.

Defendant's application under former 50 USCS Appx § 520(4) to reopen default decree for reason that he was prejudiced by his military service in making his defense, was denied where evidence indicated that by reason of defendant's military tour of duty, interest of plaintiff, as well as that of defendant, was adversely affected. *Price v Phillips* (1943, La App 1st Cir) 12 So 2d 59.

Since default judgment in case was void for lack of proper service, defendant could have sought relief pursuant to former 50 USCS Appx § 520(4) seeking to have judgment set aside on proper showing of prejudice. *Doyle v Jorgensen* (1966) 82 Nev 196, 414 P2d 707 (ovrld in part by *Gassett v Snappy Car Rental* (1995) 111 Nev 1416, 906 P2d 258).

Although there had been no finding that defendant had not been "prejudiced by reason of his military service or in making his defense" to action, since it had been found that defendant had had full opportunity to present his defense, that he had presented all facts available to him, and that such facts did not tend to establish meritorious defense, he had no valid defense, and had not been prejudiced. *Lightner v Boone* (1947) 228 NC 199, 45 SE2d 261.

Provisions of former 50 USCS Appx § 520, especially former § 520(4), were not applicable where minor defendant was not in any way prejudiced by being in military service, since his rights could have been protected at all times by his guardian ad litem, and therefore defendant could not avail himself of statute. *Smith v Fitch* (1946) 25 Wash 2d 619, 171 P2d 682.

Defendant was not "prejudiced by reason of his military service" as that phrase was used in former 50 USCS Appx § 520(4) where facts showed that trial court found interests of each of defendants as tenants in common were alike, that their defense was common one, that brother of defendant had been designated by all others to represent each and all of them in cause with full power and authority to take such action in their behalf as might be deemed proper, and that he acted under this authority. *Bell v Niven* (1945) 225 NC 395, 35 SE2d 182.

40. Miscellaneous

Lower court did not abuse its discretion in refusing to open default judgment entered against defendant who, at time of entry of judgment, was serving overseas in Armed Forces, where record showed that defendant was fully informed of

pendency of action and took no steps, such as attempting to stay proceedings or addressing letter to court that he wanted opportunity to defend, to protect any rights he may have cared to assert. *La Mar v La Mar* (1973) 19 Ariz App 128, 505 P2d 566.

Trial court's refusal to open default judgment was justified where attorney's affidavit seeking reopening of divorce decree against husband alleged only that husband had been confined in army hospital and did not claim that he was prejudiced in that he could not have left there long enough to have come to trial, and wife's counteraffidavit stated that husband had spent some time prior to trial away from hospital and at another city, and it also appeared that even though in military service, defendant had had attorney of record until shortly before trial, when attorney withdrew with defendant's consent. *Kromm v Kromm* (1948) 84 Cal App 2d 523, 191 P2d 115.

C.Practice and Procedure 41. Jurisdiction

Federal court has no jurisdiction to enjoin enforcement of judgment of state court in domestic relations case, on grounds of violation of rights granted state case defendant under Soldiers' and Sailors' Civil Relief Act (50 USCS §§ 501 et seq.), since judgments entered in violation of Act were voidable only, not void, and had to be attacked in court where rendered. *Sarfaty v Sarfaty* (1982, ED Pa) 534 F Supp 701.

Court was without jurisdiction over action under former 50 USCS Appx § 520, where complaint sought injunction against state order garnishing serviceman's pay until state hearing could be obtained, because action was impermissible collateral attack on state judgment. *Scheidegg v Department of Air Force* (1989, DC NH) 715 F Supp 11, affd without op (1990, CA1 NH) 915 F2d 1558, reported in full (1990, CA1 NH) 1990 US App LEXIS 17624.

42. Timeliness of motion

Motion to set aside default judgment entered while defendant was in military service should have been dismissed on demurrer on ground that it was not brought within 90-day time limit fixed by statute for bringing such motion, where motion showed on its face that movant was discharged from military service on September 27, 1945, and that motion was filed upon March 4, 1946; time limit fixed by statute was not altered by allegation that movant did not learn of existence of judgment until within 90 days of date upon which motion was filed. *Morris Plan Bank v Hadsall* (1947) 202 Ga 52, 41 SE2d 881.

43. Burden of proof

With respect to provisions of Soldiers' and Sailors' Civil Relief Act, including former 50 USCS Appx § 520(4), burden of proving that rights of person were materially affected by his absence in military service was on one claiming prejudice; bare fact of induction into military service of 2 of many beneficiaries of reputed will involved in suit during proceedings was manifestly not enough to bring such defendants under provision of Act. *Thompson v Anderson* (1946) 208 SC 208, 37 SE2d 581.

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*** CURRENT THROUGH PL 110-353, APPROVED 10/7/2008 ***
*** WITH GAPS OF 110-343, 110-344, 110-346 and 110-351 ***

TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
SERVICEMEMBERS CIVIL RELIEF ACT
TITLE II. GENERAL RELIEF

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50 USCS Appx § 522

§ 522. Stay of proceedings when servicemember has notice

(a) Applicability of section. This section applies to any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant at the time of filing an application under this section--

- (1) is in military service or is within 90 days after termination of or release from military service; and
- (2) has received notice of the action or proceeding.

(b) Stay of proceedings.

(1) Authority for stay. At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.

(2) Conditions for stay. An application for a stay under paragraph (1) shall include the following:

(A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.

(B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

(c) Application not a waiver of defenses. An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).

(d) Additional stay.

(1) Application. A servicemember who is granted a stay of a civil action or proceeding under subsection (b) may apply for an additional stay based on continuing material effect of military duty on the servicemember's ability to appear. Such an application may be made by the servicemember at the time of the initial application under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.

(2) Appointment of counsel when additional stay refused. If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

(e) Coordination with section 201. A servicemember who applies for a stay under this section and is unsuccessful may not seek the protections afforded by section 201 [50 USCS Appx § 521].

(f) Inapplicability to section 301. The protections of this section do not apply to section 301 [*50 USCS Appx § 531*].

HISTORY:

(Oct. 17, 1940, ch 888, Title II, § 202, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2842; Dec. 10, 2004, P.L. 108-454, Title VII, § 703, 118 Stat. 3624; Jan. 28, 2008, P.L. 110-181, Div A, Title V, Subtitle H, § 584(b), 122 Stat. 128.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 522 (Act Oct. 17, 1940, ch 888, § 202, 54 Stat. 1181) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to fines and penalties on contracts, etc. For similar provisions, see *50 USCS Appx § 523*.

Amendments:

2004. Act Dec. 10, 2004, in subsec. (a), in the introductory matter, inserted "plaintiff or".

2008. Act Jan. 28, 2008, in subsec. (a), in the introductory matter, inserted ", including any child custody proceeding,"

Other provisions:

Stay of judicial proceedings. Act March 18, 1991, P.L. 102-12, § 6, 105 Stat. 37, provides:

"(a) Stay of action or proceeding. In any judicial action or proceeding (other than a criminal proceeding) in which a member of the Armed Forces described in subsection (b) is involved (either as plaintiff or defendant), the court shall, upon application by such member (or some other person on the member's behalf) at any stage before final judgment is entered, stay the action or proceeding until a date after June 30, 1991.

"(b) Members covered. A member of the Armed Forces is covered by subsection (a) if at the time of application for the stay of a judicial action or proceeding the member--

"(1) is on active duty; and

"(2) is serving outside the State in which the court having jurisdiction over the action or proceeding is located.

"(c) Definition. For purposes of this section, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam."

Applicability of section. This section applies to any case that is not final before December 19, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

10 Moore's Federal Practice (Matthew Bender 3d ed.), ch 55, Default; Default Judgment § 55.90.

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:504, 512, 513.

Am Jur:

53A Am Jur 2d, Military and Civil Defense §§ 390, 398, 403.

Forms:

3 Fed Procedural Forms L Ed, Armed Forces, Civil Disturbances, and National Defense (2002) §§ 5:172-181, 183, 185-192, 204.

Annotations:

Provisions of Soldiers' and Sailors' Civil Relief Act relating to taxation of property of military personnel. 32 ALR2d 618.

Appealability of order granting or refusing stay or continuance under Federal Civil Relief Act because of litigant's military service. 34 ALR2d 1149.

Soldiers' and Sailors' Civil Relief Act of 1940, as amended, as affecting matrimonial actions. 54 ALR2d 390.

Soldiers' and Sailors' Civil Relief Act of 1940, as amended, as affecting negligence actions. 75 ALR2d 1062.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Advoc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 Judges' Journal 27, Summer 2006.

Seganish. Civil Litigation Involving Persons in the Military. 39 Md BJ 52, July/August 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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I.IN GENERAL 1. Generally

Language of Soldiers' and Sailors' Civil Relief Act, as to granting of stays, was permissive, but it reflected instructive legislative policy to place person engaged in military establishment beyond effect of urgencies and uncertainties pending litigation, and to allow him reasonable period following his discharge to reorient himself with view to trial of his cause. *Bowsman v Peterson* (1942, DC Neb) 45 F Supp 741; *Koons v Nelson* (1945) 113 Colo 574, 160 P2d 367; *Semler v Oertwig* (1943) 234 Iowa 233, 12 NW2d 265; *Application of Marks* (1944) 181 Misc 497, 46 NYS2d 755; *Jaworski v McCloskey* (1944, Sup) 47 NYS2d 26, affd (1944) 267 App Div 981, 48 NYS2d 799; *Galanek v Guntzer* (1945) 184 Misc 485, 54 NYS2d 118.

Stay was not automatic by reason of one's military personnel status, but had to be justified by sufficient showing of prejudice if civil action was allowed to proceed. *Allfirst Bank v Lewis (In re Lewis)* (2001, BC DC Md) 257 BR 431, 37 BCD 65.

50 USCS Appx §§ 501 et seq. does not grant absolute right to stay whenever it is made to appear that one of parties is in military service. *Johnson v Johnson* (1943) 59 Cal App 2d 375, 139 P2d 33.

2. Relationship with common law

50 USCS §§ 501 et seq. is but declaratory of common law, except insofar as it requires courts to grant continuances. *State ex rel. Buck v McCabe* (1942) 140 Ohio St 535, 24 Ohio Ops 552, 45 NE2d 763.

3. Stay compared to continuance

There is no sound reason for drawing nice distinctions between continuance of cause and stay of proceedings; in either event matter is one resting in sound discretion of the trial court. *Ex parte Taylor* (1945) 247 Ala 308, 24 So 2d 217.

4. Relationship with stays in other actions

Showing required for stay under 50 USCS Appx §§ 501 et seq. is less than that required for stay independent of the Act. *Miller v Miller* (1945) 26 Cal 2d 119, 156 P2d 931; *Johnson v Johnson* (1943) 59 Cal App 2d 375, 139 P2d 33.

II.CONSTRUCTION OF TERMS 5. "Plaintiff" and "defendant"

Word "defendant" in 50 USCS Appx §§ 501 et seq. should be given liberal construction. *In re Adoption of a Minor* (1943, App DC) 78 US App DC 48, 136 F2d 790.

In action by injured motorist against out-of-state driver in which plaintiff's uninsured motorist carrier participated by filing pleadings in name of out-of-state driver, trial court did not err in denying stay requested by carrier on behalf of out-of-state driver under Soldiers' & Sailors' Civil Relief Act, which provides for stay of proceedings in which persons in military service are parties, since out-of-state driver was never personally served with process and thus he never became party to proceeding. *Smith v Phillips* (1984) 172 Ga App 459, 323 SE2d 669.

Liberal interpretation had to be given to words "plaintiff" and "defendant" in former 50 USCS Appx § 521 and they were not to be construed in their narrow formal sense, but covered those who were petitioners, respondents, movants or interveners. *Shire v Superior Court* (1945) 63 Ariz 420, 162 P2d 909.

6. "Prejudice"

Term "prejudiced" in former 50 USCS Appx § 520 had same meaning as term "materially affected" in former 50 USCS Appx § 521. *Saborit v Welch* (1963) 108 Ga App 611, 133 SE2d 921.

III.APPLICABILITY 7. Proceedings which may be stayed

Soldiers' and Sailors' Civil Relief Act is applicable to bankruptcy proceedings. *Allfirst Bank v Lewis (In re Lewis)* (2001, BC DC Md) 257 BR 431, 37 BCD 65.

Former 50 USCS Appx § 521 was applicable alike to state and federal courts. *State ex rel. Stenstrom v Wilson* (1951) 234 Minn 570, 48 NW2d 513.

8. Stage of proceedings in which stay may be sought

Contention that motion for continuance might not be timely was without merit, since Soldiers' and Sailors' Civil Relief Act itself provides that stay of proceeding may be made at any stage of proceeding. *Semler v Oertwig* (1943) 234 Iowa 233, 12 NW2d 265.

9. Persons able to claim benefits

Former 50 USCS Appx § 521 did not apply when those in military service were mere witnesses. *Konstantino v Curtiss-Wright Corp.* (1943, DC NY) 52 F Supp 684.

IV.DECISION CONCERNING STAY

A.In General 10. Role and discretion of trial court

Stay of proceedings against defendant in military service was not made matter of absolute right, but was left to judicial discretion, by provisions of Former 50 USC Appx § 521. *Boone v Lightner* (1943) 319 US 561, 87 L Ed 1587, 63 S Ct 1223, reh den (1943) 320 US 809, 88 L Ed 489, 64 S Ct 26; *Martin v Wagner* (1946) 247 Ala 591, 25 So 2d 409, cert den (1946) 329 US 740, 91 L Ed 639, 67 S Ct 77; *Ridley v Young* (1944) 64 Cal App 2d 503, 149 P2d 76 (superseceded by statute as stated in *American Broadcasting Cos. v Walter Reade-Sterling, Inc.* (1974, 1st Dist) 43 Cal App 3d 401, 117 Cal Rptr 617); *State ex rel. Swanson v Heaton* (1946) 237 Iowa 564, 22 NW2d 815.

Motion under 50 USCS Appx §§ 501 et seq. is addressed to discretion of trial court; mere fact of service in armed forces of United States does not entitle party to stay of proceedings against him as matter of right; trial court may and should deny stay when it is apparent that party absent in military service will not be materially prejudiced by trial of case. *Gross v Williams* (1945, CA8 Ark) 149 F2d 84.

District court should not have dismissed 42 USCS § 1983 complaint against prison guard who was currently on active duty status with Air Force under Soldiers' and Sailors' Relief Act; rather, it should have merely stayed action. *White v Black* (1999, CA5 Tex) 190 F3d 366.

Defendant's motion for order postponing trial until 60 days after termination of war is addressed to sound discretion of court. *Konstantino v Curtiss-Wright Corp.* (1943, DC NY) 52 F Supp 684.

Trial court's refusal to stay proceedings is discretionary. *Lavender v Gernhart* (1952) 201 Md 92, 92 A2d 751.

Discretion to grant or refuse stay under 50 USCS Appx § 501 et seq. is lodged initially with trial court. *Sharp v Grip Nut Co.* (1945) 116 Ind App 106, 62 NE2d 774.

Discretion imposed on court in this 50 USCS Appx § 501 et seq. is sound judicial discretion, to end that, so far as possible, injustice will be done to no one. *Semler v Oertwig* (1943) 234 Iowa 233, 12 NW2d 265.

Phrase "in the opinion of the court" meant in discretion of the court, and "discretion" meant sound judicial discretion. *Gilbride v Algona* (1945) 237 Iowa 20, 20 NW2d 905.

To determine whether a continuance was proper under former 50 USCS Appx § 521 the trial court was given wide discretion in determining whether a stay should be granted under the circumstances of a particular case. *Bond v Bond* (1976, Tex Civ App Eastland) 547 SW2d 43.

Congress intended that courts should have discretion to determine primary question of whether person requesting stay would be prejudiced through refusal. *Glick Cleaning & Laundry Co. v Wade* (1943) 206 Ark 8, 172 SW2d 929; *Welsh v Mercy Hospital* (1944) 65 Cal App 2d 473, 151 P2d 17; *People ex rel. Flanders v Neary* (1944) 113 Colo 12, 154 P2d 48; *Koons v Nelson* (1945) 113 Colo 574, 160 P2d 367.

50 USCS Appx §§ 501 et seq. grants no absolute right to stay of proceedings in military service but vests in trial courts wide discretion in passing upon motion made thereunder. *Miller v Miller* (1945) 26 Cal 2d 119, 156 P2d 931; *Young v Evans* (1944) 62 Cal App 2d 365, 144 P2d 651; *Ridley v Young* (1944) 64 Cal App 2d 503, 149 P2d 76 (superseceded by statute as stated in *American Broadcasting Cos. v Walter Reade-Sterling, Inc.* (1974, 1st Dist) 43 Cal App 3d 401, 117 Cal Rptr 617); *Ratliff v Ratliff* (1944) 234 Iowa 1171, 15 NW2d 272; *Van Doeren v Pelt* (1945, Mo App) 184 SW2d 744.

Discretion of court lies not in granting or refusing stay, but only in determining whether serviceman's or any litigant's rights will be materially affected by denial of stay. *Rauer's Law & Collection Co. v Higgins* (1946) 76 Cal App 2d 854, 174 P2d 450.

Person in military service was not entitled to stay of judgment against him merely by virtue of 50 USCS Appx §§ 501 et seq. unless, in opinion of court passing on question, his ability to conduct his defense was materially affected by reason of his military service. *Pope v United States Fidelity & Guaranty Co.* (1942) 67 Ga App 415, 20 SE2d 618, subsequent app (1942) 67 Ga App 560, 21 SE2d 289, subsequent app (1942) 193 Ga 769, 20 SE2d 13, subsequent app

(1944) 198 Ga 304, 31 SE2d 602, subsequent app (1945) 200 Ga 69, 35 SE2d 899; *Application of Marks* (1944) 181 Misc 497, 46 NYS2d 755.

Discretion vested in trial courts is not to be withheld on nice calculations as to whether prejudice may result from absence, or absence result from service. *Continental Illinois Nat'l Bank & Trust Co. v University of Notre Dame Du Lac* (1946) 394 Ill 584, 69 NE2d 301.

Former 50 USCS Appx § 521 erected no absolute bar to proceedings against one in military service, and whether rights of party litigant were materially affected in his ability to prosecute or defend action by reason of such service so as to entitle him to stay of proceedings and indefinite continuance, rested within sound discretion of trial court. *Fourth Nat'l Bank v Hill* (1957) 181 Kan 683, 314 P2d 312.

While former 50 USCS Appx § 521 mandated continuance of trial where military service would cause party to be absent, it also empowered trial judge to deny continuance if, in his opinion, ability of plaintiff to prosecute action or of defendant to conduct his defense was not materially affected by reason of his military service; discretion lodged in trial judge was interpreted so as to prevent party from using provisions of former § 521 to shield his own wrongdoing or lack of diligence. *Booker v Everhart* (1977) 33 NC App 1, 234 SE2d 46, revd on other grounds (1978) 294 NC 146, 240 SE2d 360, 24 UCCRS 165.

Trial court did not abuse its discretion in denying father's motion for stay in custody proceeding because (1) he did not provide deployment order with his name on it or statement from his commanding officer, failing to satisfy conditions of Servicemembers Civil Relief Act, and (2) mother had superior rights to child. *In re Marriage of Bradley* (2006, Kan) 137 P3d 1030.

11.--Basis for decision

Soldier's request to suspend litigation under former 50 USCS Appx § 521, was denied, where litigation was still in discovery stage, and where soldier had not diligently pursued discovery, had not attempted to aid his own cause, and had not offered any alternative suggestions. *Dalenberg v City of Waynesboro* (2002, SD Ga) 221 F Supp 2d 1380, 83 CCH EPD P 41123.

Discretion of trial court in granting or refusing continuance is great, but he must base his opinion on some character of showing made to him. *People ex rel. Flanders v Neary* (1944) 113 Colo 12, 154 P2d 48; *Burke v Hyde Corp.* (1943, Tex Civ App) 173 SW2d 364.

Before compelling trial when defendant is absent in military service, court should be reasonably certain that rights of absent soldier are not prejudiced by fact of his absence; discretion of the trial court is great, but its opinion must be based upon some character of showing made to him. *Esposito v Schille* (1944) 131 Conn 449, 40 A2d 745.

12.--Motion by service member

Denial of stay under former 50 USCS Appx § 521, sought by person in armed service claiming ownership of land involved in action by state to conform its title to land allegedly forfeited for nonpayment of taxes was abuse of discretion; where serviceman had specifically asked for stay, he took away from trial court any discretion it might have had on its own motion and in absence of such requests, and made allowance of stay mandatory unless, in opinion of court, serviceman's ability to conduct his defense was not materially affected by reason of his military service. *Reynolds v Haulcroft* (1943) 205 Ark 760, 170 SW2d 678.

13. Grounds for granting stay

50 USCS Appx §§ 501 et seq. has application only when military service in fact has prevented or is preventing member of military forces from meeting obligations imposed upon him by instrument sued upon. *Brooklyn Trust Co. v Papa* (1941, Sup) 33 NYS2d 57; *Application of Marks* (1944) 181 Misc 497, 46 NYS2d 755.

It is only in cases where rights of persons in military service might be prejudiced without their presence to either prosecute action or conduct their defense that courts authorized to stay proceedings. *Charles Tolmas, Inc. v Streiffer* (1941) 199 La 25, 5 So 2d 372.

True test in determining whether or not man's ability to meet his obligations is materially affected by his military service is not whether his army income is less than that in civilian life, but rather whether his service income is sufficient to enable him to live normally and meet his obligations without too much hardship. *First Federal Sav. & Loan Asso. v White* (1943) 49 Pa D & C 169.

14.--Material effect

There must be proof that serviceman's ability to comply with terms of his obligation has been materially affected by military service. *Radich v Bloomberg* (1947) 140 NJ Eq 289, 54 A2d 247, cert den (1947) 332 US 810, 92 L Ed 388, 68 S Ct 112.

Respondent, a member of the armed forces, was entitled to stay of proceedings in paternity suit in absence of finding by the trial justice that his ability to conduct his defense would not be materially affected by reason of his military service; entry of default against him was improper. *Stringfellow v Whichelo* (1967) 102 RI 426, 230 A2d 858.

To justify granting of stay, it was not necessary that court find that ability of defendant to conduct his defense was materially affected by reason of his military service, but it was only necessary that court be of opinion that such was case. *Davis v Wyche* (1944) 224 NC 746, 32 SE2d 358.

15. Length of stay

Court did not abuse discretion in giving soldier continuance of 60 days with provision for further relief if he was absent in military service at end of extension, to defend action of wife to enforce marital contract. *Donigan v Donigan* (1952) 236 Minn 516, 53 NW2d 635.

Order staying case "indefinitely" or until such time as defendant was able to return to United States to participate in trial was clearly unauthorized under provisions of statute; stay provided for by law was for period of military service and 3 months thereafter, or any part of such period. *Graves v Bednar* (1959) 167 Neb 847, 95 NW2d 123, 75 ALR2d 1056.

16. Imposition of conditions

Where wife sued husband to have divorce decree declared null and void and husband moved for stay under 50 USCS Appx § 501 et seq., and court granted stay conditional upon husband paying wife alimony of \$ 40 a month pendente lite, appeal from such order would be dismissed as moot 6 months after husband's discharge from army. *Shelton v Shelton* (1946) 248 Ala 48, 26 So 2d 553.

Where order staying husband's action for divorce was conditioned upon keeping up temporary alimony payments to wife, appellate court could take jurisdiction of order allowing temporary alimony. *Ahrens v Ahrens* (1945) 299 Ky 497, 185 SW2d 694.

Upon granting of motion for alimony and counsel fees, subsequent proceedings and trial were stayed until termination of defendant's military service. *Gilmore v Gilmore* (1945) 185 Misc 535, 58 NYS2d 556.

B.Particular Factors and Circumstances 17. Generally

50 USCS Appx §§ 501 et seq is not applicable unless it is made to appear that rights of a person in service will be prejudiced by a proceeding against him. *Register v Bourquin* (1943) 203 La 825, 14 So 2d 673.

18. Admission of liability

Although defendant in military service had been convicted of reckless driving as result of accident in which plaintiff was injured, and also carried liability insurance, stay was properly granted, since it could not be said, as matter of law, that defendant's rights would not be affected by proceeding to trial in his absence; his admissions or statements under oath in another action were not conclusive of facts stated therein but might be explained or contradicted in different action between different parties. *Royster v Lederle* (1942, CA6) 128 F2d 197.

Refusal of stay of proceeding was proper where defendant had already admitted negligence. *Gross v Williams* (1945, CA8 Ark) 149 F2d 84.

Stay of action against serviceman serving in Vietnam for loss of consortium by husband of woman injured in automobile accident in which serviceman was involved was proper, although in the wife's suit serviceman had stipulated as to his liability. *Marts v Cauley* (1969) 119 Ga App 23, 166 SE2d 46.

Defendant serviceman, who had driven truck involved in accident, was entitled to stay notwithstanding his admissions of negligence. *Laperouse v Eagle Indem. Co.* (1942) 202 La 686, 12 So 2d 680.

19. Availability of deposition

In action against absent member of armed forces for injuries sustained in collision between automobile and taxicab, refusal of stay under Soldiers' and Sailors' Relief Act was not abuse of discretion, where court had before it defendant's deposition, which covered every issue of fact raised on pleadings and at trial, contained as much to support as it did to deny, plaintiffs' charge of negligence against defendant, and defendant had not denied that he was covered by insurance. *Gross v Williams* (1945, CA8 Ark) 149 F2d 84.

Conduct of defense of air force officer who was not available at trial was not materially affected in light of existence of his disposition, and continuance was properly denied. *Tabor v Miller* (1967, ED Pa) 269 F Supp 647, aff'd (1968, CA3 Pa) 389 F2d 645, cert den (1968) 391 US 915, 20 L Ed 2d 654, 88 S Ct 1810.

Trial court did not abuse its discretion in denying stay of action arising from automobile collision case where, although defendant could not be relieved of duties to attend trial, commanding officer had suggested that defendant could be available to have deposition taken. *Johnson v Johnson* (1943) 59 Cal App 2d 375, 139 P2d 33.

Trial court did not abuse its discretion in refusing to grant stay of action for damages arising out of automobile collision where defendant's deposition was on file and there was nothing to indicate that he was present at accident or knew anything about circumstances incident to collision. *Ridley v Young* (1944) 64 Cal App 2d 503, 149 P2d 76 (superseded by statute as stated in *American Broadcasting Cos. v Walter Reade-Sterling, Inc.* (1974, 1st Dist) 43 Cal App 3d 401, 117 Cal Rptr 617).

Refusal of trial court to grant stay of personal injury action was not improper where defendant's deposition on cross-examination as well as deposition on written interrogatory was before court. *Koons v Nelson* (1945) 113 Colo 574, 160 P2d 367.

Stay should have been granted where it was not satisfactory to take defendant's deposition, since he could not know in advance nature of plaintiff's evidence. *Simpson v Swinehart* (1951) 122 Ind App 1, 98 NE2d 509.

Taking of deposition in advance of trial was not waiver of right to stay under 50 USCS Appx §§ 501 et seq. *Heck v Anderson* (1944) 234 Iowa 379, 12 NW2d 849.

Trial court did not err in granting stay in action for personal injuries even though defendant's deposition had been taken. *Davis v Wyche* (1944) 224 NC 746, 32 SE2d 358.

Claim that defendant serviceman would not be prejudiced by trial, in his absence, of negligence action pending against him, since his deposition was on file, was rejected since, while sometimes trials were had upon depositions, such situation was prejudicial to one so forced to trial. *Davis v Wyche* (1944) 224 NC 746, 32 SE2d 358.

Absence in service of one of defendants, driver of car involved in accident, was ground for stay; although serviceman's deposition might be available, such procedure would seriously prejudice his rights since his testimony would not be available to answer evidence that might be produced by plaintiff. *Vasey v Hoffman* (1947) 60 Pa D & C 606.

It was error to deny stay although serviceman's deposition had been taken, where it was not altogether clear that he was totally protected by insurance and it could not be said as matter of law that plaintiff was entitled to recover against him. *Ulmer v Mackey* (1951, Tex Civ App) 242 SW2d 679.

20. Availability of testimony

Fact that absent defendant had been present and testified at earlier trial and that transcript of this testimony was available was not controlling especially since many of plaintiff's objections to reading of parts of transcripts had been sustained. *Semler v Oertwig* (1943) 234 Iowa 233, 12 NW2d 265.

There was no abuse of discretion in finding that defendant's absence in service would not materially affect his ability to conduct his defense, where absent serviceman's statement of testimony was read to jury at trial, and it strongly tended to show that he had been guilty of negligence causing accident, and failed to show any negligence on part of plaintiffs and contained nothing bearing on damages or any other issue in case. *Barry v Keeler* (1947) 322 Mass 114, 76 NE2d 158.

Continuance was properly refused where it appeared that defendant serviceman was covered by liability insurance to amount of claim against him and he had given statements substantially corroborating plaintiff's version of accident, and it was inconceivable that defendant could have consistently, and with good effect, given different testimony had he been present at trial. *Lindsey v Williams* (1953, Mo) 260 SW2d 472, cert den (1954) 347 US 904, 98 L Ed 1063, 74 S Ct 428.

Application for examination of defendant before trial, sought on ground that defendant was about to be inducted and plaintiff would be prejudiced by being compelled to wait until end of war before having case disposed of, was refused since actions were brought for large sum and it would be unjust to require defendant to testify in advance of trial where matters might be brought out on trial which his absence would prevent him from contradicting. *Curran v Newstead* (1943, *Sup*) 40 NYS2d 886.

Trial court did not abuse its discretion in refusing to grant stay of proceedings because of absence of two heirs in armed forces, but objector to probate of will should be given opportunity to have issue of undue influence considered in connection with such testimony as such witnesses might present and which has not already been submitted. *In re Ehrlke's Will* (1945) 247 Wis 534, 19 NW2d 888.

21. Ability to obtain leave

Trial court properly held that serviceman defendant in divorce action could not take advantage of former 50 USCS § 521, authorizing stay of proceedings where party's military service materially affected ability to prosecute or defend action, where record showed that defendant failed to show (1) his inability to obtain leave or that he had even sought leave; (2) his actual unavailability for trial; or (3) that his rights would be adversely affected by his absence. *Palo v Palo* (1980, *SD*) 299 NW2d 577.

Trial judge did not abuse his discretion in refusing to grant serviceman defendant in civil action stay under Soldiers' and Sailors' Civil Relief Act (50 USCS Appx §§ 501 et seq.) for duration of enlistment plus 60 days, where plaintiff averred in affidavit he was unable to leave duty station in Hawaii, but failed to show unsuccessful attempt to obtain leave or exercise of due diligence in making himself available for trial, since judge determined that defendant had 50 days' accrued leave and could properly conclude from bad faith on defendant's part that military service did not materially affect defendant's ability to conduct his defense. *Underhill v Barnes* (1982) 161 Ga App 776, 288 SE2d 905.

Trial court did not abuse its discretion in refusing to grant stay of action for damages arising out of automobile collision where there was no showing made that defendant could not obtain leave of absence to attend trial. *Ridley v Young* (1944) 64 Cal App 2d 503, 149 P2d 76 (superseded by statute as stated in *American Broadcasting Cos. v Walter Reade-Sterling, Inc.* (1974, 1st Dist) 43 Cal App 3d 401, 117 Cal Rptr 617).

It was error to deny plea for stay of proceedings and enter judgment for temporary alimony against member of armed forces upon uncontradicted showing that he was undergoing intensive training for active duty in combat area and was not authorized to be absent from his station. *Smith v Smith* (1966) 222 Ga 246, 149 SE2d 468.

Stay should have been granted where it appeared, inter alia, that defendant's application for leave to attend trial had been denied. *Simpson v Swinehart* (1951) 122 Ind App 1, 98 NE2d 509.

Serviceman's failure to obtain leave to be present when it might have been obtained may be considered in determination of whether action should be stayed. *Semler v Oertwig* (1943) 234 Iowa 233, 12 NW2d 265.

Provision of Soldiers' and Sailors' Civil Relief Act for stay on account of military service does not require continuance in negligence action on mere showing that defendant is in military service, without showing or contention that defendant has applied for, and been unable to secure, leave for purpose of attending trial. *Graves v Bednar* (1959) 167 Neb 847, 95 NW2d 123, 75 ALR2d 1056.

In adoption proceedings, stay would not be granted for natural father who was in service where it appeared that he could have obtained leave to be present at hearing. *In re Stromberg's Adoption* (1944, App, Montgomery Co) 41 Ohio L Abs 133, 58 NE2d 88.

Refusal of stay of divorce proceedings requested by defendant husband who was absent in military service was error although plaintiff submitted in evidence letter from husband's commanding officer stating that he would be given leave to attend trial if he requested it; letter was purely hearsay and should not have been admitted, and person in military service was entitled as matter of right to stay upon showing that he was in military service unless opposing party made it appear that his ability to prosecute or defend was not materially impaired by his military service. *Roark v Roark* (1947, Tex Civ App) 201 SW2d 862.

Trial court's failure to grant defendant Air Force member's motion for continuance of divorce trial for approximately 2 weeks was abuse of discretion under Soldiers' and Sailors' Civil Relief Act, where defendant was under order to remain at base for 2 weeks remaining before his retirement. *Bond v Bond* (1976, Tex Civ App Eastland) 547 SW2d 43.

22. Bad faith or fraud

Requirements of Soldiers' and Sailors' Civil Relief Act of 1940 that to warrant denial of stay of suit against defendant in military service of United States, court must be of opinion that ability of defendant to conduct his defense is not materially affected by reason of his military service are met by findings that defendant is deliberately and wilfully attempting to evade ultimate determination of the issues involved in the litigation and is exercising his assumed right under Act referred to avoid such determination, that defendant is not upon the motion for continuance acting in good faith, that defendant has had ample time and opportunity to properly prepare his defense and that his military service has not prevented him from doing this, and that it is apparent that he has only sought to use provisions of Act as a shield for his wrongdoing. *Boone v Lightner* (1943) 319 US 561, 87 L Ed 1587, 63 S Ct 1223, reh den (1943) 320 US 809, 88 L Ed 489, 64 S Ct 26.

Soldier who was seeking stay of mortgage foreclosure proceedings was not entitled to stay where it was found that rental income from mortgaged property, which had been assigned to mortgagee for purpose of liquidating debt, had been diverted by soldier. *Radding v Ninth Federal Sav. & Loan Asso.* (1944, DC NY) 55 F Supp 361.

In determining whether or not service member's rights might be materially affected by his absence within meaning of former 50 USCS Appx § 521, Bankruptcy Court could consider evidence of his diligence to preserve his rights during litigation and his good faith or lack thereof in proceeding with action when he had opportunity to do so; where evidence established that debtor obtained loan based on alleged fraudulent application when he knew he was going to receive overseas orders and filed Chapter 7 petition shortly before leaving and failed to attend pretrial conference on dischargeability complaint scheduled 10 days before he was to leave for Europe and that debtor did not request that trial of dischargeability complaint be scheduled before his departure, debtor's conduct strongly suggested bad faith on his part and Bankruptcy Court would not indefinitely postpone trial as requested by debtor. *In re Diaz* (1988, BC MD Ga) 82 BR 162, 17 BCD 48.

Husband's motion for stay of proceeding was properly denied because it did not appear that any prejudice resulted from his absence in military service, where husband, after he had entered military service, procured entry of final decree of divorce by presenting affidavit that he had fully complied with all provisions of interlocutory decree, and wife thereafter filed motion to vacate decree on ground that affidavit was fraudulent and that husband had not made payments for support and medical care of children provided for by decree. *Miller v Miller* (1945) 26 Cal 2d 119, 156 P2d 931.

Where delays in divorce action had all been due to conduct of serviceman, he could not rely on the benefits of former 50 USCS Appx § 521. *Robbins v Robbins* (1967, Fla App D2) 193 So 2d 471.

23. Depreciation of item involved

Stay of order for foreclosure sale under chattel mortgage upon motor vessel was denied where it was found that stay would cause depreciation of value of vessel and decline in available market. *The Sylph* (1941, DC NY) 42 F Supp 354.

In suit for construction of will, on motion of sole heir for stay of proceedings because of his absence in armed forces, possibility of detriment to parties who were not in military service from fact that property of the estate consisted largely of stocks and bonds, which were subject to fluctuation in value and that, as consequence, value of estate might have been impaired had stay been granted, was not controlling factor. *Continental Illinois Nat'l Bank & Trust Co. v University of Notre Dame Du Lac* (1946) 394 Ill 584, 69 NE2d 301.

24. Existence of indemnity contract

Stay was to be allowed only where serviceman would be prejudiced by his absence in military service; in exercising discretion granted under statute it was proper for trial court to consider existence of indemnity contract protecting serviceman, and where any judgment which might be rendered would be covered by such indemnity contract, serviceman's civil rights could not be said to have been prejudiced by reason of his military service, especially since his deposition was offered in evidence. *Koons v Nelson* (1945) 113 Colo 574, 160 P2d 367.

Refusal of trial court to grant stay of personal injury action was not improper where defendant was shown to be protected by indemnity contract. *Koons v Nelson* (1945) 113 Colo 574, 160 P2d 367.

25. Insurance

Serviceman was denied indefinite stay of personal injury action arising out of traffic collision under former 50 USCS Appx § 521, where it was reasonable to infer that serviceman's insurance company was attempting to use § 521 as means of postponing and perhaps defeating liability, because no representations were made that serviceman was unable to attend or take part in trial, or that his rights would be materially affected by virtue of his military service. *Hackman v Postel* (1988, ND Ill) 675 F Supp 1132.

Indefinite stay pursuant to Soldiers' and Sailors' Civil Relief Act in personal injury action resulting from traffic collision would be denied, where serviceman made no actual showing of unavailability or that his rights would be materially affected by virtue of his military service, in that no representations were made that that serviceman was unable to attend trial, serviceman had made any attempts to secure leave to attend trial, or that serviceman's deposition could not be taken on base and offered as evidence if serviceman declined to attend trial; where insurance company was attempting to use Act to postpone or defeat liability and serviceman would not materially benefit from stay, trial court would be justified in refusing to injure plaintiff for sole advantage of insurance company. *Hackman v Postel* (1988, ND Ill) 675 F Supp 1132.

Trial court did not abuse its discretion in denying stay of action arising from automobile collision where defendant was adequately represented at trial by insurance company. *Johnson v Johnson* (1943) 59 Cal App 2d 375, 139 P2d 33.

Fact that defendant serviceman is covered by liability insurance is one factor which trial court should consider in exercising discretion as to allowing stay because of military service; while fact that defendant was insured did not, as matter of law, compel denial of stay, yet where it was reasonable inference that insurance company was attempting to use statutory provisions as means of postponing and perhaps defeating liability and defendant serviceman would not be materially benefited by stay, trial court was justified in refusing to injure plaintiff for sole advantage of defendant's insurer. *Johnson v Johnson* (1943) 59 Cal App 2d 375, 139 P2d 33.

Trial court abused its discretion in refusing stay where personal injury action was instituted against serviceman after he entered service and had been assigned to foreign duty, and in support of his motion for stay, affidavits were filed showing that he had been denied leave to return to United States, his enlistment would expire in few months, when he would be permitted to return, he had no other witnesses, and it would be unavailing to take his deposition since he could not know in advance nature of plaintiff's evidence, and although he had liability insurance for amount of judgment sought, his policy required his cooperation and his insurer was threatening to deny coverage unless he attended trial. *Simpson v Swinehart* (1951) 122 Ind App 1, 98 NE2d 509.

Driver of vehicle which allegedly killed plaintiff's decedent was entitled to stay notwithstanding plaintiff's contention that true defendant was driver's employer and employer's insurance carrier; action was brought against all defendants jointly and judgment could be recovered against either only upon finding that absent serviceman had been guilty of negligence proximately causing death, and there was nothing in record about amount of insurance, terms of policy, its coverage, obligations of insured or his employee as to cooperation or otherwise, and any right of subrogation which employer or his insurer might have against absent defendant. *Semler v Oertwig* (1943) 234 Iowa 233, 12 NW2d 265.

Trial court did not err in granting stay of action for personal injuries even though defendant carried liability insurance and insurer was defending case. *Davis v Wyche* (1944) 224 NC 746, 32 SE2d 358.

Claim that defendant's liability insurer was real party in interest and that therefore serviceman's interest would not be materially affected by trial in his absence was rejected as untenable where policy contained provision that no action should lie against insurer unless insured had fully complied with all terms of policy, nor until amount of insured's obligation had been finally determined. *Davis v Wyche* (1944) 224 NC 746, 32 SE2d 358.

Mere showing that absent serviceman defendant carried liability insurance and that his counsel represented insurance carrier did not require that application for stay be denied since there was no showing as to kind of policy involved or extent of coverage, and even if plaintiffs' argument that application for stay was device on part of insurance company to drive plaintiffs into unfair settlement, was accepted, plaintiffs were not compelled to settle, and any hardship was result of wartime conditions. *Craven v Vought* (1941) 43 Pa D & C 482.

26.--Limitation of claims to extent of insurance

Stay was properly granted to defendant in action for personal injuries, although it appeared that defendant carried liability insurance, and plaintiff offered to accept insurance proceeds in full settlement of any claim she might obtain, and it also appeared the defendant had been convicted of reckless driving as result of accident in which plaintiff was injured; although stay was proper, insurer should be required to enter into bond to extent of its liability under policy,

which would protect plaintiff in event that soldier defendant was insolvent at time judgment might finally be entered against him. *Royster v Lederle* (1942, CA6) 128 F2d 197.

Defendant serviceman was not entitled to stay of proceeding where it was shown, among other things, that plaintiffs had reduced claims to extent of liability insurance. *Gross v Williams* (1945, CA8 Ark) 149 F2d 84.

Stay of personal injury action, based on absence in service of defendant, was refused where plaintiff had undertaken to limit recovery to amount of defendant's liability policy. *Swiderski v Moodenbaugh* (1942, DC Or) 45 F Supp 790.

Although fact that serviceman carried liability insurance was relevant consideration, it was error to refuse stay to serviceman in foreign service where it appeared that limits of his insurance coverage were less than amount sued for. *Cox v Yates* (1957) 96 Ga App 466, 100 SE2d 649.

Although it appeared that defendant carried liability insurance and that plaintiff undertook to enforce any judgment recovered only against proceeds of insurance policies, and judgment so provided, it was abuse of discretion to deny requested continuance, since defendant was entitled to appear in court and present his defense. *Rutherford v Bentz* (1952) 345 Ill App 532, 104 NE2d 343.

Serviceman's motion for continuance was properly overruled where it appeared that he was covered by liability insurance and plaintiff had reduced her claim to comply with insurance coverage. *Lindsey v Williams* (1953, Mo) 260 SW2d 472, cert den (1954) 347 US 904, 98 L Ed 1063, 74 S Ct 428.

Although defendant cross-complainant's deposition had been taken and deposing party undertook to hold him harmless as against judgment in excess of limit of his liability insurance, it was reversible error to refuse his request for stay; judgment was against him personally and his insurer might or might not be solvent at time it was called upon to pay judgment and also might seek to avoid liability because of his breach of cooperation clause, and serviceman's inability to be present prevented him from performing under his insurance contract, and jury might have inferred from his mere absence that insurance was involved. *Ulmer v Mackey* (1951, Tex Civ App) 242 SW2d 679.

Refusal of stay requested by absent serviceman was proper where he was covered by liability insurance and plaintiff agreed to enforce any judgment recovered only against this insurance; defendant's claim that probable result of compelling case to go to trial would be to deprive him of his insurance coverage because of breach of cooperation clause was sufficiently met by trial judge's statement that there was no showing of existence of any such clause, and if it were made to appear in course of trial that defendant's personal appearance in court was necessary to protect his insurance coverage, stay would then be granted. *Richey & Gilbert Co. v Northwestern Natural Gas Corp.* (1943) 16 Wash 2d 631, 134 P2d 444.

27. Laches

District court did not abuse its discretion in denying motion to stay proceedings under former 50 USCS § 521 for twelve months since plaintiff had 13 months to conduct discovery after case management order was entered but made no attempt to do so, and did not permit his attorney to conduct discovery in his absence. *Comer v City of Palm Bay* (2001, CA11 Fla) 265 F3d 1186, 14 FLW Fed C 1262.

Stay of order for foreclosure sale under chattel mortgage upon motor vehicle is to be denied where applicant had deliberately permitted default judgment to be taken at time when he was present at scene of action and had had opportunity to confer with counsel in order to prepare defense. *The Sylph* (1941, DC NY) 42 F Supp 354.

Refusal of continuance predicated upon finding that defendant, himself attorney, knowing he would join army, did not use due diligence to procure adjudication of his rights at time when this could be done, was not abuse of discretion. *Glick Cleaning & Laundry Co. v Wade* (1943) 206 Ark 8, 172 SW2d 929.

Plaintiff wife who was member of armed forces at time decree of divorce was entered in her favor and also at time she appealed therefrom, and who did nothing to prosecute appeal for 6 months thereafter until defendant husband filed motion to dismiss appeal, was not entitled to have proceedings stayed because of her military service; despite fact that she filed affidavit stating that because of her reduced income incident to military service she was unable to meet expense of prosecuting appeal, she was receiving only her military pay at time she filed appeal and her ability to conduct appeal did not appear to be materially affected by her military service. *Levin v Levin* (1944) 64 Cal App 2d 298, 148 P2d 714.

Denial of stay was not error where serviceman was guilty of bad faith in failing diligently to prosecute divorce action or defend against counterclaim, failing to amend pleadings, failing to comply with separation agreement, and failing to remain in contact with his own attorney. *Robbins v Robbins* (1967, Fla App D2) 193 So 2d 471.

Motion for continuance to obtain depositions of attending physicians who subsequently entered army, which disclosed that one physician did not enter service until 6 months after suit was filed and that thereafter plaintiff made no effort for almost year and half to obtain depositions, failed to show due diligence, and continuance was properly denied for want of prosecution. *Marshall v B. F. Goodrich Co.* (1945) 325 Ill App 623, 60 NE2d 651.

Husband who voluntarily chose Army as career at time when he could have left service, who had ample opportunities during period when he was stationed in United States at which he could have attended hearing, and who retained able counsel to prosecute his defense to his wife's divorce action, was properly denied stay of proceedings; statute was not designed to enable persons in military service to disregard and flout civil obligations by obtaining indefinite delays. *Fluhr v Fluhr* (1947) 140 NJ Eq 131, 52 A2d 847.

There was no abuse of discretion in refusing continuance where case was filed on February 23, and defendant serviceman participated in proceedings through following August, and was present in jurisdiction until August 23, when he left United States, and did not file motion for stay until September 7, few days before case was set for trial; absence of any showing that attempt had been made to procure leave so that defendant could be present at trial indicated there was no negligence on his part. *Stalcup v Ruzic* (1947) 51 NM 377, 185 P2d 298.

28. Lack of defense to action

Refusal to grant stay in proceeding by wife of serviceman to set aside invalid divorce decree was not abuse of discretion since there could have been no possible defense which serviceman could have offered in action. *Gates v Gates* (1943) 197 Ga 11, 28 SE2d 108.

Absent serviceman was entitled to stay; it was immaterial whether he had good defense. *Rutherford v Bentz* (1952) 345 Ill App 532, 104 NE2d 343.

There is nothing in Soldiers' and Sailors' Relief Act which empowers court to stay action when defendant nowhere sets forth legal defense. *Modern Industrial Bank v Grossman* (1943) 180 Misc 415, 40 NYS2d 628.

29. Mere presence in military

Mere showing that defendant in small claims property damage action was in military service did not render continuance or stay under 50 USCS § 521 mandatory, unless defendant's ability to conduct his defense was materially affected. *Deacon v Witham* (1985, City Ct) 131 Misc 2d 217, 499 NYS2d 317.

Where appellant instituted action for divorce and was member of armed forces when matter came on for trial, at which time judgment was rendered in her favor, she filed her notice of appeal at time when she was receiving monthly stipend of \$ 50 as member of marine corps, and she took no further steps to prosecute her appeal until, almost 6 months had elapsed, her former husband made his motion to dismiss appeal, appellant's motion for stay under Soldiers' and Sailors' Civil Relief Act would be denied because her ability to conduct her appeal was not materially affected by reason of her military service. *Levin v Levin* (1944) 64 Cal App 2d 298, 148 P2d 714.

Trial court did not abuse its discretion in refusing to grant stay of action for damages arising out of automobile collision where nothing but certificate to show that he was in military service was offered. *Ridley v Young* (1944) 64 Cal App 2d 503, 149 P2d 76 (superseded by statute as stated in *American Broadcasting Cos. v Walter Reade-Sterling, Inc.* (1974, 1st Dist) 43 Cal App 3d 401, 117 Cal Rptr 617).

Denial of motion for stay of divorced wife's bill to set aside final divorce decree declared to have been obtained through husband's fraud was not abuse of discretion where motion for stay was originally based merely on unsupported statement that defendant was in Navy and stationed in distant state under military orders and that it would be impossible for him to adequately prepare his defense. *Cadieux v Cadieux* (1954, Fla) 75 So 2d 700.

Applicant for stay may well rest his request for stay upon bare statement that he is at time actively in military service, and with nothing more appearing as evidence touching question of his impairment by virtue of such service, trial judge would be required as matter of law to grant stay; but where applicant undertakes to show impairment by alleging conclusions to that effect, this evidence immediately becomes subject to rule that it must be most strongly construed against him. *Gates v Gates* (1943) 197 Ga 11, 28 SE2d 108.

Person in military service was entitled, as matter of law, to stay of proceeding against him in any case to which former 50 USCS Appx § 521 applied, upon his bare application that he was actively in military service; unless something appeared sufficient to show that his rights, as litigant, would not be materially affected by determination of pending litigation, it was mandatory that such application be granted. *Mays v Tharpe & Brooks, Inc.* (1977) 143 Ga App 815, 240 SE2d 159.

Mere fact that litigant is in military service does not automatically invoke relief provisions of Soldiers' and Sailors' Civil Relief Act; there must be showing on part of service person that his ability to present his case is materially affected by said service. *Holtzman's Furniture Store v Schrapf* (1949, La App, Orleans) 39 So 2d 450.

Former 50 USCS Appx § 521 could not be construed to require continuance on mere showing that defendant was in military service; it required that there be present and not mere anticipatory danger. *Graves v Bednar* (1959) 167 Neb 847, 95 NW2d 123, 75 ALR2d 1056.

Where cause proceeded as appeal on questions of law, and there was no right in either party to take further testimony, appellee's motion for stay because of his absence in military service would be denied, but if it be developed that appeal might not safely be determined without presence of appellee, or if for any reason his interest cannot be safeguarded court may stay proceedings or withhold judgment entry. *Adams v Adams* (1945, App, Franklin Co) 42 Ohio L Abs 595, 61 NE2d 512.

30. Presence of others to represent interest; attorney

In proceeding to probate lost will, denial of stay of proceedings on account of absence of petitioner in military service was not abuse of discretion, where petitioner was represented by able counsel and cause never progressed beyond stage of pleading prior to trial. *Martin v Wagner* (1946) 247 Ala 591, 25 So 2d 409, cert den (1946) 329 US 740, 91 L Ed 639, 67 S Ct 77.

Motion to stay proceedings on appeal under provisions of 50 USCS Appx §§ 501 et seq. filed by respondent army officer (stationed in Washington, D. C.) on ground that his ability to conduct his defense was materially affected by reason of his military service in that he was financially unable to employ counsel to represent him, and that prosecution of appeal would cause him mental strain and worry him when his first duty was to do the things assigned to him in armed forces, was denied; that it would be disturbing and disconcerting to him for appeal to proceed would not be sufficient ground for stay. *Briner v Briner* (1943) 60 Cal App 2d 473, 140 P2d 995.

Trial court did not abuse its discretion in refusing to grant stay of action for damages arising out of automobile collision where his attorney had represented him throughout entire litigation and was perfectly familiar with facts in case. *Ridley v Young* (1944) 64 Cal App 2d 503, 149 P2d 76 (superseded by statute as stated in *American Broadcasting Cos. v Walter Reade-Sterling, Inc.* (1974, 1st Dist) 43 Cal App 3d 401, 117 Cal Rptr 617).

No stay would be granted in adoption proceeding where counsel of natural father who was in service was present and active at hearing. *In re Stromberg's Adoption* (1944, App, Montgomery Co) 41 Ohio L Abs 133, 58 NE2d 88.

31.--Co-owners of property

Debtor's ability to prosecute joint bankruptcy case is not materially affected by reason of his military service where wife is present in United States and is in possession of all assets, and is able to attend creditors meeting under 11 USCS § 343 and provide testimony relevant to position of both debtors. *In re Edwards* (1979, BC SD Fla) 2 BR 103, 5 BCD 1299, 1 CBC2d 440, CCH Bankr L Rptr P 67443.

Where absent soldiers owned 2/14 interest in land condemned for municipal airport and their uncle, brothers, and sisters owned remaining 12/14 interest, court did not abuse its discretion in denying stay, since if absent soldiers were present only thing they could do would be to appear before commissioners to influence them in fixing damages, and it may be presumed that owners of 12/14 interest would be able to secure highest award possible. *Gilbride v Algona* (1945) 237 Iowa 20, 20 NW2d 905.

In suit to set aside will, court did not abuse its discretion in refusing to stay proceedings on affidavit of defendant absent in military service who was financially interested in having the will sustained, since his interests were fully protected by guardian ad litem. *Kinsella v Kinsella* (1944) 353 Mo 661, 183 SW2d 905.

32.--Guardian ad litem

Refusal of continuance in motor vehicle accident was error under former *50 USCS Appx § 521*; fact that guardian ad litem was appointed to represent defendant did not affect question, since former *50 USCS Appx § 520(3)* provided that "no attorney appointed under this Act [*50 USCS Appx §§ 501 et seq.*] to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts," so that guardian ad litem could not waive any rights of defendant either by his appearance or by any other action. *Rutherford v Bentz* (1952) 345 Ill App 532, 104 NE2d 343.

33. Protection of family

It was not error for court to find servicemen in criminal contempt for failure to pay child support and attorney's fees where husband filed motion under former *50 USCS Appx § 521*, asking that proceedings be continued or abated, which motion court granted, and serviceman appeared through counsel on date to which proceedings had been continued, but motion for continuance or abatement was not renewed. *Gillis v Gillis* (1979) 243 Ga 1, 252 SE2d 434.

Defendant was not entitled to automatic stay of proceedings in paternity suit merely because he was in military service; matter was one for discretion of the court where plaintiff alleged she was without funds and unable to care for the child, a determination as to who had the obligation to provide support for the child was necessary at the earliest possible time; trial judge did not abuse discretion in denying stay of proceedings. *Slove v Strohm* (1968, 1st Dist) 94 Ill App 2d 129, 236 NE2d 326.

34. Protection of public

In action to abate liquor and gambling nuisance conducted on property of absent serviceman, finding was warranted on record that presence of serviceman was unnecessary to adequately protect his rights; hence, his application for stay would be overruled; record indicated that agents of serviceman had operated business and maintained nuisance, if any, for him; right of general public to protection from public nuisance is element to be considered. *State ex rel. Swanson v Heaton* (1946) 237 Iowa 564, 22 NW2d 815.

35. Relationship with prior proceedings

Refusal to grant stay under former *50 USCS Appx § 521* was not improper where second proceeding was based on another proceeding in which serviceman had participated. *Gates v Gates* (1943) 197 Ga 11, 28 SE2d 108.

36. Waiver

Defendant in small claims action for property damage who was in military service, waived his right to utilize former *50 USCS Appx § 521* for stay of proceedings where defendant appeared in action on at least 2 occasions through attorneys of his own choice and prior to filing motion for stay of proceedings due to military service, his attorneys indicated to court that they were prepared to try matter even if defendant was absent. *Deacon v Witham* (1985, City Ct) 131 Misc 2d 217, 499 NYS2d 317.

Where counsel for plaintiffs in error, prior to rendition of judgment from which error was taken, expressly waived rights of his clients to stay of proceedings under *50 USCS Appx §§ 501 et seq.*, he would not be heard to withdraw waiver. *Lankford v Milhollin* (1946) 201 Ga 594, 40 SE2d 376.

Failure of trustees of appellant's property to ask continuance precludes appellant from asserting right. *Lincoln Joint Stock Land Bank v Mitchell* (1948) 239 Iowa 995, 33 NW2d 388.

Where husband in military service initiated arbitration proceedings to decrease sums to be paid by him under separation agreement, on motion of wife to modify arbitration award and motion of husband for stay of entry of judgment for arrears accumulated to date of award, motion for stay would be granted as against contention that stay may be entered only where proceeding is commenced against person in military service. *McKinney v McKinney* (1944) 182 Misc 903, 50 NYS2d 8.

Where defendants did not move in lower court for stay of proceedings under Soldiers' and Sailors' Civil Relief Act question of whether or not such motion should have been granted was not before court on appeal. *Lyle v Haskins* (1946) 24 Wash 2d 883, 168 P2d 797.

37. Miscellaneous

Serviceman who was codefendant in civil suit was not entitled to have proceeding suspended until discharge in 1984, where he was stationed in United States and could with continuance of one month arrange for leave or pass to

attend trial or to be deposed by videotape deposition or otherwise, since although Soldiers' and Sailors' Civil Relief Act (50 USCS §§ 501 et seq.) is to be construed liberally for benefit of servicemen, it does not provide automatic delay in every case and may not be used for delay where trial can proceed without prejudice to civil rights of serviceman and conduct of his defense is not materially affected by reason of military service. *Keefe v Spangenberg* (1981, WD Okla) 533 F Supp 49.

Indefinite stay pursuant to Soldiers' and Sailors' Civil Relief Act in personal injury action resulting from traffic collision would be denied, where serviceman made no actual showing of unavailability or that his rights would be materially affected by virtue of his military service, in that no representations were made that that serviceman was unable to attend trial, serviceman had made any attempts to secure leave to attend trial, or that serviceman's deposition could not be taken on base and offered as evidence if serviceman declined to attend trial; where insurance company was attempting to use Act to postpone or defeat liability and serviceman would not materially benefit from stay, trial court would be justified in refusing to injure plaintiff for sole advantage of insurance company. *Hackman v Postel* (1988, ND Ill) 675 F Supp 1132.

In proceeding by mother to modify dissolution decree to give her custody of children, who were taken out of country without court permission by father who was in active military service overseas, trial court did not abuse discretion in refusing to grant father stay under Soldiers' and Sailors' Civil Relief Act where father's motion contained no indication that failure to stay proceeding would disadvantage him, where motion was not supported by affidavit or other factual information, and where father had been given leave to attend modification hearing, but had failed to do so. *Hibbard v Hibbard* (1988) 230 Neb 364, 431 NW2d 637.

Court will not stay proceeding for support allowance for minor children of soldier instituted by his former wife because father was in armed services if it is shown that father, receiving his own subsistence from government, has means to provide for them. *Kelley v Kelley* (1942, Sup) 38 NYS2d 344.

Trial court abused its discretion in denying serviceman's request for delay of 8 months in hearing on child custody, permanent support, attorney's fees and costs as part of divorce proceeding until serviceman would return from European assignment to United States, since delay in concluding litigation resulting from absence in military service does not justify denial of stay provided by former 50 USCS Appx § 521, so long as there is likelihood of injury to civil rights of one in armed services. *Coburn v Coburn* (1982, Fla App D3) 412 So 2d 947.

Trial court did not abuse its discretion in not finding that serviceman's ability to defend divorce action was materially affected by his military service and sua sponte ordering stay of proceedings under Soldiers' and Sailors' Civil Relief Act of 1940 (former 50 USCS Appx § 521), where serviceman signed property settlement agreement, entered general appearance by filing answer to complaint and sought to have costs assessed against plaintiff. *Roqueplot v Roqueplot* (1980, 2d Dist) 88 Ill App 3d 59, 43 Ill Dec 441, 410 NE2d 441.

Although serviceman chose to stand mute in proceedings on merits of cause in divorce action, he filed answer and sought to have costs assessed against wife which constituted general appearance in those proceedings so that trial court did not abuse its discretion by not finding that his ability to defend cause was materially affected by reason of his military service and sua sponte ordering stay of proceedings pursuant to Soldiers' and Sailors' Civil Relief Act. *Roqueplot v Roqueplot* (1980, 2d Dist) 88 Ill App 3d 59, 43 Ill Dec 441, 410 NE2d 441.

Fact that absent defendant would not be competent witness in his own behalf would not prejudice his motion for stay of proceedings until he could be present, since 50 USCS Appx §§ 501 et seq also protects right of litigant to be present at trial for purpose of assisting counsel in preparation of his case, and its presentation to court. *Continental Illinois Nat'l Bank & Trust Co. v University of Notre Dame Du Lac* (1946) 394 Ill 584, 69 NE2d 301.

V.PRACTICE AND PROCEDURE 38. Generally

Ordinary rules governing continuance are not necessarily applicable in case under 50 USCS Appx §§ 501 et seq. *Espósito v Schille* (1944) 131 Conn 449, 40 A2d 745.

Where right to continuance is based on this 50 USCS Appx §§ 501 et seq, compliance with provisions of state statute relative to stay of proceedings or continuance in civil actions is not required, but application may be made at any stage of proceedings. *Semler v Oertwig* (1943) 234 Iowa 233, 12 NW2d 265.

Ordinary rules governing motions for continuance are not necessarily applicable in case governed by 50 USCS Appx §§ 501 et seq. *Burke v Hyde Corp.* (1943, Tex Civ App) 173 SW2d 364.

39. Jurisdiction

Filing of motion for continuance under Soldiers' and Sailors' Relief Act in wife's action for divorce, which motion specifically stated that request was not to be construed as appearance, was not general appearance which waived defendant's right to assert lack of jurisdiction over his person. *O'Neill v O'Neill* (1987, Miss) 515 So 2d 1208.

Trial court had jurisdiction to receive and pass on application for stay under Soldiers' and Sailors' Civil Relief Act where writ of error from judgment overruling demurrers to petition and granting temporary injunction is pending before state supreme court, but no supersedeas has been obtained. *Cedartown v Pickett* (1942) 194 Ga 508, 22 SE2d 318.

40. Affidavits and evidence

Statements in affidavits supporting motion to stay proceedings of small claims action for property damage which set forth that defendant, who was in military service, will not be able to appear and that his ability to conduct his defense is materially affected, do not in and of themselves indicate defendant's ability to conduct his defense will be materially affected, rather there must be some showing or indication by facts or otherwise as to how defendant's ability to conduct his defense will be materially affected. *Deacon v Witham* (1985, City Ct) 131 Misc 2d 217, 499 NYS2d 317.

Trial court did not abuse its discretion in refusing to grant stay of action where no affidavit for stay had been filed. *Ridley v Young* (1944) 64 Cal App 2d 503, 149 P2d 76 (superseded by statute as stated in *American Broadcasting Cos. v Walter Reade-Sterling, Inc.* (1974, 1st Dist) 43 Cal App 3d 401, 117 Cal Rptr 617).

Motion for stay should not be denied on ground that it did not allege any facts which supported movant's claims, whereas answer to such motion informed court that the plaintiffs were prepared to prove facts which would demonstrate such claims to be groundless, since court is not authorized to decide merits of case on affidavits supporting and opposing motion for stay. *Continental Illinois Nat'l Bank & Trust Co. v University of Notre Dame Du Lac* (1946) 394 Ill 584, 69 NE2d 301.

Where answer and affidavit of defendant in military service contain nothing on which court could form opinion as to whether or not his ability to conduct his defense was affected by his service, court will take proof on matter either in form of affidavits or testimony. *Jamaica Sav. Bank v Bryan* (1941) 175 Misc 978, 25 NYS2d 17.

41. Burden of proof

Trial court may exercise its discretion to determine who has burden of proof of issues raised by motion for continuance under 50 USCS Appx §§ 501 et seq. *Boone v Lightner* (1943) 319 US 561, 87 L Ed 1587, 63 S Ct 1223, reh den (1943) 320 US 809, 88 L Ed 489, 64 S Ct 26; *Semler v Oertwig* (1943) 234 Iowa 233, 12 NW2d 265.

Under 50 USCS Appx §§ 501 et seq, party resisting application for stay has burden of satisfying court of absence of material impairment by military service of defendant's ability to defend himself. *Bowsman v Peterson* (1942, DC Neb) 45 F Supp 741; *Meyers v Schmidt* (1944) 181 Misc 589, 46 NYS2d 420.

On case by case basis, courts should impose burden of proof upon whichever party is in best position to show either that applicant for stay will be prejudiced by proceeding with action or whether applicant has improperly used statute to prolong controversy. *Allfirst Bank v Lewis (In re Lewis)* (2001, BC DC Md) 257 BR 431, 37 BCD 65.

Burden is on party resisting stay of proceedings under 50 USCS Appx §§ 501 et seq of satisfying trial court by clear and convincing evidence that rights of soldier or sailor would not be impaired while in military service by denying stay of proceedings. *Reynolds v Haulcroft* (1943) 205 Ark 760, 170 SW2d 678.

In order to obtain stay of proceedings pursuant to Soldier's and Sailor's Civil Relief Act of 1940, party must establish that he is on active duty in military, that he is not or will not be present for trial, that his absence during trial will materially affect his ability to prosecute or defend, and, in addition, that his military status is proximate cause of his inability to be present for trial. *Plesniak v Wiegand* (1975, 1st Dist) 31 Ill App 3d 923, 335 NE2d 131.

Under former 50 USCS Appx § 521, trial court was given wide discretion in deciding which party should carry burden of proof on issue of prejudice. *Bond v Bond* (1976, Tex Civ App Eastland) 547 SW2d 43.

42. Findings of fact

Where military defendant was in active service, he was stationed in United States, and was only deployed on air force related missions approximately two weeks per month; therefore, military defendant was in United States for at least two weeks per month, during which time parties could work together to provide military defendant adequate notice

as to scheduling of depositions, or discovery deadlines. *Antioch Co. v Scrapbook Borders, Inc.* (2002, DC Minn) 210 FRD 645, 54 FR Serv 3d 427.

50 USCS Appx §§ 501 et seq does not require finding of necessity of continuance, but since it applies to courts not of record as well as to courts of record, it requires only that court be of opinion that ability to defend litigation is not materially affected by military service. *Glick Cleaning & Laundry Co. v Wade* (1943) 206 Ark 8, 172 SW2d 929.

Order overruling motion for continuance under 50 USCS Appx § 501 et seq. implies finding upon part of trial court, there being no express findings in record, that court was of the opinion that defendant's military service did not materially affect his ability to defend litigation or prosecute his cross action. *Burke v Hyde Corp.* (1943, Tex Civ App) 173 SW2d 364.

43. Extension or continuance of stay

When litigant has been granted one stay because of his military service, he is not entitled to further stays as matter of right; this is left to discretion of trial court. *Crowder v Capitol Greyhound Lines* (1947, Mun Ct App Dist Col) 51 A2d 372, affd (1948, App DC) 83 US App DC 303, 169 F2d 674.

Upon showing that member of armed forces, stationed in Korea, could not obtain leave and that his presence was essential to proper defense in tort action against him, it was not an abuse of court's discretion to continue stay even though original application stated that he expected to be available at time set by original stay. *Starling v Harris* (1966) 114 Ga App 282, 151 SE2d 163.

44. Appeal and review

Former 50 USCS Appx § 521 indicated that discretion of trial judge was absolute and without review, at least where some action had been taken by that court. *Swiderski v Moodenbaugh* (1942, DC Or) 44 F Supp 687.

Discretion of trial court will be presumed to have been wisely exercised in absence of showing otherwise. *Koons v Nelson* (1945) 113 Colo 574, 160 P2d 367.

Order under Soldiers' and Sailors' Relief Act staying proceedings in equity case for foreclosure of mechanic's lien is interlocutory within rules governing appeals. *Ruth & Clark, Inc. v Emery* (1944) 235 Iowa 131, 15 NW2d 896.

Whether there has been abuse of discretion in granting or refusing stay under 50 USCS Appx § 501 et. seq. is question which must be determined from facts as found in each case. *White System of Lafayette, Inc. v Fisher* (1943, La App 1st Cir) 16 So 2d 89.

Trial court's discretion in granting or refusing stay under 50 USCS Appx §§ 501 et seq. is reviewable. *Lofstedt v Gulf Paving Co.* (1944, Tex Civ App) 185 SW2d 203, affd (1945) 144 Tex 17, 188 SW2d 155.

Appeal from order staying proceedings was dismissed since order was interlocutory, and under rule of procedure, no interlocutory rule or decision could be appealed until after final judgment, except as provided in another rule, with which appellant had failed to comply. *Ruth & Clark, Inc. v Emery* (1944) 235 Iowa 131, 15 NW2d 896.

Order granting stay of proceedings was "an order affecting a substantial right made in a special proceeding," and as such appealable; "a special proceeding" included every special statutory remedy not in itself action, even though connected with pending action. *Sullivan v Storz* (1952) 156 Neb 177, 55 NW2d 499, 34 ALR2d 1142.

45.--Particular circumstances

In action by testamentary trustees to have district court assume supervision of administration of trust, wherein only adult beneficiary moved for stay of proceedings and trustees moved for summary judgment granting their prayer that court take jurisdiction, court's orders refusing stay and granting summary judgment were not "final order, judgment, or decree," within District of Columbia Code, and therefore not appealable, special appeal from interlocutory orders not having been requested or allowed. *Cammack v Howard* (1946, App DC) 81 US App DC 22, 154 F2d 22.

Order under 50 USCS Appx §§ 501 et seq staying proceedings in ejectment proceedings is not final order from which appeal may be prosecuted. *Piercy v Baldwin* (1943) 205 Ark 413, 168 SW2d 1110.

Stay order entered by trial court, limited to proceedings on appeal, while record on appeal was being prepared was not appealable as special order made after final judgment, but served merely to extend or continue time for preparation

of the record on appeal. *Imperial Beverage Co. v Superior Court of Alameda County (1944) 24 Cal 2d 627, 150 P2d 881.*

Order placing will contest on military list because of caveator's military service was interlocutory and not appealable, and since administrator pendente lite had been appointed and had been acting for estate for over one year, delay in hearing of cause did not, as contended by appellant, visit irreparable injury upon estate. *In re Coleman's Will (1953) 27 NJ Super 532, 99 A2d 812.*

Order granting stay of proceedings, in ejectment action, was not appealable as being in no sense final order; order merely continued cause during military service of one of defendants, and for 3 months thereafter, and cause had not been tried on its merits but was still pending. *Piercy v Baldwin (1943) 205 Ark 413, 168 SW2d 1110.*

Court's refusal to grant stay, in hearing upon motion to vacate final decree of divorce, was intermediate in nature and nonappealable. *Miller v Miller (1945) 26 Cal 2d 119, 156 P2d 931.*

Order granting ex parte stay of proceedings was reviewable by direct bill of exceptions, as being final judgment with respect to subject matter involved, where, after Supreme Court had reversed interlocutory injunction granted plaintiff against enforcement of order adjudging his business to be nuisance and ordering him to abate it, and before remittitur had been transmitted to Superior Court, latter had granted stay. *Cedartown v Pickett (1942) 194 Ga 508, 22 SE2d 318.*

Refusal to set aside order revoking stay of proceedings was reviewable by direct bill of exceptions. *Howard v Howard (1948) 203 Ga 782, 48 SE2d 451.*

Appeal was dismissed in action in municipal court by landlord against tenant, wherein landlord appealed from order staying proceedings, since order was not appealable as of course and it did not appear that permission to appeal was granted. *1784 Prospect Ave. Co. v Schwendinger (1944) 182 Misc 639, 50 NYS2d 743.*

Order of court granting stay of proceedings was not "any special order made after final judgment, " and therefore not appealable, since, in order to be appealable, order must affect judgment in some manner or bear some relation to it either by way of enforcing it or staying its execution. *Imperial Beverage Co. v Superior Court of Alameda County (1944) 24 Cal 2d 627, 150 P2d 881.*

46. Miscellaneous

Courts are jealous in defense of right of litigant to be present at trial of his own case, and such right should not be denied him unless for weighty reasons. *Heck v Anderson (1944) 234 Iowa 379, 12 NW2d 849.*

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*** CURRENT THROUGH PL 110-353, APPROVED 10/7/2008 ***
*** WITH GAPS OF 110-343, 110-344, 110-346 and 110-351 ***

TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
SERVICEMEMBERS CIVIL RELIEF ACT
TITLE II. GENERAL RELIEF

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50 USCS Appx § 523

§ 523. Fines and penalties under contracts

(a) Prohibition of penalties. When an action for compliance with the terms of a contract is stayed pursuant to this Act [50 USCS Appx §§ 501 et seq.], a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

(b) Reduction or waiver of fines or penalties. If a servicemember fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if--

- (1) the servicemember was in military service at the time the fine or penalty was incurred; and
- (2) the ability of the servicemember to perform the obligation was materially affected by such military service.

HISTORY:

(Oct. 17, 1940, ch 888, Title II, § 203, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2843.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 523 (Act Oct. 17, 1940, ch 888, § 203, 54 Stat. 1181) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to the stay or vacation of execution of judgments, attachments, etc. For similar provisions, see 50 USCS Appx § 524.

Other provisions:

Applicability of section. This section applies to any case that is not final before December 19, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as 50 USCS Appx § 501 note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:504, 514.

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 390.

Forms:

3 Fed Procedural Forms L Ed, Armed Forces, Civil Disturbances, and National Defense (2002) § 5:204.

Bankruptcy:

4 Collier Bankruptcy Practice Guide, ch 74, Exemptions P 74.67.

Texts:

1 Adoption Law and Practice (Matthew Bender), ch 4, Adoption Procedure § 4.02.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Advoc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 Judges' Journal 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

Interpretive Notes and Decisions:

Maker of promissory note who had been subjected to fine under state banking law could be relieved of fine under provisions of former 50 USCS Appx § 522. *Modern Industrial Bank v Zaentz* (1941) 177 Misc 132, 29 NYS2d 969.

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*** CURRENT THROUGH PL 110-353, APPROVED 10/7/2008 ***
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TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
SERVICEMEMBERS CIVIL RELIEF ACT
TITLE II. GENERAL RELIEF

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50 USCS Appx § 524

§ 524. Stay or vacation of execution of judgments, attachments, and garnishments

(a) Court action upon material affect determination. If a servicemember, in the opinion of the court, is materially affected by reason of military service in complying with a court judgment or order, the court may on its own motion and shall on application by the servicemember--

- (1) stay the execution of any judgment or order entered against the servicemember; and
- (2) vacate or stay an attachment or garnishment of property, money, or debts in the possession of the servicemember or a third party, whether before or after judgment.

(b) Applicability. This section applies to an action or proceeding commenced in a court against a servicemember before or during the period of the servicemember's military service or within 90 days after such service terminates.

HISTORY:

(Oct. 17, 1940, ch 888, Title II, § 204, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2843.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 524 (Act Oct. 17, 1940, ch 888, § 204, 54 Stat. 1181) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to the duration and term of stays, and the procedure when codefendants are not in service. For similar provisions, see *50 USCS Appx § 525*.

Other provisions:

Applicability of section. This section applies to any case that is not final before December 19, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:504, 515.

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 405.

Forms:

3 Fed Procedural Forms L Ed, Armed Forces, Civil Disturbances, and National Defense (2002) §§ 5:193, 204.

Bankruptcy:

4 Collier Bankruptcy Practice Guide, ch 74, Exemptions P 74.67.

Annotations:

Soldiers' and Sailors' Civil Relief Act of 1940, as amended, as affecting matrimonial actions. 54 ALR2d 390.

Texts:

1 Adoption Law and Practice (Matthew Bender), ch 4, Adoption Procedure § 4.02.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 Judges' Journal 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

Interpretive Notes and Decisions:

1. Proceeding "against" military serviceman 2. Stay of execution of judgments 3.--Notice and appearance in action 4.-Support proceedings 5. Stay or vacation of attachments

1. Proceeding "against" military serviceman

Enforcement of judgment for arrears in alimony payments was stayed since fact that soldier-husband had instituted proceedings in which judgment was entered did not mean he was not entitled to stay; availability of relief should not be controlled by form of proceeding nor status of serviceman as plaintiff or defendant. *McKinney v McKinney* (1944) 182 Misc 903, 50 NYS2d 8.

2. Stay of execution of judgments

Person in military service is not entitled to stay of judgment against him as matter of law under Act, where, in opinion of court passing on matter, ability of such person to comply with judgment is not materially affected by reason of his military service. *Bowsman v Peterson* (1942, DC Neb) 45 F Supp 741; *Pope v United States Fidelity & Guaranty*

Co. (1942) 67 Ga App 415, 20 SE2d 618, subsequent app (1942) 67 Ga App 560, 21 SE2d 289, subsequent app (1942) 193 Ga 769, 20 SE2d 13, subsequent app (1944) 198 Ga 304, 31 SE2d 602, subsequent app (1945) 200 Ga 69, 35 SE2d 899; Luckes v Luckes (1955) 245 Minn 141, 71 NW2d 850, 54 ALR2d 384; In re Bashor (1943) 16 Wash 2d 168, 132 P2d 1027.

Soldier is not entitled to stay of judgment against him where, in the opinion of the court passing on the matter, his ability to comply with the judgment is not materially affected by reason of his military service. *Gates v Gates (1943) 197 Ga 11, 28 SE2d 108; Ratliff v Ratliff (1944) 234 Iowa 1171, 15 NW2d 272; New York Life Ins. Co. v Litke (1943) 181 Misc 32, 45 NYS2d 576; Application of Marks (1944) 181 Misc 497, 46 NYS2d 755; Lightner v Boone (1942) 222 NC 205, 22 SE2d 426, affd (1943) 319 US 561, 87 L Ed 1587, 63 S Ct 1223, reh den (1943) 320 US 809, 88 L Ed 489, 64 S Ct 26.*

Motion to dismiss appeal taken by appellant in armed forces from judgment rendered before he was inducted would be denied where appellant's ability to conduct appeal was materially affected by reason of his military service. *Shisler v Becker (1942, Sup) 38 NYS2d 60.*

3.--Notice and appearance in action

Court would set aside order entered on serviceman's application after being discharged from service, modifying decree as of date of his entry into service so as to absolve him from liability for installments on judgment which had accrued while he was in service, where, prior to entry into military service, defendant husband had entered appearance in action and waived notice of trial and he was still civilian at time of entry of interlocutory support order. *Stevens v Stevens (1948) 88 Cal App 2d 654, 199 P2d 314.*

It was not intent of Congress to prohibit entry of judgment where defendant had filed notice of appearance by authorized attorney and entered into stipulation of settlement. *Title Guarantee & Trust Co. v Duffy (1944) 267 App Div 444, 46 NYS2d 441.*

4.--Support proceedings

Order retroactively increasing former husband's child support payments would be vacated and default judgment opened for presentation of husband's defense under provisions of Soldiers' and Sailors' Civil Relief Act, notwithstanding that husband would be construed as having appeared generally in action by filing written response, where husband, who was serving in Air Force in Arizona, was prejudiced in defending New Hampshire action by reason of his military service, where husband would have had legal defense to former wife's petition if wife were requesting retroactive modification, and where master ought to have appointed local counsel to represent husband. *Chenausky v Chenausky (1986) 128 NH 116, 509 A2d 156.*

Order decreeing that defendant's obligations to make payments under property settlement entered into prior to his induction into service were, during period of service, "forever released" insofar as payments provided for were in excess of dependent's allowance provided by government, was improperly entered; purpose of statute was merely to suspend enforcement of civil liabilities and not to provide for discharge of such liabilities. *Kerrin v Kerrin (1950) 97 Cal App 2d 913, 218 P2d 1004.*

Defendant husband's application, under Civil Relief Act, for modification of alimony award against him was rejected; notwithstanding his military service, some provision for defendant's wife and children must be made, and in absence of further evidence as to his financial status relief would not be granted. *Clarke v Clarke (1941, Sup) 25 NYS2d 64.*

Provision for stay of execution of any judgment or order entered against person in military service, where, in opinion of court, ability of such person to comply with judgment was materially affected by reason of his military service, did not require stay of proceedings; it would clearly be unjust to suspend provision for food and clothing for small children for duration of war if father, receiving his own subsistence from government, had means to provide for his children, and moral obligations could not be entirely overlooked. *Kelley v Kelley (1942, Sup) 38 NYS2d 344.*

Defendant who had left for Army without making provision for care of his wife and child, although he had property in jurisdiction, was not entitled to protection of statute, especially since he did not question reasonableness of support order nor make any offer of provision for his family, but apparently intended that proceedings be stayed and his family be left to get along as best they could. *Wilson v Wilson (1944, CP Ct) 28 Ohio Ops 363, 40 Ohio L Abs 281.*

Court refused to stay proceedings for enforcement of support order against delinquent father since statute was designed to protect servicemen with respect to their civil rights while support proceeding was in nature of criminal proceeding; fact of military service did not excuse father from duty of providing for his family. *Commonwealth v Watts* (1942) 47 Pa D & C 87.

5. Stay or vacation of attachments

Where court ordered all proceedings under writs of attachment in action against defendant absent in armed forces to be stayed, it thereby complied with only mandatory requirement of former 50 USCS Appx § 523(b), since it chose one of options set forth, that is, court chose to stay attachment rather than vacate it; application to discharge attachments against funds of defendant absent in military service was properly denied, where stay of proceedings was granted, so that no adverse right of plaintiff could be ripened into judgment while defendant continued to be absent in military service, all rights of defendant in funds were fully secured by good and sufficient undertaking against any damages which could possibly be sustained by reason of attachment, and defendant was in hands of Japanese where he personally was unable to withdraw funds for any purpose. *Halstead v Halstead* (1946) 72 Cal App 2d 832, 165 P2d 513.

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*** CURRENT THROUGH PL 110-353, APPROVED 10/7/2008 ***
*** WITH GAPS OF 110-343, 110-344, 110-346 and 110-351 ***

TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
SERVICEMEMBERS CIVIL RELIEF ACT
TITLE II. GENERAL RELIEF

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50 USCS Appx § 525

§ 525. Duration and term of stays; codefendants not in service

(a) Period of stay. A stay of an action, proceeding, attachment, or execution made pursuant to the provisions of this Act [50 USCS Appx §§ 501 et seq.] by a court may be ordered for the period of military service and 90 days thereafter, or for any part of that period. The court may set the terms and amounts for such installment payments as is considered reasonable by the court.

(b) Codefendants. If the servicemember is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under this Act [50 USCS Appx §§ 501 et seq.], the plaintiff may proceed against those other defendants with the approval of the court.

(c) Inapplicability of section. This section does not apply to sections 202 and 701 [50 USCS Appx §§ 522 and 591].

HISTORY:

(Oct. 17, 1940, ch 888, Title II, § 205, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2844.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 525 (Act Oct. 17, 1940, ch 888, § 205, 54 Stat. 1181; Oct. 6, 1942, ch 581, § 5, 56 Stat. 770; March 18, 1991, P.L. 102-12, § 9(6), 105 Stat. 39) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to statutes of limitations as affected by period of service. For similar provisions, see 50 USCS Appx § 526.

Other provisions:

Applicability of section. This section applies to any case that is not final before December 19, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as 50 USCS Appx § 501 note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:504, 505, 516.

Am Jur:

53A Am Jur 2d, Military and Civil Defense §§ 392, 401.

Am Jur Trials:

91 Am Jur Trials, When Clergy Fail Their Flock: Litigating the Clergy Sexual Abuse Case, p. 151.

Forms:

3 Fed Procedural Forms L Ed, Armed Forces, Civil Disturbances, and National Defense (2002) §§ 5:193204.

Bankruptcy:

9 Collier on Bankruptcy (Matthew Bender 15th ed. rev), ch 4007, Determination of Dischargeability of a Debt P 4007.04.

Annotations:

Soldiers' and Sailors' Civil Relief Act of 1940, as amended, as affecting matrimonial actions. 54 ALR2d 390.

Soldiers' and Sailors' Civil Relief Act of 1940, as amended, as affecting negligence actions. 75 ALR2d 1062.

Texts:

1 Adoption Law and Practice (Matthew Bender), ch 2, Consent to Adoption § 2.04.

1 Adoption Law and Practice (Matthew Bender), ch 4, Adoption Procedure § 4.02.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Advoc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 Judges' Journal 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

Interpretive Notes and Decisions:

I.DURATION OF STAY 1. Legislative intent 2. Indefinite stay

II.STAY OF PROCEEDING INVOLVING NONMILITARY CODEFENDANTS

A.In General 3. Generally 4. Prejudice to service member 5. Failure to prosecute action

B.Particular Circumstances 6. Absence of service member as material witness 7. Judgment sought only against codefendants 8. Litigation concerning prior judgment 9. Possible satisfaction of judgment against joint assets 10. Service member is majority stockholder 11. Service member present through attorney

I.DURATION OF STAY 1. Legislative intent

While language of former 50 USCS Appx § 524, authorizing stay for period of military service and 3 months thereafter or any part of such period, was permissive, it obviously reflected legislative policy to place person engaged in military establishment beyond effect of urgencies of pending litigation and to allow him reasonable period for reorientation following his discharge, so that there was rather clear congressional intimation that in ordinary case stay should be granted for duration of service and 3 months thereafter. *Bowsman v Peterson* (1942, DC Neb) 45 F Supp 741.

2. Indefinite stay

Continuance granted solely on account of defendant's military service was beyond discretionary power of trial court where it continued case indefinitely or until such time as defendant was able to return to participate in trial of case. *Graves v Bednar* (1959) 167 Neb 847, 95 NW2d 123, 75 ALR2d 1056.

II.STAY OF PROCEEDING INVOLVING NONMILITARY CODEFENDANTS

A.In General 3. Generally

Rights of one defendant, presently in military service, cannot avail to another defendant in same suit who was not in service. *Trujillo v Wilson* (1948) 117 Colo 430, 189 P2d 147.

Stay of action as to defendant in military service does not necessarily or automatically stay it as to his codefendant. *Craig v Clearwater Concentrating Co.* (1944) 21 Wash 2d 530, 151 P2d 828.

4. Prejudice to service member

In absence of prejudice to serviceman, proceedings should not be stayed for benefit of other parties. *Heck v Anderson* (1944) 234 Iowa 379, 12 NW2d 849; *Craig v Clearwater Concentrating Co.* (1944) 21 Wash 2d 530, 151 P2d 828.

Order granting stay to codefendants of serviceman could be sustained only insofar as it was necessary to protect interest of serviceman defendant, and since there was no showing that serviceman would be prejudiced by trial of case against his codefendants, there was no reason for staying proceedings as to them. *Heck v Anderson* (1944) 234 Iowa 379, 12 NW2d 849.

5. Failure to prosecute action

Staying negligence action as to defendant serviceman did not necessarily stay as to his codefendant; where plaintiff did not proceed with action against codefendant, suit was properly dismissed as to that defendant. *Craig v Clearwater Concentrating Co.* (1944) 21 Wash 2d 530, 151 P2d 828.

B.Particular Circumstances 6. Absence of service member as material witness

Contention of defendant that it was entitled to stay because its employee, material witness who had been operating its vehicle at time of accident in suit, was absent in military service was rejected since in absence of prejudice to absent serviceman, defendant should not be permitted to acquire vicarious shelter under statute, especially where original defendant was in bankruptcy and claim of plaintiff, who was 63 years old, might be indefinitely postponed or lost if matter was continued for duration of military service of absent employee. *Hrabak v Hummel* (1943, DC Pa) 55 F Supp 775, affd (1944, CA3 Pa) 143 F2d 594, cert den (1944) 323 US 724, 89 L Ed 582, 65 S Ct 57.

Codefendant in action with another who was absent in military service was jointly, with defendant in military service, entitled to stay of proceedings under former 50 USCS Appx § 524, where defendant in military service was important witness for himself and necessarily for his codefendant, in joint action in which alleged negligence on part of absent defendant was essential to judgment against either defendant. *Semler v Oertwig* (1943) 234 Iowa 233, 12 NW2d 265.

Codefendant does not have standing to raise defendant's right to continuance because of military service so as to have entire action stayed where defendant was represented by counsel at trial and took no appeal from judgment; mere fact that defendant's absence as witness may have affected codefendant's defense of action is not enough, since codefend-

dant should have obtained his testimony through depositions. *Forker v Pomponio* (1960) 60 NJ Super 278, 158 A2d 849, 5 ALR3d 263.

Where defendant in armed forces was charged with fraud and money judgment was demanded against him, and co-defendants were sought to be held upon same causes of action by reason of his alleged fraud, and the record did not show such unreasonable delay or such fault on part of codefendants in taking his deposition, codefendants should not be required to proceed to trial without benefit of his testimony, their motion for stay and to have cause placed on the military suspense calendar would be granted. *Wuster v Levitt* (1944) 268 App Div 926, 51 NYS2d 344.

Right to stay because of absence of codefendant in military service who was asserted to be material and indispensable witness for defense of remaining defendant is to be measured by rules governing rights of ordinary litigant to continuance and not by provisions of 50 USCS Appx §§ 501 et seq. *Young v Evans* (1944) 62 Cal App 2d 365, 144 P2d 651.

Absence in military service of nurse whose act of negligence was basis of liability imposed upon defendant did not require granting of stay under former 50 USCS Appx § 524; statute was enacted for welfare of serviceman and applied only to persons engaged in military services, and there was nothing therein requiring continuance merely because material witness not party to action was engaged in military service. *Welsh v Mercy Hospital* (1944) 65 Cal App 2d 473, 151 P2d 17.

Parents of absent serviceman, who were charged with liability by virtue of their having consented to his driving their motor car, were not entitled to stay because of their son's absence overseas; 50 USCS Appx § 524 made no provision for staying trial for civilian because witness was in Armed Forces and former 50 USCS Appx § 524 specifically provided that court might in such situations proceed against those who were not in service. *Culver v Superior Court of Los Angeles County* (1954) 125 Cal App 2d 76, 270 P2d 78.

7. Judgment sought only against codefendants

Where neither defendant absent in military service nor defendant partnership of which he was member had ever been served with process or appeared and there was nothing to show that plaintiff, in opposing motions for stay under 50 USCS Appx §§ 501 et seq., was seeking to proceed to trial and to obtain judgment against any person other than those defendants not in service, refusal of stay was proper. *Young v Evans* (1944) 62 Cal App 2d 365, 144 P2d 651.

8. Litigation concerning prior judgment

As to effect of Soldiers' and Sailors' Civil Relief Act upon codefendant where other defendant is in military service, trial court did not err in refusing to continue case because junior member of firm of attorneys who were sued in action was in Army, for reason that matters embraced in litigation depended upon construction of contract which had already been settled by previous decision. *Davies & Davies v Patterson* (1919) 137 Ark 184, 208 SW 592.

9. Possible satisfaction of judgment against joint assets

Fact that judgment against defendant not in military service might be satisfied by charging order upon his interest in partnership of which codefendant absent in military service was member would not justify granting of stay as to defendant. *Young v Evans* (1944) 62 Cal App 2d 365, 144 P2d 651.

In action to enforce bank stockholder's liability, order staying all proceedings in case as to defendants not in military service was not erroneous where theory of liability of such defendants was that they were jointly liable as heirs of defendant who was in military service. *Hellberg v Warner* (1943) 319 Ill App 117, 48 NE2d 972.

10. Service member is majority stockholder

In action to determine ownership of capital stock of corporation, entire action was properly stayed where it was shown that defendant who owned majority of stock was in military service; while courts in exercise of their discretion may refuse to grant stay they are not obligated to do so unless they are of the opinion that the interests of the person in the military or naval service will not be materially affected by a refusal. *McArthur v Shaffer* (1943) 59 Cal App 2d 724, 139 P2d 959.

11. Service member present through attorney

Where, in action on note, defendant maker who was in military service was represented by counsel, and no proper legal defense was interposed, motion of co-makers who were not in service for stay would be denied. *Modern Industrial Bank v Grossman* (1943) 180 Misc 415, 40 NYS2d 628.

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*** CURRENT THROUGH PL 110-353, APPROVED 10/7/2008 ***
*** WITH GAPS OF 110-343, 110-344, 110-346 and 110-351 ***

TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
SERVICEMEMBERS CIVIL RELIEF ACT
TITLE II. GENERAL RELIEF

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50 USCS Appx § 526

§ 526. Statute of limitations

(a) Tolling of statutes of limitation during military service. The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

(b) Redemption of real property. A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

(c) Inapplicability to internal revenue laws. This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

HISTORY:

(Oct. 17, 1940, ch 888, Title II, § 206, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2844.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The "internal revenue laws of the United States", referred to in this section, appear generally as *26 USCS §§ 1* et seq.

Explanatory notes:

A prior § 526 (Act Oct. 17, 1940, ch 888, § 206, as added Oct. 6, 1942, ch 581, § 6, 56 Stat. 771; March 18, 1991, P.L. 102-12, § 9(7), 105 Stat. 39) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to the maximum rate of interest. For similar provisions, see *50 USCS Appx § 527*.

Other provisions:

Applicability of section. This section applies to any case that is not final before December 19, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense § 5:504.

Am Jur:

48B Am Jur 2d, Labor and Labor Relations § 3370.

53A Am Jur 2d, Military and Civil Defense §§ 419, 426, 427.

Forms:

3 Fed Procedural Forms L Ed, Armed Forces, Civil Disturbances, and National Defense (2002) § 5:204.

Annotations:

Amendment of pleading to add, substitute, or change capacity of, party plaintiff as relating back to date of original pleading, under *Rule 15(c) of Federal Rules of Civil Procedure*, so as to avoid bar of limitations. 12 ALR Fed 233.

Tolling provision of soldiers' and sailors' Civil Relief Act (*50 USCS Appx § 525*). 36 ALR Fed 420.

Accrual of cause of action and tolling of limitation period of § 6 of the Federal Employers' Liability Act (*45 USC § 56*). 16 ALR3d 637.

Tolling of statute of limitations during absence from state as affected by fact that party claiming benefit of limitations remained subject to service during absence or nonresidence. 55 ALR3d 1158.

Absence of judgment debtor from state as suspending or tolling running of period as to judgment. 27 ALR2d 839.

Appealability of order granting or refusing stay or continuance under Federal Civil Relief Act because of litigant's military service. 34 ALR2d 1149.

Part payment or promise to pay judgment as affecting running of statute of limitations. 45 ALR2d 967.

Soldiers' and Sailors' Civil Relief Act of 1940, as amended, as affecting matrimonial actions. 54 ALR2d 390.

Soldiers' and Sailors' Civil Relief Act of 1940, as amended, as affecting negligence actions. 75 ALR2d 1062.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Folk. Tolling of Statutes of Limitations Under Section 205 of the Soldiers' and Sailors' Civil Relief Act. 102 *Mil L Rev* 157, Fall 1983.

Thompson. The Servicemembers Civil Relief Act. 48 *Res Gestae* 13, September 2004.

Gutman. Willfulness and the Statute of Limitations in the Fair Labor Standards Act, 5 *Seton Hall Legis J* 87, Fall 1980.

Interpretive Notes and Decisions:

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I.IN GENERAL 1. Generally

Period spent in military service by a plaintiff in an action shall not be included in any period during which the statute of limitations runs. *Perkins v Manning* (1942) 59 Ariz 60, 122 P2d 857.

Former 50 USCS Appx § 525 had effect of extending statute of limitations of state or time for performance of act required by state law or rule. *Shire v Superior Court* (1945) 63 Ariz 420, 162 P2d 909.

Period of military service of defendant should not be included in time for bringing action in state court. *Blazewski v Stadnicki* (1944) 317 Mass 352, 58 NE2d 164.

Period of military service by plaintiff should not be included in computing limitation against him. *First Nat'l Bank v English* (1951, Tex Civ App) 240 SW2d 503.

In determining whether statute of limitations had run against plaintiff, plaintiff could not be charged with time that defendant was not available for service of process because of being in military service overseas. *Bethel Mills, Inc. v Whitcomb* (1950) 116 Vt 357, 76 A2d 548.

2. Constitutionality

Former 50 USCS Appx § 525 was valid. *Kilfoile v Sherman* (1975, Ky) 535 SW2d 69.

Tolling provision of Soldiers' and Sailors' Civil Relief Act (former 50 USCS Appx § 525) was constitutional. *Van Heest v Veech* (1959) 58 NJ Super 427, 156 A2d 301.

3. Purpose

Purpose of former 50 USCS Appx § 525 was to extend time in which action could be brought by or against person in military service. *Van Heest v Veech* (1959) 58 NJ Super 427, 156 A2d 301.

4. Construction

Although literally former 50 USCS Appx § 525 would not toll running of period during which attachments of bankrupt's property could be dissolved under provisions of Bankruptcy Act (former 11 USCS § 107(a)), since period provided by that statute during which such liens could be dissolved by trustee in bankruptcy did not amount to statute of limitations, former 50 USCS Appx § 525 should have been liberally construed beyond its letter. *In re Meade* (1945, DC Mass) 60 F Supp 69.

Former 50 USCS Appx § 525 should have been liberally construed to protect rights of persons who had been obliged to drop their own affairs to take up burdens of nation. *Shell Oil Co. v Industrial Com.* (1950) 407 Ill 186, 94 NE2d 888.

There was policy of liberal construction of former 50 USCS Appx § 525 in favor of those who had been obliged to drop their own affairs in order to take up burdens of nation. *Stutz v Guardian Cab Corp.* (1947) 273 App Div 4, 74 NYS2d 818.

Former 50 USCS Appx § 525 was to be liberally construed by courts. *Mitchell v Phillips* (1972) 58 Pa D & C2d 314.

5. Relationship with other laws

Former 50 USCS Appx §§ 525 and 560 supplemented each other, § 560 giving greater protection to restricted types of real property, while § 525 extended in terms to all land; to adopt contrary construction would have attributed to Congress purpose to protect only certain classes of property, which could not have been done without drastically contracting language of § 525 and ignoring its beneficent purpose. *Le Maistre v Leffers* (1948) 333 US 1, 92 L Ed 429, 68 S Ct 371.

Limitations period applicable to hybrid § 301 action filed by former employee against his former employer and union representative at his former job is governed by military-service tolling provision contained in § 10(b) of NLRA, rather than by CSRA, since decision to apply latter could seriously distort balanced limitations rule that Congress crafted for unfair labor practice cases. *Mouradian v John Hancock Cos.* (1991, CA1 Mass) 930 F2d 972, 137 BNA LRRM 2134, 118 CCH LC P 10712, cert den (1992) 503 US 951, 117 L Ed 2d 650, 112 S Ct 1514, 139 BNA LRRM 2808, 121 CCH LC P 10048.

Tolling provision of Soldiers' and Sailors' Civil Relief Act (former 50 USCS Appx § 525) was applicable to actions brought under Federal Tort Claims Act (28 USCS § 1346 et seq.). *Lester v United States* (1980, ND Tex) 487 F Supp 1033.

Waiver of benefits of former 50 USCS Appx § 517 protecting serviceman against seizure of mortgaged property did not constitute waiver of benefits of former 50 USCS Appx § 525. *Harris v Stem* (1947, La App, Orleans) 30 So 2d 889.

Provisions of former 50 USCS Appx §§ 525 and 560 were complementary and not conflicting; where, at time plaintiff serviceman's land was sold for taxes, period of redemption computed under former 50 USCS Appx § 525 had not expired, sale was void under terms of state statute so that purchaser received no title. *Day v Jones* (1947) 112 Utah 286, 187 P2d 181.

6. Mandatory nature of provision

Limitations provision of former 50 USCS Appx § 525 was mandatory and not discretionary. *Estate of Wolf v Comm'r* (1959, CA3) 264 F2d 82, 59-1 USTC P 11856, 3 AFTR 2d 1797.

Tolling of state statute of limitations by former 50 USCS Appx § 525 for duration of plaintiff's military service was mandatory rather than permissive. *Thompson v Reedman* (1961, ED Pa) 201 F Supp 837, 5 FR Serv 2d 166.

Former 50 USCS Appx § 525 was not merely directory or permissive, but was imperatively controlling so as to automatically extend period of redemption. *Peace v Bullock* (1949) 252 Ala 155, 40 So 2d 82; *Illinois Nat'l Bank v Gwinn* (1945) 390 Ill 345, 61 NE2d 249, 159 ALR 468; *Kenney v Churchill Truck Lines, Inc.* (1972, 4th Dist) 6 Ill App 3d 983, 286 NE2d 619.

Former 50 USCS Appx § 525 was unambiguous, and, therefore, suspension was not affected by fact that serviceman could have effectively pursued his rights while he was in service. *Trew v Standard Supply & Hardware Co.* (1947, La App, Orleans) 33 So 2d 426.

Former 50 USCS Appx § 525 involved no element of discretion, and its provision was mandatory, requiring tolling of statute of limitations during period of military service. *Van Heest v Veech* (1959) 58 NJ Super 427, 156 A2d 301.

In action for personal injuries sustained by plaintiff in automobile accident, provisions of former 50 USCS Appx § 525 were mandatory and not up to court's discretion, and therefore applicable statute of limitations was tolled during period of plaintiff's military service. *Plymale v Pittsburgh R. Co.* (1962) 29 Pa D & C2d 149.

7. Failure to raise issue at trial; waiver

Fact that former 50 USCS Appx § 525 was not raised in district court did not prevent consideration of such issue on appeal, since § 525 was couched in mandatory terms, and exception to general rule of nonreviewability existed when pertinent statute had been overlooked in trial court. *Ricard v Birch* (1975, CA4 NC) 529 F2d 214, 36 ALR Fed 414.

In wrongful death action brought by mother of member of Marine Corps who was killed while riding in automobile driven by defendant fellow Marine, action was not time-barred since applicable statute of limitations was tolled under former 50 USCS Appx § 525 during period of defendant's military service; fact that plaintiff brought action while defendant was still member of Armed Forces did not constitute waiver of rights under § 525 since § 525 was unconditional, and once military service could be shown, period of limitations would automatically be tolled for duration of service, though adverse plaintiff could file sooner if service of process could be had. *Ricard v Birch* (1975, CA4 NC) 529 F2d 214, 36 ALR Fed 414.

Despite fact that plaintiff's failure to claim his rights under former 50 USCS Appx § 525 at trial could have been considered by court on appeal, court refused to remand case for new trial where final result would not be changed. *Campbell v Rockefeller* (1948) 134 Conn 585, 59 A2d 524.

In action by ex-serviceman to recover damages for illegal seizure of automobile mortgaged to defendant as security for loan, former 50 USCS Appx § 525 prevented running of one year Louisiana statute of limitations during time plaintiff was in military service, and § 517 permitting waiver of protection against seizure and sale of mortgaged property did not permit waiver of rights under § 525. *Harris v Stem* (1947, La App, Orleans) 30 So 2d 889.

8. Prejudice

Showing of prejudice by military service was not required to invoke tolling provision since statutory command of provision was unambiguous, unequivocal, and unlimited, and there was no justification of departing from unambiguous text. *Conroy v Aniskoff* (1993) 507 US 511, 123 L Ed 2d 229, 113 S Ct 1562, 93 CDOS 2354, 93 Daily Journal DAR 4021, 7 FLW Fed S 139.

Former 50 USCS Appx § 525 was inapplicable to career serviceman who was not handicapped by military service from asserting claim prior to expiration of prescribed period. *Pannell v Continental Can Co.* (1977, CA5 Ga) 554 F2d 216.

Plaintiff was not entitled to relief under former 50 USCS Appx § 525 with respect to challenging adoption decree, where evidence showed that plaintiff had sufficient legal notice or knowledge of abandonment and needs of his children, and of dependency proceedings which took place prior to adoptions, and that plaintiff had effectively waived his rights and deliberately abandoned his children. *Olsen v Davidson* (1960) 142 Colo 205, 350 P2d 338.

Showing of prejudice to person in military service was not part of former 50 USCS Appx § 525. *Van Heest v Veech* (1959) 58 NJ Super 427, 156 A2d 301.

Tax sale of career serviceman's real property, purchased while still in the service, was valid since former 50 USCS Appx § 525 did not provide for tolling of statute of limitation unless prejudice and hardship was shown. *Bailey v Baranca* (1971) 83 NM 90, 488 P2d 725 (superseded by statute as stated in *State ex rel. Kline v Blackhurst* (1988) 106 NM 732, 749 P2d 1111).

Soldiers' and Sailors' Civil Relief Act was not intended to completely exempt career serviceman owning property, who knew of his tax obligations and was not handicapped because of military status, from paying usual taxes assessed on his property; thus, career serviceman was not entitled to exemption of period of redemption where he had been in military almost 16 years before he bought property, and tax deed was not issued until 3 years after tax certificate was issued and after he had owned property for over 4 years, during which time he paid no taxes. *King v Zagorski* (1968, Fla App D2) 207 So 2d 61.

9. Availability of remedy during service period

Where wife brought action against husband to recover amount of loans, which were allegedly payable on demand, and husband could have been found and served with process if due diligence had been exercised over period from 1937 to 1948, excepting two-year period when husband was in military service, wife's cause of action was barred by New York statute of limitations. *Daitz v Daitz* (1953, DC NY) 113 F Supp 78.

Action based on personal injuries sustained in automobile accident in Pennsylvania, commenced two years and twelve days after accident, against defendant who was in navy at time of accident and for more than twelve days there-

after, was tolled, as against contention of defendant that defendant, who was stationed outside Pennsylvania, could have been served under that state's nonresident motorist act. *Zitomer v Holdsworth* (1959, DC Pa) 178 F Supp 504.

Serviceman was entitled to benefits of former 50 USCS Appx § 525 even though he could have effectively pursued his rights prior to his entry into service or while he was in service. *Trew v Standard Supply & Hardware Co.* (1947, La App, Orleans) 33 So 2d 426.

Claimant was not entitled to protection of former 50 USCS Appx § 525 where he was not prejudiced by his military service since he had guardian ad litem who could have and did file claim in decedent's estate. *Smith v Fitch* (1946) 25 Wash 2d 619, 171 P2d 682.

10. Calculation of time

Former 50 USCS Appx § 525 operated, in case of one in Navy at time of its enactment, to toll, so long as he remained in Navy, running of period after which purchaser at tax sale of such person's property could apply for tax deed. *Le Maistre v Leffers* (1948) 333 US 1, 92 L Ed 429, 68 S Ct 371.

Serviceman was entitled to benefits of former 50 USCS Appx § 525, so that applicable 6-year statute of limitations was tolled and did not commence to run on serviceman's claim until end of his terminal leave. *Berry v United States* (1954) 130 Ct Cl 33, 126 F Supp 190, cert den (1955) 349 US 938, 99 L Ed 1266, 75 S Ct 783.

In action brought to recover damages for sale of certain personal property, action was timely since under predecessor of former 50 USCS Appx § 525, 6-year statute of limitations for bringing of action did not start to run until plaintiff's discharge from military service. *Kosel v First Nat'l Bank* (1927) 55 ND 445, 214 NW 249.

Serviceman who had brought action to recover for personal injuries he sustained in automobile accident which occurred while he was on active duty with United States Navy was entitled to benefits of former 50 USCS Appx § 525 so that period of limitations prescribed by state statute for bringing action was tolled until date when serviceman was permanently retired for physical disability. *Cruz v General Motors Corp.* (1970, SD NY) 308 F Supp 1052.

Under former 50 USCS Appx § 525, serviceman's period of military service ended with the date of discharge from "active service," and his active service included the period he was absent from duty "on account of sickness"; period of limitations was also tolled when plaintiff was placed on the retirement list for permanent disability. *Cruz v General Motors Corp.* (1970, SD NY) 308 F Supp 1052.

With respect to injuries suffered when personnel heater exploded in flames in armored ammunition carrier in which soldier was passenger, products liability action was time-barred, where (1) injury occurred in Germany on November 9, 1988, (2) soldier was released from military service on July 20, 1992, and (3) he filed suit on July 21, 1994, even though 2-year statute of limitations was tolled during his period of military service under former 50 USCS Appx § 525, because limitations period began to run July 21, 1992 and ran out at midnight July 20, 1994. *Hamner v BMY Combat Sys.* (1994, DC Kan) 869 F Supp 888, affd without op (1996, CA10 Kan) 79 F3d 1156, reported in full (1996, CA10 Kan) 1996 US App LEXIS 3249.

Order granting defendant's motion to dismiss former soldier's action on ground that it was not filed within applicable 2-year limitations period would not be altered, where statute of limitations was tolled during soldier's period of military service, because first day following period tolled by application of 50 USCS Appx §§ 501 et seq. was included within 2-year period, since no act, event, or default occurred on that date which served to exclude it under state law from limitations period. *Hamner v BMY Combat Sys.* (1995, DC Kan) 874 F Supp 322.

In action to recover salary for services performed and to enforce lien therefor on employer's property, action was not barred by applicable state statute of limitations, since under unambiguous language of former 50 USCS Appx § 525, one year period for bringing action was suspended and could only be counted from date of plaintiff's discharge from United States Navy. *Trew v Standard Supply & Hardware Co.* (1947, La App, Orleans) 33 So 2d 426.

Plaintiff's recovery was not barred by failure to serve notice where he had been in military service at time of accident and for entire 6 months during which notice should have been served. *Calderon v New York* (1945) 184 Misc 1057, 55 NYS2d 674.

11. Miscellaneous

Plaintiff's claim for backpay and allowances for 3-year period spent in law school under Army's Excess Leave Program, while retaining active duty status but without pay and allowances, was not barred by 6-year statute of limitations

(28 USCS § 2501), notwithstanding that plaintiff entered law school in 1970, graduated in 1973, and did not bring action until 1979, while still on active duty, more than 9 years after cause of action first accrued, as plain language of former 50 USCS § 525 unconditionally mandated tolling of statute of limitations for any period of active military service, without restriction and with no distinction between many different categories of active duty personnel. *Bickford v United States* (1981) 228 Ct Cl 321, 656 F2d 636.

II. APPLICABILITY

A. Persons Entitled to Claim Benefit of Provision 12. Generally

Former 50 USCS Appx § 525 was adopted by Congress not only to protect right of individuals in military service of United States but also to protect rights of individuals having causes of action against members of Armed Forces of United States. *Ray v Porter* (1972, CA6 Ky) 464 F2d 452.

Former 50 USCS Appx § 525 was applied unconditionally to those on active military duty, including career military personnel. *McCance v Lindau* (1985) 63 Md App 504, 492 A2d 1352.

Former 50 USCS Appx § 525 worked to toll running of statutory period even when defendant might be subject to out-of-state service because of, for example, nonresident motorist act; provisions of section applied equally to benefit of civilian plaintiff as well as to benefit of serviceman or former serviceman; tolling of period of limitations under § 525 was mandatory in state courts as well as federal courts. *Landis v Hodgson* (1985, App) 109 Idaho 252, 706 P2d 1363.

Language of former 50 USCS Appx § 525 referring to bringing of any action "by or against any person in military service" indicated purpose to provide tranquility to serviceman with respect to all litigation and not merely with respect to that in which he might elect to invoke Act to suspend statute of limitations; there was convenience in uniformity of application, as well as fairness to both civilian and serviceman, since persons in military service might better devote their entire energy to defense of their country if their creditors were not obliged to sue during war. *Blazejowski v Stadnicki* (1944) 317 Mass 352, 58 NE2d 164.

Former 50 USCS Appx § 525 suspended running of limitations in favor of serviceman; contention that serviceman alone had right to invoke tolling provision was rejected since use of words "by or against" was clear and unambiguous. *Blazejowski v Stadnicki* (1944) 317 Mass 352, 58 NE2d 164.

Former 50 USCS Appx § 525 made no distinction, but clearly excluded period of military service from computation of limitations running against actions both by and against servicemen. *Warinner v Nugent* (1951) 362 Mo 233, 240 SW2d 941, 26 ALR2d 278.

Provisions of former 50 USCS Appendix § 525 providing for tolling of statute of limitations during period of military service could be raised by party who had not been himself in service. *Kasner v Ashburn* (1948) 200 Okla 256, 192 P2d 649.

Former 50 USCS Appx § 525 could be invoked by civilians as well as by persons in Armed Forces. *Henderson v Miller* (1972, Tenn) 477 SW2d 197.

13. Assigns

Absent soldier's trustee in bankruptcy was his "assign" within meaning of former 50 USCS Appx § 525. *In re Meade* (1945, DC Mass) 60 F Supp 69.

14. Beneficiaries and heirs

Heirs of deceased serviceman, who brought action in trespass to try title to undivided half interest in land, were entitled under predecessor of former 50 USCS Appx § 525 to deduct period of time during which deceased was in military service from 25 year limitation period prescribed by state statute for bringing action. *Easterling v Murphey* (1928, Tex Civ App) 11 SW2d 329.

Action brought by named beneficiary of insurance policy, seeking reinstatement of policy and collection of amount alleged to be due thereon, was not time-barred since under predecessor of former 50 USCS Appx § 525, time prescribed by state statute for bringing action did not include time that insured was in military service. *Green v Bankers' Life Ins. Co.* (1922) 112 Kan 50, 209 P 670 (ovrld as stated in *Squires v Woodbury* (1980) 5 Kan App 2d 596, 621 P2d 443).

Plaintiff, sole beneficiary of deceased serviceman, who brought action seeking adjudication that he was owner of one-half interest in certain mineral interests, was entitled to benefits of tolling provision of former 50 USCS Appx § 525

so that action was not barred by applicable state statute of limitations since running of such statute was suspended during period of deceased serviceman's military service. *Chichester v Chichester* (1950) 209 Miss 628, 48 So 2d 123.

15. Codefendants

Provision of former 50 USCS Appx § 525 tolling statute of limitations as to serviceman had no application to his civilian codefendant, whose alleged liability was several with that of serviceman, so that codefendant could properly rely on limitations as bar notwithstanding fact that action against serviceman was not barred. *Hurwitch v Adams* (1959) 52 Del 247, 155 A2d 591.

16. Immediate family of service member

In action brought by wife of serviceman to recover for personal injuries which serviceman had sustained in skiing accident, wife was not entitled to benefits of tolling provision of former 50 USCS Appx § 525; since § 525 extended only to persons in military service, such provision should not have been construed to include wife who brought suit in her own name to recover derivatively for damages she had incurred as result of injuries suffered by her husband, individual covered by provision. *Wanner v Glen Ellen Corp.* (1974, DC Vt) 373 F Supp 983.

In diversity action based on personal injuries and loss of consortium suffered by serviceman and his wife as result of automobile accident which occurred while serviceman was on active duty with United States Navy, former 50 USCS Appx § 525 tolled running of applicable statute of limitations as to serviceman's claim for his own personal injuries and his claim for loss of his wife's services, but, since § 525 did not extend to wife of serviceman, wife's claim for her personal injuries and for loss of her husband's consortium was barred by statute of limitations. *Card v American Brands Corp.* (1975, SD NY) 401 F Supp 1186.

In action brought by serviceman on his own behalf and on behalf of his wife and minor child to recover damages resulting from automobile collision which occurred while serviceman was in Vietnam, under tolling provision of former 50 USCS Appx § 525, applicable statute of limitations was tolled during period of serviceman's military service, with respect to those elements of damage for which serviceman, as husband, was entitled to recover in his own right, but statute of limitations was not tolled as to recovery of damages to which wife or child were entitled in their own right. *Lopez v Waldrum Estate* (1970) 249 Ark 558, 460 SW2d 61.

In complaint in trespass filed by husband and his wife, alleging that defendant had operated his automobile so negligently as to cause collision with automobile in which plaintiffs were traveling, where husband was in military service of United States at time of accident and continuously thereafter, wife could not take advantage of tolling provisions of former 50 USCS Appx § 525 since she was not person in military service within meaning of Act. *Malinowski v Main* (1956) 10 Pa D & C2d 425.

17. Partnerships

In action brought by partnership for recovery of balance allegedly due on promissory note and for foreclosure on mechanic's and materialman's lien on certain property by which note was secured, wherein it appeared that one member of partnership had served with Armed Forces between time note became due and time action was brought, partnership was entitled to benefits of tolling provision of former 50 USCS Appx § 525, and therefore, action was not barred by applicable statute of limitations because period during which such member of partnership was in military service should not be included in computing limitations period for bringing action. *Crawford v Adams* (1948, Tex Civ App) 213 SW2d 721.

18. Service member as representative of another

Former 50 USCS Appx § 525 applied only to period for bringing action "by or against any person in military service or by or against his heirs, executors, administrators, or assigns," and thus § 525 would have been stretched beyond bounds if it were to cover actions against person not in military service whose executor, who was in military service, had to be substituted. *Photometric Products Corp. v Radtke* (1946, DC NY) 5 FRD 394, 69 USPQ 437, app dismd (1946, CA2 NY) 157 F2d 849, 71 USPQ 180.

Under former 50 USCS Appx § 525, state statute of limitations would be tolled on behalf of "a person in the military service" although his action was purely derivative because based on an injury to his wife, and although wife was barred by state statute of limitations from bringing suit. *Lopez v Waldrum Estate* (1970) 249 Ark 558, 460 SW2d 61.

In action instituted by decedent to recover for personal injuries, and later assumed by husband of decedent, executor in her will, fact that person appointed representative of deceased was at one time in military service was immaterial because suit was still suit of deceased, who was never in military service, and rights sought to be enforced were primarily hers, and not those of her husband or of one who was in military service. *Dudley v Eastman* (1901) 70 NH 418, 50 A 101.

Although wrongful death action was required to be brought in name of decedent's personal representative, sole beneficiary of proceeding was real party in interest, and where this party had been in military service, statute of limitation was tolled for period of such service; however, as to action for personal injuries which survived, decedent's estate was through plaintiff and proceeds were for benefit of that estate as such, so that limitations as to this cause of action were not tolled by next of kin's military service. *Stutz v Guardian Cab Corp.* (1947) 273 App Div 4, 74 NYS2d 818.

In action for foreclosure of mortgage brought by serviceman in his capacity as administrator of estate which owned mortgage, serviceman was entitled to benefits of tolling provision of former 50 USCS Appx § 525, so that action was not time barred since applicable statute of limitations was tolled during period of serviceman's military service. *Karsten v 1180 Longwood Ave.* (1947, Sup) 68 NYS2d 147.

Serviceman who had brought wrongful death action in his capacity as administrator of decedent's estate was not entitled to benefits of former 50 USCS Appx § 525 even though serviceman, who was son of decedent and thus one of beneficiaries of action, had not been appointed administrator of decedent's estate until after his discharge from military service; serviceman brought action as representative of estate in official capacity and not as representative of any distributee of recovery, and therefore action should have been regarded as suit brought by serviceman in his individual right merely because of his interest in contingent recovery of damages. *McCoy v Atlantic C. L. R. Co.* (1948) 229 NC 57, 47 SE2d 532.

Former 50 USCS Appx § 525 was not applicable to total period of limitations governing action for wrongful death even though plaintiff, one of beneficiaries of action, had been in service and had not been appointed administrator of decedent's estate until after his discharge; there were other beneficiaries who might have been so appointed during period of limitation. *McCoy v Atlantic C. L. R. Co.* (1948) 229 NC 57, 47 SE2d 532.

Serviceman serving as guardian ad litem for his minor child was entitled to benefits of tolling provision of former 50 USCS Appx § 525 so that statute of limitations applicable to action was tolled during period of father's military service; fact that party in military service was not injured plaintiff as such, but was natural father and guardian ad litem of injured minor plaintiff did not make any difference. *Mitchell v Phillips* (1972) 58 Pa D & C2d 314.

19. Subrogees

Compensation insurer subrogated to rights of its insured, injured person's employer, who was in turn subrogated to employee's right of action against negligent tortfeasor, was entitled to benefits of tolling provision of former 50 USCS Appx § 525 excluding period of military service from running of limitations, so that period of employee's military service subsequent to time of his injury could not be included in computing running of limitations as against insurer's cause of action for negligence. *American Motorists Ins. Co. v Manhattan Lighterage Corp.* (1948, DC NY) 80 F Supp 335.

20. Miscellaneous

Career status of Coast Guard instructor did not negate applicability of former 50 USCS Appx § 525 since only condition to application of statute was military service and that condition was met during instructor's placement on temporary disability retired list. *Mason v Texaco, Inc.* (1988, CA10 Kan) 862 F2d 242, CCH Prod Liab Rep P 11981.

Where Air National Guard officer, who had been discharged from active guard and reserve for misconduct, sued in Court of Federal Claims for back pay and allowances, running of limitations period was not tolled, under Soldiers and Sailors Civil Relief Act of 1940, for officer's local annual training occurring after discharge; training did not qualify as "active service." *Bowen v United States* (2002, CA FC) 292 F3d 1383.

Limitations period applicable to serviceman's tort action was not tolled under 50 Appx USCS § 525, where military service did not interfere with ability to file action and serviceman even filed 2 actions in 2 other states on same alleged injury. *Crouch v General Electric Co.* (1988, SD Miss) 699 F Supp 585, 7 UCCRS2d 1113.

B.Particular Actions, Claims or Proceedings 21. Administrative claims

Air Force reservist's appeal of his separation from contract specialist position was tolled while he was on active duty status. *Davis v Dep't of Air Force* (1991, MSPB) 51 MSPR 246, pet for review den (1992, MSPB) 54 MSPR 247.

Tolling provision of former 50 USCS Appx § 525 was applicable to postpone date before which claimant was required to file his application for workmen's compensation. *Shell Oil Co. v Industrial Com.* (1950) 407 Ill 186, 94 NE2d 888.

22. Banking claims

In action brought by serviceman to recover sum of money he had deposited in defendant bank which was not repaid to him, defendant's contention that serviceman's cause of action was barred because he did not file his suit until more than 2 years after his alleged cause of action arose, was rejected; serviceman was entitled to benefits of former 50 USCS Appx § 525 and, therefore, applicable statute of limitations was tolled during serviceman's period of military service. *First Nat'l Bank v English* (1951, Tex Civ App) 240 SW2d 503.

23. Contracts

Former 50 USCS Appx § 525 was applicable to action for specific performance of contract to convert annuity policy into ordinary life policy. *Rosenbloom v New York Life Ins. Co.* (1947, CA8 Mo) 163 F2d 1.

Action based on breach of contract was not time barred, although filed after expiration of 6-year statute of limitations, where plaintiff was in Air Force for 3 1/2 years between date cause of action accrued and expiration of 6-year period, since under former 50 USCS Appx § 525, time in military service was not included in computing running of statute of limitations. *King v First Nat'l Bank* (1982, Alaska) 647 P2d 596.

Term of defendant's military service was properly deducted in calculation of statutory period of limitations in connection with recovery of balance due upon oral contract alleged by defendant to be barred by 6-year statute of limitations. *Campbell v Rockefeller* (1948) 134 Conn 585, 59 A2d 524.

In action to recover payments due for goods and services furnished defendant pursuant to oral contract, under tolling provision of former 50 USCS Appx § 525, running of 6-year limitation period prescribed by state statute for bringing action was suspended during period of defendant's military service. *Campbell v Rockefeller* (1948) 134 Conn 585, 59 A2d 524.

In action upon oral contract to recompense plaintiff for losses which she had incurred by selling stock in order to obtain money to loan to defendant, under tolling provision of former 50 USCS Appx § 525, running of 5-year limitation period prescribed by state statute for bringing action was suspended during period of defendant's military service. *Warinner v Nugent* (1951) 362 Mo 233, 240 SW2d 941, 26 ALR2d 278.

Statute of limitations, applicable to action for breach of contract, was tolled during period that defendant was in military service. *Warinner v Nugent* (1951) 362 Mo 233, 240 SW2d 941, 26 ALR2d 278.

Tolling provision of former 50 USCS Appx § 525 was not applicable to contract reserving to vendor right to remove timber from land he had conveyed within certain period of time, and therefore vendor's right to remove such timber was not extended by § 525 despite vendor's military service. *Schroeder v Toedtemeier* (1948) 184 Or 561, 200 P2d 606.

In action of contract to recover upon running account for merchandise sold and delivered to defendant, under tolling provision of former 50 USCS Appx § 525, period during which defendant was in military service could not be included in determining whether 6-year limitation period prescribed by state statute for bringing action had expired, and therefore, action was timely. *Bethel Mills, Inc. v Whitcomb* (1950) 116 Vt 357, 76 A2d 548.

24. Correction of military records

Tolling provision at former 50 USCS Appx § 525 suspended Board for Correction of Military Record's three-year statute of limitations during servicemember's period of active service; tolling provision was unambiguous, unequivocal, and unlimited. *Detweiler v Pena* (1994, App DC) 309 US App DC 16, 38 F3d 591.

Action which former servicemember filed against U.S. Government, seeking determination that he was unlawfully discharged from U.S. Marine Corps and was entitled to disability discharge, or honorable discharge, and payment of severance pay under 10 USCS § 1212 was not barred by six-year statute of limitations that appeared in 28 USCS § 2501 because that statute was tolled by 50 USCS app. § 526(a) while servicemember was in confinement, and it had not expired; however, court found that it did not have jurisdiction to hear servicemember's claims seeking disability discharge

and payment of severance pay because servicemember received dishonorable discharge, *10 USCS § 1212* required Secretary of Navy to pay disability severance pay only if servicemember was discharged for disability under *10 USCS §§ 1203 or 1206*, and nothing in *10 USCS §§ 1203 or 1206* required Secretary to grant servicemember disability discharge. *Lowe v United States* (2007) 79 Fed Cl 218.

25. Credit-related claims

Suit upon plaintiff's claim for mechanic's lien was timely because under predecessor of former *50 USCS Appx § 525*, period during which plaintiff was in military service should be excluded in computing time for bringing of suit. *Clark v Mechanics' American Nat'l Bank* (1922, CA8 Ark) 282 F 589.

In action to recover damages for illegal seizure and sale of automobile theretofore mortgaged by plaintiff to defendant as security for loan, tolling provision of former *50 USCS Appx § 525* prevented running of statute of limitations during time plaintiff was in military service. *Harris v Stem* (1947, La App, Orleans) 30 So 2d 889.

In action to recover upon running account for merchandise sold and delivered to defendant serviceman, plaintiff was entitled to benefits of tolling provision of former *50 USCS Appx § 525*, so that period during which defendant was in military service could not be included in determining whether plaintiff's action was barred by applicable 6-year state statute of limitations. *Bethel Mills, Inc. v Whitcomb* (1950) 116 Vt 357, 76 A2d 548.

26. Criminal proceedings

Tolling provision of former *50 USCS Appx § 525* was not applicable to statutes of limitations governing criminal proceedings; word "civil" used in title of Act announced that purpose of Act was to make provision for temporary suspension of proceedings which might prejudice civil rights of persons in military service; definition of term "person" as used in Act did not include state or Commonwealth, prosecutor in criminal case. *Commonwealth v Shimpeno* (1946) 160 Pa Super 104, 50 A2d 39.

27. Probate

Tolling provision of former *50 USCS Appx § 525* applied to one year period of limitations prescribed by state statute upon caveat after probate, but where there was no evidence to show that movant's military service continued after period of limitations began to run, caveat was barred by expiration of period. *McLaughlin v McLaughlin* (1946) 186 Md 165, 46 A2d 307.

28. Promissory notes

Where debtor made substantial payments on notes in 1941 and was in service from 1942 to 1946, claim on notes were not barred by 6-year statute, since statute of limitations was tolled by time spent in service. *Falk v Levy* (1950, CA2 NY) 180 F2d 562.

Order of referee in bankruptcy dismissing bankrupt's objections to claim based on promissory notes he had executed in favor of his brother was upheld where, under former *50 USCS Appx § 525*, state statute of limitations applicable to claim was tolled while bankrupt was in military service of United States; debt was still actionable when claim was filed in bankruptcy proceedings. *Falk v Levy* (1950, CA2 NY) 180 F2d 562.

In action brought by wife against husband to recover amount of loans, which were allegedly payable on demand, tolling provision of former *50 USCS Appx § 525* suspended running of limitation period prescribed by state statute for action, during period of defendant's military service. *Daitz v Daitz* (1953, DC NY) 113 F Supp 78.

In action on promissory note brought against serviceman, state statute did not authorize making of order of publication because limitation of time to commence action had not and could not expire until some time after order was made, since time for commencement of action on note had been extended and enlarged by period of defendant's military service pursuant to predecessor of former *50 USCS Appendix § 525*. *Erickson v Macy* (1921) 231 NY 86, 131 NE 744, 16 ALR 1322.

29. Real estate claims

Action by purchaser of land for breach of warranty of title to portion of land was not barred by applicable state statute of limitations because under tolling provision of former *50 USCS Appx § 525* statute of limitations did not run during time that plaintiff was in military service. *Maurice v Schmidt* (1949) 214 Ark 725, 218 SW2d 356.

Dismissal of action for breach of warranty of title to portion of land which plaintiff serviceman had purchased was reversed where plaintiff was entitled to benefits of former 50 USCS Appx § 525, so that action was not time barred since applicable statute of limitations did not run during time that serviceman was in military service. *Maurice v Schmidt* (1949) 214 Ark 725, 218 SW2d 356.

In action to quiet title to parcel of real property, 5 year state statute of limitations applicable to action was tolled during period of plaintiff's military service, pursuant to former 50 USCS Appx § 525. *Burkhead v Briggs* (1948) 86 Cal App 2d 803, 196 P2d 73.

Serviceman was entitled to benefits of former 50 USCS Appx § 525 and, therefore, action to quiet title to parcel of real property was not barred by 5-year statute of limitations, because period of serviceman's military service could not be included in computing 5-year period within which action must be brought. *Burkhead v Briggs* (1948) 86 Cal App 2d 803, 196 P2d 73.

Former 50 USCS Appx § 525 did toll statute that provided for automatic reverter of title to land. *Newman v Newman* (1975) 234 Ga 297, 216 SE2d 79.

Holder of resale tax deed who had brought action against serviceman to quiet title to and obtain possession of real estate was entitled to benefits of tolling provision of former 50 USCS Appx § 525, so that applicable statute of limitations was tolled during period of defendant's military service. *Kasner v Ashburn* (1948) 200 Okla 256, 192 P2d 649.

In action brought by holder of resale tax deed to quiet title to and obtain possession of real estate, where plaintiff alleged that defendant who claimed interest in land in question had been in military service during time when applicable 2 year state statute of limitations had allegedly been running against cause of action, action was not barred by limitations, since statute of limitations was tolled under former 50 USCS Appx § 525 during period of defendant's military service. *Kasner v Ashburn* (1948) 200 Okla 256, 192 P2d 649.

30.--Redemption

Former 50 USCS Appx § 525 was provision relating to limitation of actions and not to right of redemption from judicial or quasi-judicial sales of real estate. *Ebert v Poston* (1925) 266 US 548, 69 L Ed 435, 45 S Ct 188; *Wood v Vogel* (1920) 204 Ala 692, 87 So 174; *Bell v Buffinton* (1923) 244 Mass 294, 137 NE 287.

Running of redemption period governing real property sold for delinquent taxes under state statute passing title on issuance of deed at end of redemption period was tolled by former 50 USCS Appx § 525 during veteran-owner's period of military service; and former 50 USCS Appx § 560 did not restrict tolling period to such property as therein mentioned. *Le Maistre v Leffers* (1948) 333 US 1, 92 L Ed 429, 68 S Ct 371.

Under former 50 USCS Appendix § 525, state could not, during period of taxpayer's military service, terminate his right of redemption of land sold to state for nonpayment of taxes. *Margraf v County of Los Angeles* (1956, 2nd Dist) 144 Cal App 2d 647, 301 P2d 490.

Provision of former 50 USCS Appx § 525 forbidding inclusion of period of military service in computation of any period provided for redemption of property from mortgage foreclosure sale was not merely directory or permissive, but imperatively controlling so as to automatically extend period of redemption, there being no discretion vested in courts to determine whether, under facts of particular case, extension should be had. *Illinois Nat'l Bank v Gwinn* (1945) 390 Ill 345, 61 NE2d 249, 159 ALR 468.

Former 50 USCS Appx § 525 had to be regarded as written into state statute of redemption and as, in effect, amending such statute, and automatically extending period of time allowed for redemption in all cases coming within application of its terms. *Illinois Nat'l Bank v Gwinn* (1945) 390 Ill 345, 61 NE2d 249, 159 ALR 468.

Where Soldiers' and Sailors' Civil Relief Act was passed after period of redemption had begun to run, but before its completion, no part of subsequent period of military service could be included in computing period of redemption. *Illinois Nat'l Bank v Gwinn* (1945) 390 Ill 345, 61 NE2d 249, 159 ALR 468.

Former 50 USCS Appx § 525 excluding period of military service from period provided by statute for redemption of property sold at mortgage foreclosure sale had no application to case in which statutory period of redemption had expired prior to effective date of statute. *Lincoln Joint Stock Land Bank v Mitchell* (1948) 239 Iowa 995, 33 NW2d 388.

31.--Application for tax deed

Former 50 USCS Appx § 525 did not apply with respect to state statute which specified time within which purchaser of land sold by county treasurer had to apply for tax deed; although county treasurer was agent of government of county which was subdivision of state, application for tax deed was neither action nor proceeding. *Blatnick v Ciancimino* (1954) 206 Misc 916, 135 NYS2d 462, affd (1956, 2d Dept) 1 App Div 2d 383, 151 NYS2d 267, affd (1957) 2 NY2d 943, 162 NYS2d 38, 142 NE2d 211.

32. Recovery of excess rent

Proceeding by area rent administrator to decrease maximum rents on rental property owned by plaintiff, who was in armed services, was not affected by former 50 USCS Appx § 525; § 525 related only to extension of time in statutes of limitation which would otherwise run against persons during period which they served in Armed Forces. *Polis v Creedon* (1947, Em Ct App) 162 F2d 908.

Former 50 USCS Appx § 525 applied to and modified one year period of limitation prescribed by federal statute for commencement of action for recovery of excess rent payments. *Lerner v Participant Realty Corp.* (1946, City Ct) 64 NYS2d 272.

33. Salary claims

Statute of limitations for filing claims under Tucker Act, 28 USCS § 1491, as applied to claims challenging Army Board for the Correction of Military Records' denial of claims seeking correction of military records to reflect periods of alleged dual service as members of Army Reserve, who entered Naval Academy as appointments as midshipmen, and seeking an award of backpay was tolled for serviceman, who continued to serve in Army at time suit was filed, and for serviceman, who retired 2 years before suit was filed as 6 years had not elapsed since he was last in active service; however, § 525 did not toll limitations period for 2 servicemen who retired more than 6 years prior to filing of their claim for correction of records. *Edison v United States* (1987) 14 Cl Ct 1.

In claim by officer of United States Naval Reserve for additional pay and allowances, applicable 6-year statute of limitations was tolled by former 50 USCS Appx § 525 and did not commence to run on plaintiff's claim, until end of his terminal leave. *Berry v United States* (1954) 130 Ct Cl 33, 126 F Supp 190, cert den (1955) 349 US 938, 99 L Ed 1266, 75 S Ct 783.

Defendant's motion to dismiss claim for disability retirement pay by plaintiff, former member of both United States Army and United States Air Force, was granted where, although under tolling provision of former 50 USCS § 525, applicable federal statute of limitations was tolled during period of plaintiff's military service, well over 6 years during which statutes did run had elapsed since accrual of plaintiff's cause of action for disability retirement pay. *Diamond v United States* (1965) 170 Ct Cl 166, 344 F2d 703.

In action for overtime compensation under Fair Labor Standards Act (29 USCS §§ 201 et seq.) state statute of limitations applicable to plaintiffs' claim was tolled, pursuant to former 50 USCS Appx § 525, during period of plaintiffs' military service. *Baker v California Shipbuilding Corp.* (1947, DC Cal) 73 F Supp 322, 13 CCH LC P 63855.

Periods of active service are not included in computing applicable period of statute of limitations on claim for retroactive pay. (1983) 63 Comp Gen 70.

In action to recover difference between plaintiff's salary as state employee and his pay as army officer while on active military duty, 6 month period prescribed by state statute for filing of claim against state was deferred by plaintiff's military service pursuant to former 50 USCS Appx § 525. *Parker v State* (1945) 185 Misc 584, 57 NYS2d 242.

34. Tax claims

Soldiers' and Sailors' Civil Relief Act of 1940 did not prevent government from imposing statute of limitations defense to former serviceman's claim for excess income tax withholding because former 50 USCS Appx § 527 specifically provided that general provision as to statutes of limitations, former 50 USCS Appx § 525, did not apply to limitations prescribed by internal revenue laws. *Allen v United States* (1977, CD Cal) 439 F Supp 463, 77-2 USTC P 9691, 40 AFTR 2d 5954.

35. Tort claims; wrongful death

Plaintiff mother who had brought action against serviceman to recover for wrongful death of her son was entitled to benefits of tolling provision of former 50 USCS Appx § 525; § 525 required that in computing time limitation, court should disregard period of defendant serviceman's military service, and therefore action should not have been dis-

missed, because statute of limitations was tolled and had not yet run. *Ricard v Birch* (1975, CA4 NC) 529 F2d 214, 36 ALR Fed 414.

In action brought by mother to recover for wrongful death of her son, tolling provision of former 50 USCS Appx § 525 required court, in computing time limitation, to disregard 2 1/2 years which defendant had spent in Armed Forces after accident. *Ricard v Birch* (1975, CA4 NC) 529 F2d 214, 36 ALR Fed 414.

In products liability suit for wrongful death of Coast Guard instructor from benzene produced by defendant, statute of limitations was tolled for period he was placed on temporary disability retirement list since that constituted absence from duty on account of sickness. *Mason v Texaco, Inc.* (1988, CA10 Kan) 862 F2d 242, CCH Prod Liab Rep P 11981.

In action for wrongful death arising from collision between 2 tractor trailer units, since defendant had become officer in Armed Forces sometime after accident and was still in military service at time of trial, tolling provision of former 50 USCS Appx § 525 was applicable, and therefore, time condition for filing wrongful death complaint was not applicable. *Kenney v Churchill Truck Lines, Inc.* (1972, 4th Dist) 6 Ill App 3d 983, 286 NE2d 619.

In wrongful death action brought against serviceman, plaintiff was entitled to benefits of tolling provision of former 50 USCS Appx § 525, so that statute of limitations applicable to action was tolled during period of defendant's military service; plain reading of § 525 required that defendant's period of military service be deducted in computing time between death of plaintiff's decedent and initial filing of action. *Kenney v Churchill Truck Lines, Inc.* (1972, 4th Dist) 6 Ill App 3d 983, 286 NE2d 619.

Under tolling provision of former 50 USCS Appx § 525, time limitations for filing wrongful death complaint were not applicable, because defendant became officer in Armed Forces sometime after accident and was still in service at time of trial. *Kenney v Churchill Truck Lines, Inc.* (1972, 4th Dist) 6 Ill App 3d 983, 286 NE2d 619.

Former 50 USCS Appx § 525 applied to computation of time within which to bring wrongful death action under statutory provision for commencing such action within one year after prior nonsuit. *Worlow v Mississippi River Fuel Corp.* (1969, Mo) 444 SW2d 461.

In action brought by plaintiff to recover for wrongful death of his mother, tolling provision of former 50 USCS Appx § 525 was applicable to state statute requiring death actions be commenced within 1 year following prior nonsuit. *Worlow v Mississippi River Fuel Corp.* (1969, Mo) 444 SW2d 461.

36.--Personal injury claims

Period of military service would not be included when computing period limited by law for bringing of action for personal injury. *Linard v Pennsylvania R. Co.* (1950, CA6 Ohio) 181 F2d 342, 42 Ohio Ops 167, 59 Ohio L Abs 544.

Running of state statute of limitations was tolled during period of defendant's military service; hence, action under "family purpose doctrine" to recover for injuries suffered by plaintiffs when their automobile collided with defendant's automobile, operated by his wife, was not barred by elapse of required time under statute. *Ray v Porter* (1972, CA6 Ky) 464 F2d 452.

Statute's plain language required that time periods such as that fixed by bar date in Dalkon Shield manufacturer's Chapter 11 reorganization be tolled in favor of military personnel. *In re A.H. Robins Co.* (1993, CA4 Va) 996 F2d 716, 5 Fourth Cir & Dist Col Bankr Ct Rep 694, 24 BCD 628, CCH Bankr L Rptr P 75319.

Although parents' medical malpractice claim under FTCA was barred by statute of limitations, SSCRA applied to toll father's claim for medical expenses since he was in military service for relevant period of time and under applicable Virginia law his claim was not extinguished by fact that child's personal injury claim was barred by statute of limitations. *Kerstetter v United States* (1995, CA4 Va) 57 F3d 362.

In action for personal injuries brought against serviceman, plaintiff was entitled to benefits of tolling provision of former 50 USCS Appx § 525, so that statute of limitations applicable to action was tolled in favor of plaintiff during period defendant serviceman was in active military service. *Bowles v Dixie Cab Asso.* (1953, DC Dist Col) 113 F Supp 324.

Statute of limitations was tolled during period defendant in action for personal injuries was in military service, since former 50 USCS Appx § 525 provided that period of military service should not be included in computing limitation period in actions "by or against" any person in military service. *Bowles v Dixie Cab Asso.* (1953, DC Dist Col) 113 F Supp 324.

50 USCS Appx § 526

In action based on personal injuries sustained by plaintiffs in automobile accident brought against defendant, who was in United States Navy at time of accident, statute of limitations was tolled by former 50 USCS Appx § 525 during period of defendant's military service. *Zitomer v Holdsworth* (1959, DC Pa) 178 F Supp 504.

In action brought by serviceman seeking recovery for personal injuries he had sustained in skiing accident, tolling provision of former 50 USCS Appx § 525 suspended running of applicable state statute of limitations during period of plaintiff's military service, and therefore, plaintiff was not barred from maintaining action. *Wanner v Glen Ellen Corp.* (1974, DC Vt) 373 F Supp 983.

Where plaintiff reserve officer alleged intentional infliction of emotional distress by defendant military contractor, because contractor notified officer of its decision not to re-hire officer while officer was in combat zone, contractor's motion for summary judgment on grounds of prescription was denied because officer had submitted evidence that he was in military service during all or nearly all of alleged prescriptive period and under 50 USCS app. § 526, claim was not time barred. *Murphree v Commun. Techs., Inc.* (2006, ED La) 460 F Supp 2d 702, 180 BNA LRRM 3319.

In action to recover damages for personal injuries which plaintiff had sustained in automobile accident, under tolling provision of former 50 USCS Appx § 525, applicable state statute of limitations was tolled during period of defendant's military service and therefore action was timely. *Jones v Garrett* (1963) 192 Kan 109, 386 P2d 194.

In action brought to recover damages for personal injuries sustained in automobile accident, applicable state statute of limitations was extended as matter of law under tolling provision of former 50 USCS Appx § 525 during period that defendant was in military service of United States, and thus action was timely. *Henderson v Miller* (1972, Tenn) 477 SW2d 197.

37.--Libel

Under predecessor to former 50 USCS Appx § 525, plaintiff's period of military service should not have been included in computing time between date of publication of libelous article and commencement of action for libel and, therefore, action was filed within 1-year period prescribed by state statute for bringing civil action for libel. *Lewis v Anthony Republican Pub. Co.* (1922) 111 Kan 653, 208 P 254.

38. Nonstatutory claims

Former 50 USCS Appx § 525 applied to every form of action whether arising under statute or otherwise, and whether statute granted right to sue or merely limited time for suit. *Clark v Mechanics' American Nat'l Bank* (1922, CA8 Ark) 282 F 589.

Former 50 USCS Appx § 525 was applicable to every form of action, whether arising under statute or otherwise. *Crawford v Adams* (1948, Tex Civ App) 213 SW2d 721.

III. TIME LIMITS WHICH ARE TOLLED

A. Statutory Limits 39. Generally

Meaning and purpose of former 50 USCS Appx § 525 was to extend time in which action could be brought by or against person in military service, whenever any limitation had been, or was thereafter, fixed by any law, for bringing of action. *Clark v Mechanics' American Nat'l Bank* (1922, CA8 Ark) 282 F 589.

One whose suit was dismissed for failure to prosecute could not rely upon tolling provision of former 50 USCS Appx § 525 to continue action indefinitely. *Zitomer v Holdsworth* (1971, CA3 Pa) 449 F2d 724, 15 FR Serv 2d 757.

Tolling provision of former 50 USCS Appx § 525 simply tolled statute of limitations during period of military service, and had no application to action duly filed and served within applicable statute of limitations. *Zitomer v Holdsworth* (1971, CA3 Pa) 449 F2d 724, 15 FR Serv 2d 757.

Tolling provision of former 50 USCS Appx § 525 was intended to modify not only those statutes properly called statutes of limitation by which times were fixed for bringing of actions, but statutes creating right of action which did not exist independently of statute where time for bringing action was limited in some way or condition precedent was imposed by statute. *Parker v State* (1945) 185 Misc 584, 57 NYS2d 242.

Former 50 USCS Appx § 525 applied only to limitation of time for "bringing" action, not to limitation of time for continuing of process in action already brought. *Zarlinsky v Laudenslager* (1961) 402 Pa 290, 167 A2d 317.

40.--Foreign statutes

In wrongful death action brought by mother to recover damages resulting from death of her son in auto accident while on military duty in Ethiopia, two year Ethiopian statute of limitations applicable to such action was tolled by former 50 USCS Appx § 525 during two and one-half years since accident that defendant remained in military service. *Ricard v Birch* (1975, CA4 NC) 529 F2d 214, 36 ALR Fed 414.

41. Notice of claim

Former 50 USCS Appx § 525 did not operate to toll notice requirement of state Unsatisfied Claim and Judgment Fund where claimant against fund was not engaged in bringing action against person in military service. *Peters v Unsatisfied Claim & Judgment Fund Board* (1974) 271 Md 304, 316 A2d 803.

In action involving application for order directing state treasurer to make payment to plaintiff by reason of unsatisfied judgment entered in action arising out of automobile accident, claimant was not barred from receiving payment, even though he did not file his notice of claim within 90 days after date of accident as required by state statute, because such period during which he was entitled to make claim against Fund was extended until his discharge from active duty by reason of tolling provision of former 50 USCS Appx § 525. *Murray v Rogers* (1962) 78 NJ Super 163, 188 A2d 47.

Serviceman's recovery was not barred by failure to serve notice, where he was in military service at time of accident and for entire 6 months during which notice should have been served; it was entirely immaterial what label or legal designation was applied to notice of claim--whether it was called statute of limitations, condition precedent, or even "circumstance necessary to the creation of such right"; nomenclature was unimportant. *Calderon v New York* (1945) 184 Misc 1057, 55 NYS2d 674.

In action brought by plaintiff depositor to recover sum of money which he had deposited in defendant bank and which had not been repaid to him, bank's contention that since money in plaintiff's account was paid out by bank on checks drawn on such account and since such canceled checks were mailed to plaintiff, plaintiff's cause of action was barred under state statute which required plaintiff to notify bank in writing within one year from time checks were paid that checks were forged and unauthorized, was rejected; in accordance with former 50 USCS Appx § 525, plaintiff's period of military service should not have been included in computing limitation against him. *First Nat'l Bank v English* (1951, Tex Civ App) 240 SW2d 503.

42.--Personal injury claims against municipalities

Former 50 USCS Appx § 525 was applicable to statutory requirement for filing of notice of claim for personal injury against municipality, so that period in military service was not included in computing time within which such notice could be filed. *The West Point* (1947, DC Va) 71 F Supp 206.

In libel filed by plaintiff, who was officer of United States Navy, seeking recovery for personal injuries he sustained when motorboat he was rising in collided with ferryboat owned by defendant municipality, since plaintiff was in military service at time he was injured and for 6 months during which his notice of claim should have been served, plaintiff was not required to serve notice within statutory time period because of tolling provisions of former 50 USCS Appx § 525. *The West Point* (1947, DC Va) 71 F Supp 206.

Former 50 USCS Appx § 525 relieved plaintiff in military service from statutory requirement of filing claim against city within 6 months after occurrence which was basis of action for damages. *Calderon v New York* (1945) 184 Misc 1057, 55 NYS2d 674.

Plaintiff was relieved of necessity of serving proper notice within statutory time period where he was in military service at time of accident and for entire 6 months during which his notice of claim for personal injuries against defendant city should have been served. *Calderon v New York* (1945) 184 Misc 1057, 55 NYS2d 674.

43. Service of process

Soldiers' and Sailors' Civil Relief Act became operative upon commencement of action and had no relation to service of process or to any suspension of statute of limitations. *Puchek v Elledge* (1958, DC Ind) 160 F Supp 286.

Tolling provision of former 50 USCS Appx § 525 did not suspend mandatory requirement under state statute of service of process within 3 years after commencement of action. *Thornley v Superior Court of San Francisco* (1949) 89 Cal App 2d 662, 201 P2d 567.

44. Substitution of parties

In action of certiorari to require court to dismiss action instituted by plaintiff since deceased, wherein his heirs had not moved for substitution within 2 year period provided by statute, action should have been dismissed, but dismissal should have been without prejudice to rights of one of heirs who was in military service, since 2 years' period for substitution would be extended by former 50 USCS Appx § 525 for his benefit. *Shire v Superior Court* (1945) 63 Ariz 420, 162 P2d 909.

45. Matrimonial actions; period of desertion

Appellant's military service tolled period for filing appeal with Board (5 USCS § 7701), under *Soldiers' and Sailors' Civil Relief Act*. *Henry v United States Postal Serv.* (1996, MSPB) 69 MSPR 555.

Husband's period of absence due to military service would not necessarily be excluded in computing statutory period of desertion under tolling provision of former 50 USCS Appx § 525; while, on principle as well as policy, such service should, under certain circumstances, have been excluded from period of desertion, yet where initiation and continuation of desertion was in no way attributable to military restraint, continuity should not have been interrupted. *Rebar v Rebar* (1949) 165 Pa Super 341, 67 A2d 598.

Provision for exclusion of period of military service from period limited by statute for bringing of any action did not require conclusion that period of military service could not be included in computing period of desertion necessary to give rise to cause of action for divorce. *Rebar v Rebar* (1949) 165 Pa Super 341, 67 A2d 598.

Former 50 USCS Appx § 525 did not require that period of military service be automatically dropped from consideration in computing period of willful and malicious desertion necessary for divorce. *Shuman v Shuman* (1946) 56 Pa D & C 416.

46. Real property actions, period of adverse possession

Provisions of former 50 USCS Appx § 525 were not applicable to prevent one from holding property adversely to career serviceman. *Pannell v Continental Can Co.* (1977, CA5 Ga) 554 F2d 216.

Pursuant to former 50 USCS Appx § 525, period during which plaintiff was in military service could not be considered in computing 10 year period for adverse possession prescribed by applicable state statute of limitations. *Campbell v Laningham* (1962) 274 Ala 138, 145 So 2d 824.

In action for equitable partition by sale of certain described land, defendant's contention that state statute of limitations did not run against him during period that he was on active duty in military service of United States, pursuant to former 50 USCS Appx § 525, was rejected, since § 525 merely tolled all statutes of limitation "for the bringing of any action or proceeding in any court" but it did not toll statute that provided for automatic reverter of title to land. *Newman v Newman* (1975) 234 Ga 297, 216 SE2d 79.

Defendant's contention that in accordance with tolling provision of former 50 USCS Appx § 525, period which he was in military service broke continuity of plaintiff's adverse possession of property and tolled statute of limitations applicable to acquisition of title by prescription, was rejected, where defendant had no claim of right, title, or interest in and to property prior to or during his period of service. *Smith v Pettijohn* (1961, Okla) 366 P2d 633.

In trespass action to try title, period of time defendant was in military service was not includible in computing period of time he was in adverse possession. *Scruggs v Troncalli* (1957, Tex Civ App Waco) 307 SW2d 300.

In action in form of suit in trespass to try title, pursuant to former 50 USCS Appx § 525, period during which defendant was in military service could not be included in determining whether defendant had acquired title by adverse possession pursuant to applicable 10 year state statute of limitations. *Scruggs v Troncalli* (1957, Tex Civ App Waco) 307 SW2d 300.

47. Appeals

Predecessor to former 50 USCS Appx § 525 applied to time limited by state statute for payment of costs of appeal and taking out of mandate; such time would not run against plaintiff during period of his military service. *Keuhn v Neugebauer* (1919, Tex Civ App) 216 SW 259.

48. Miscellaneous

Retired Air Force service member's claim for backpay and allowances from date of his involuntary separation from Air Force Reserves was tolled during period he subsequently enlisted and served in Air Force. *Mai v United States* (1991) 22 Cl Ct 664, affd without op (1992, CA) 975 F2d 868, reported in full (1992, CA FC) 1992 US App LEXIS 16580.

Terminated employee's 29 USCS § 185 hybrid claim against employer and union was appropriately declared time-barred under 6-month statute of limitations of 29 USCS § 160(b), where employee's monthly weekend duty and 2 weeks' active-duty training in Naval Reserves did not trigger "armed forces" tolling provision in § 160(b), because that tolling provision superseded more general provision contained in former 50 USCS Appx § 525 where collective-bargaining agreement was implicated. *Mouradian v John Hancock Cos.* (1990, DC Mass) 751 F Supp 272, 134 BNA LRRM 3200, 118 CCH LC P 10555, affd (1991, CA1 Mass) 930 F2d 972, 137 BNA LRRM 2134, 118 CCH LC P 10712, cert den (1992) 503 US 951, 117 L Ed 2d 650, 112 S Ct 1514, 139 BNA LRRM 2808, 121 CCH LC P 10048.

In case in which Secretary of Navy argued that dismissal of former naval reservist's claim under Administrative Procedure Act, 5 USCS §§ 701 et seq., was appropriate because it was time-barred by six year limitations period in 28 USCS § 2401, that argument was rejected because former reservist was correct that limitations period was tolled during his active duty under Servicemembers Civil Relief Act, 50 USCS app. §§ 501 et seq; 50 USCS app. § 526(a) tolled six year limitations period in 28 USCS § 2401. *Giel v Winter* (2007, DC Dist Col) 503 F Supp 2d 208.

B.Nonstatutory Limits 49. Provisions of judicial decree

Tolling provision of former 50 USCS Appx § 525 applied to decree in bankruptcy providing for reorganization of corporation and stipulating that stockholders wishing to exchange their stock in old corporation for that of reorganized corporation must apply before certain date, with respect to one of stockholders who had not applied because he was in military service. *Detroit Harbor Terminals, Inc. v Kuschinski* (1950, CA6 Mich) 181 F2d 541.

50. Insurance policy stipulation

Under predecessor to former 50 USCS Appx § 525, period of plaintiff's military service was not included in computing 90 day period, after payment of loss or expense, within which he was required by stipulation in policy of indemnity insurance to bring suit for such loss or expense. *Steinfeld v Massachusetts Bonding & Ins. Co.* (1921) 80 NH 39, 112 A 800.

51. Laches

Suits by former United States Air Force Reserve officers who waited more than 6 years to challenge their release from active service as result of passovers for promotion by improperly constituted selection boards were barred by operation of defense of laches, notwithstanding that Soldiers' and Sailors' Civil Relief Act of 1940 (former 50 USCS Appx § 525) exonerated plaintiffs from 6-year statutory period for bringing suit, where none of former officers adequately explained failure to inquire about boards' composition during period between release from active duty and learning of judicial decision holding unlawful certain selection boards not containing appropriate number of reserve officers, and where delay amounted to between 4 1/2 years and 7 years. *Andrews v United States* (1984) 6 Cl Ct 204, affd without op (1985, CA) 770 F2d 179.

Plaintiff could not be excused for delay in bringing claim; laches barred claims of military personnel who challenged their nonselection for promotion by selection boards that were not constituted as required by law when personnel have re-enlisted and thereby obtained protection of former 50 USCS Appx § 525 from 6-year statute of limitations. *Hankins v United States* (1985) 7 Cl Ct 698.

Although Soldiers' and Sailors' Civil Relief Act suspended for military personnel running of time for computing whether statute of limitations applies, it did not correspondingly suspend running of time for determining whether laches applied. *Deering v United States* (1980) 223 Ct Cl 342, 620 F2d 242.

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UNITED STATES CODE SERVICE
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*** CURRENT THROUGH PL 110-353, APPROVED 10/7/2008 ***
*** WITH GAPS OF 110-343, 110-344, 110-346 and 110-351 ***

TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
SERVICEMEMBERS CIVIL RELIEF ACT
TITLE II. GENERAL RELIEF

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50 USCS Appx § 527

§ 527. Maximum rate of interest on debts incurred before military service

(a) Interest rate limitation.

(1) Limitation to 6 percent. An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent--

(A) during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage; or

(B) during the period of military service, in the case of any other obligation or liability.

(2) Forgiveness of interest in excess of 6 percent. Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.

(3) Prevention of acceleration of principal. The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made.

(b) Implementation of limitation.

(1) Written notice to creditor. In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.

(2) Limitation effective as of date of order to active duty. Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with subsection (a), effective as of the date on which the servicemember is called to military service.

(c) Creditor protection. A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of the servicemember's military service.

(d) Definitions. In this section:

(1) Interest. The term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.

(2) Obligation or liability. The term "obligation or liability" includes an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage.

HISTORY:

(Oct. 17, 1940, ch 888, Title II, § 207, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2844; July 30, 2008, P.L. 110-289, Div B, Title II, § 2203(b), 122 Stat. 2849.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 527 (Act Oct. 17, 1940, ch 888, § 207, as added Oct. 21, 1942, ch 619, Title V, § 507(b)(2)(B), 56 Stat. 964) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to limitations prescribed by internal revenue laws as affected by period of service. For similar provisions, see *50 USCS Appx § 526(c)*.

Amendments:

2008. Act July 30, 2008, in subsec. (a)(1), substituted "in excess of 6 percent--" and subparas. (A) and (B) for "in excess of 6 percent per year during the period of military service."; and substituted subsec. (d) for one which read: "(d) Interest. As used in this section, the term 'interest' includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.".

Other provisions:

Applicability of section. This section applies to any case that is not final before December 19, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense § 5:504.

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 381.

Forms:

3 Fed Procedural Forms L Ed, Armed Forces, Civil Disturbances, and National Defense (2002) § 5:204.

Bankruptcy:

8 Collier on Bankruptcy (Matthew Bender 15th ed. rev), ch 1325, Confirmation of Plan PP 1325.05, 1325.06.

3 Collier Bankruptcy Manual, ch 1325, Confirmation of Plan PP 1325.05, 1325.06.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 *Advoc* (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 *J Kan BA* 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 *Res Gestae* 13, September 2004.

Interpretive Notes and Decisions:

Although terms of debtor's confirmed Chapter 13 plan required debtor to pay two secured creditors interest at rate of 12 percent, once debtor, national guardsman, was called to active duty, Soldiers' and Sailors' Relief Act (50 USCS Appx § 526) limited amount of interest creditors could charge debtor; such Act applied to bankruptcy proceedings, and creditors did not show that debtor had ability to pay higher interest rate, so court reduced debtor's rate from 12 to 6 percent during time debtor was in active federal military duty. *Baxter v Watson (In re Watson)* (2003, BC SD Ga) 292 BR 441.

Where action on note was stayed under 50 USCS Appx §§ 501 et seq, demand of defendants for reduction in rate of interest became moot. *White System of Lafayette, Inc. v Fisher* (1943, La App 1st Cir) 16 So 2d 89.

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*** CURRENT THROUGH PL 110-353, APPROVED 10/7/2008 ***
*** WITH GAPS OF 110-343, 110-344, 110-346 and 110-351 ***

TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
SERVICEMEMBERS CIVIL RELIEF ACT
TITLE III. RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENTS, LEASES

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50 USCS Appx § 530

§ 530. [Omitted]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Oct. 17, 1940, ch 888, § 300, 54 Stat. 1181; Oct. 6, 1942, ch 581, § 8, 56 Stat. 771; March 3, 1966, P.L. 89-358, § 10, 80 Stat. 28; March 18, 1991, P.L. 102-12, §§ 2(a), (b), 9(8), 105 Stat. 34, 39) was omitted in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. It related to eviction or distress during military service, stays, penalties for noncompliance, allotment of pay for payment. For similar provisions, see *50 USCS Appx § 531*.

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50 USCS Appx § 531

§ 531. Evictions and distress

(a) Court-ordered eviction.

(1) In general. Except by court order, a landlord (or another person with paramount title) may not--

(A) evict a servicemember, or the dependents of a servicemember, during a period of military service of the servicemember, from premises--

(i) that are occupied or intended to be occupied primarily as a residence; and

(ii) for which the monthly rent does not exceed \$ 2,400, as adjusted under paragraph (2) for years after 2003; or

(B) subject such premises to a distress during the period of military service.

(2) Housing price inflation adjustment.

(A) For calendar years beginning with 2004, the amount in effect under paragraph (1)(A)(ii) shall be increased by the housing price inflation adjustment for the calendar year involved.

(B) For purposes of this paragraph--

(i) The housing price inflation adjustment for any calendar year is the percentage change (if any) by which--

(I) the CPI housing component for November of the preceding calendar year, exceeds

(II) the CPI housing component for November of 1984.

(ii) The term "CPI housing component" means the index published by the Bureau of Labor Statistics of the Department of Labor known as the Consumer Price Index, All Urban Consumers, Rent of Primary Residence, U.S. City Average.

(3) Publication of housing price inflation adjustment. The Secretary of Defense shall cause to be published in the Federal Register each year the amount in effect under paragraph (1)(A)(ii) for that year following the housing price inflation adjustment for that year pursuant to paragraph (2). Such publication shall be made for a year not later than 60 days after such adjustment is made for that year.

(b) Stay of execution.

(1) Court authority. Upon an application for eviction or distress with respect to premises covered by this section, the court may on its own motion and shall, if a request is made by or on behalf of a servicemember whose ability to pay the agreed rent is materially affected by military service--

(A) stay the proceedings for a period of 90 days, unless in the opinion of the court, justice and equity require a longer or shorter period of time; or

(B) adjust the obligation under the lease to preserve the interests of all parties.

(2) Relief to landlord. If a stay is granted under paragraph (1), the court may grant to the landlord (or other person with paramount title) such relief as equity may require.

(c) Penalties.

(1) Misdemeanor. Except as provided in subsection (a), a person who knowingly takes part in an eviction or distress described in subsection (a), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies and rights. The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion (or wrongful eviction) otherwise available under the law to the person claiming relief under this section, including any award for consequential and punitive damages.

(d) Rent allotment from pay of servicemember. To the extent required by a court order related to property which is the subject of a court action under this section, the Secretary concerned shall make an allotment from the pay of a servicemember to satisfy the terms of such order, except that any such allotment shall be subject to regulations prescribed by the Secretary concerned establishing the maximum amount of pay of servicemembers that may be allotted under this subsection.

(e) Limitation of applicability. Section 202 [50 USCS Appx § 522] is not applicable to this section.

HISTORY:

(Oct. 17, 1940, ch 888, Title III, § 301, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2845.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 531 (Act Oct. 17, 1940, ch 888, § 301, 54 Stat. 1181; Oct. 6, 1942, ch 581, § 9(a), (c), (d), 56 Stat. 771; March 18, 1991, P.L. 102-12, § 9(9), 105 Stat. 40) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to installment contracts for the purchase of property. For similar provisions, see 50 USCS Appx § 532.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as 50 USCS Appx § 501 note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:54, 500-506, 509-512, 514, 516, 517, 520, 522-524.

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 409.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Advoc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 Judges' Journal 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 Judges' Journal 27, Summer 2006.

Pottorff. Contemporary applications of the Soldiers' and Sailors' Civil Relief Act. 132 Mil L Rev 115, Spring 1991.

Huckabee. Operations Desert Shield and Desert Storm: resurrection of the Soldiers' and Sailors' Civil Relief Act. 132 Mil L Rev 141, Spring 1991.

Chapelle. Legal primer for advising the deployed servicemember. 34 Res Gestae 494, May 1991.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

Anderson; Armstrong. Soldiers' and Sailors' Civil Relief Act: a legal shield for military personnel. 4 Utah BJ 8, April 1991.

Interpretive Notes and Decisions:

1. Generally 2. Construction 3. --"Eviction" 4. --"Agreed rent" 5. --"Occupy" 6. Landlord-tenant relationship 7. --Leases signed after entry into service 8. Persons entitled to relief 9. --Waiver of rights 10. Need for court approval 11. Stay 12. Action for damages

1. Generally

Soldiers' and Sailors' Civil Relief Act suspended right of landlord to evict tenant for 3 months following stay period granted by court. *Daily v Kelly* (1946) 304 Ky 229, 200 SW2d 114.

2. Construction

Former 50 USCS Appx § 530, which concerned eviction or distress, was to be liberally construed. *Leshner v Louisville Gas & Electric Co.* (1943, DC Ky) 49 F Supp 88.

3. --"Eviction"

Use of terms "eviction" and "distress" in connection with reference to maximum rental clearly indicated that former 50 USCS Appx § 530 referred to relationship of landlord and tenant; refusal of utility company to furnish gas and electricity in future on credit which reasonably appeared doubtful was not "eviction". *Leshner v Louisville Gas & Electric Co.* (1943, DC Ky) 49 F Supp 88.

Term "eviction" as used in former 50 USCS Appx § 530 referred to dispossession of tenant by landlord, and not to any disturbance of tenant's right to possession and quiet enjoyment of premises by third party. *Arkless v Kilstein* (1944, DC Pa) 61 F Supp 886.

4. --"Agreed rent"

Use of term "agreed rent" and reference to maximum rental in former 50 USCS Appx § 530(1) and (2) indicated that statute referred to disturbance of landlord and tenant relationship. *Arkless v Kilstein* (1944, DC Pa) 61 F Supp 886.

5. --"Occupy"

Former 50 USCS Appx § 530 did not apply where premises were leased to aunt who was not dependent on serviceman and his wife, and they were merely guests in her house; in such circumstances serviceman and his wife did not "occupy" premises. *Pfeiffer v McGarvey* (1945, DC Pa) 61 F Supp 570.

6. Landlord-tenant relationship

Former 50 USCS Appx § 530 contemplated landlord-tenant relationship as was indicated by use of terms "agreed rent," "eviction," and "distress" all of which had reference to such relation. *Clinton Cotton Mills v United States* (1947, CA4 SC) 164 F2d 173.

Although petition for stay of eviction proceedings alleged that petitioner's husband was absent in the armed forces, that defendants threatening to evict them were purchasers from landlords, and not landlords themselves, that petitioner's husband had used premises as his office for practice of medicine as well as for their residence, and to require them to move would entail great hardship, since defendants denied that it would work great hardship for petitioner to move, and averred that petitioner was owner of premises not more than 150 feet away to which she could move, former 50 USCS

Appx § 530 did not apply, since relation between parties was not that of landlord and tenant. *Arkless v Kilstein* (1944, DC Pa) 61 F Supp 886.

7. --Leases signed after entry into service

In suit for unlawful detainer to recover possession of premises, former *50 USCS Appx § 530* was not applicable where lessee was in armed services at time of execution of lease. *Pritchard v Dixie Greyhound Lines, Inc.* (1946) 183 Tenn 408, 192 SW2d 845.

8. Persons entitled to relief

Persons entitled to relief under former *50 USCS Appx § 530*(1) were those in armed services, or their dependents, upon whom there rested at least obligation to pay rent for leased premises. *Pfeiffer v McGarvey* (1945, DC Pa) 61 F Supp 570.

9. --Waiver of rights

Inasmuch as wife of serviceman notified landlord of election to end month to month tenancy, at which time landlord re-rented premises, she waived any protection she might have had under former *50 USCS Appx § 530*. *Bronson v Chamberlain* (1945, Mun Ct) 53 NYS2d 172.

10. Need for court approval

In action of ejectment against veteran's wife, order striking off judgment entered against defendant by confession on power of attorney contained in lease without first obtaining consent of court was erroneous, since while entry of judgment might have been step preliminary to eviction or removal, action to evict was commenced only when writ of habeas facias possessionem was issued. *Cole v Walter* (1946) 159 Pa Super 536, 49 A2d 187.

11. Stay

If rights under *50 USCS Appx § 501* et seq. in eviction proceeding in city magistrate's court had been determined in that court on the merits, necessary procedure was to seek review in proper state court, and not petition in federal district court for stay of eviction proceedings. *Pfeiffer v McGarvey* (1945, DC Pa) 61 F Supp 570.

Where, in forcible entry and detainer action determinative issue for consideration on merits was nature of tenancy, and facts were in mind of defendant absent in armed forces, his ability to conduct his defense was materially affected by reason of his military service, and trial court abused its discretion in not staying proceedings. *Everingham v Stringer* (1946) 329 Ill App 490, 69 NE2d 348.

In proceeding to evict lessee, absent in armed forces, from leased premises for his alleged violation of provision in lease that lessee agrees not to offer for sale shoes, children's wear, hardware, and furniture on leased premises, order of trial judge staying proceedings only because of his opinion that there was ambiguity in lease necessitating presence of lessee to determine true intention of parties, would be set aside; where suit by owner for possession of premises was defended on the ground that verbal extension of the lease for duration of war had been agreed upon, and defendant who was absent in military service could have done nothing more if present than testify to giving of verbal extension, as his father had been permitted to do without objection, stay order under *50 USCS Appx §§ 501* et seq. would be reversed. *Tolmas v Streiffer* (1945, La App, Orleans) 21 So 2d 387.

Stay was refused where there was no proof to show that absence of tenant in summary proceeding would materially interfere with his defense. *De Metre v Hall* (1945) 269 App Div 802, 55 NYS2d 111, app den (1945) 269 App Div 873, 57 NYS2d 261.

12. Action for damages

Action for damages on violation of former *50 USCS Appx § 530* was barred by eviction order of state court and plaintiff had to secure reversal or cancellation of order before eviction could be treated as wrong. *Spampinato v M. Breger & Co.* (1955, CA2 NY) 226 F2d 742, cert den (1956) 350 US 973, 100 L Ed 844, 76 S Ct 449, reh den (1956) 350 US 1009, 100 L Ed 871, 76 S Ct 652.

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*** CURRENT THROUGH PL 110-353, APPROVED 10/7/2008 ***
*** WITH GAPS OF 110-343, 110-344, 110-346 and 110-351 ***

TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
SERVICEMEMBERS CIVIL RELIEF ACT
TITLE III. RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENTS, LEASES

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50 USCS Appx § 532

§ 532. Protection under installment contracts for purchase or lease

(a) Protection upon breach of contract.

(1) Protection after entering military service. After a servicemember enters military service, a contract by the servicemember for--

(A) the purchase of real or personal property (including a motor vehicle); or

(B) the lease or bailment of such property,

may not be rescinded or terminated for a breach of terms of the contract occurring before or during that person's military service, nor may the property be repossessed for such breach without a court order.

(2) Applicability. This section applies only to a contract for which a deposit or installment has been paid by the servicemember before the servicemember enters military service.

(b) Penalties.

(1) Misdemeanor. A person who knowingly resumes possession of property in violation of subsection (a), or in violation of section 107 of this Act [*50 USCS Appx § 517*], or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies and rights. The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

(c) Authority of court. In a hearing based on this section, the court--

(1) may order repayment to the servicemember of all or part of the prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

(2) may, on its own motion, and shall on application by a servicemember when the servicemember's ability to comply with the contract is materially affected by military service, stay the proceedings for a period of time as, in the opinion of the court, justice and equity require; or

(3) may make other disposition as is equitable to preserve the interests of all parties.

HISTORY:

(Oct. 17, 1940, ch 888, Title III, § 302, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2846.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 532 (Act Oct. 17, 1940, ch 888, § 302, 54 Stat. 1182; Oct. 6, 1942, ch 581, §§ 9(b), (c), 10, 56 Stat. 771; June 23, 1952, ch 450, 66 Stat. 151; March 18, 1991, P.L. 102-12, § 9(9), (10), 105 Stat. 40) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to mortgages, trust deeds, etc. For similar provisions, see *50 USCS Appx § 533*.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:504, 506, 517, 518.

Am Jur:

53A Am Jur 2d, Military and Civil Defense §§ 409, 424.

Annotations:

Construction of §§ 301 and 700 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, relating to installment contracts for purchase of property. 24 ALR2d 1074.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Advoc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 Judges' Journal 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 Judges' Journal 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

Interpretive Notes and Decisions:

1. "Contract" 2. --Subsequent to induction 3. Payment of installment 4. Inability to repay due to military service 5. Agreement of parties 6. Court's discretion 7. Effect of stipulation or representation 8. Liability for violation 9. Jurisdiction 10. Miscellaneous

1. "Contract"

Option to purchase contained in lease which was not exercised during original term or renewal period of lease did not constitute "contract" to purchase within terms of former *50 USCS Appx § 531*, especially where down payment provided for as condition of exercise of option was not made; option was not continued in effect when plaintiff tenant held over after expiration of lease on month-to-month basis, and acceptance of rent checks accompanied by letter stating

understanding of plaintiff's attorney that defendant thereby renewed lease and option did not amount to contract for renewal where, aside from cashing checks, landlord did nothing to express his concurrence. *Cox v McGregor* (1951) 330 Mich 260, 47 NW2d 87, 24 ALR2d 1067.

2. --Subsequent to induction

Provisions of former 50 USCS Appx § 531 were not intended to apply to obligations incurred after statute became effective, whether obligor was then in service, or thereafter was inducted; to hold otherwise would have opened door for every man in service who had any reasonable expectation of being called to purchase property and avoided payment for same under provisions of statute. *Commercial Credit Corp. v Brown* (1942, Tex Civ App) 166 SW2d 153.

3. Payment of installment

Purchaser was not entitled to protection of former 50 USCS Appx § 531 where it was plainly shown that none of installments due on contract had ever been paid by person in military service. *Ryan v Bloom* (1947) 120 Mont 443, 186 P2d 879, cert den (1948) 333 US 874, 92 L Ed 1150, 68 S Ct 903.

4. Inability to repay due to military service

Soldier who, before his induction, had earned only \$ 37 per week before deductions, and who, after entering armed forces, was receiving a total of \$ 148 per month in pay and family allowances, besides his personal upkeep and sustenance by Army, did not have his ability to meet installment payments on furniture worsened because of his military status; in making equitable disposition of case under former 50 USCS Appx § 531, consideration had to be given to creditor's plight as well as that of soldier, and since furniture which had been purchased would not have improved with usage, and only security which seller had was his vendor's lien and privilege on furniture, if he were not allowed to prosecute his suit that security might not even have been in existence by end of debtor's military service. *Holtzman's Furniture Store v Schrapf* (1949, La App, Orleans) 39 So 2d 450.

Relief under former 50 USCS Appx § 531 was properly denied where debtor's noncompliance with installment payment provisions of his purchase agreement began so long before his induction into service as to justify belief that induction was not cause of his inability to comply with terms of contract. *Reese v Bacon* (1943, Tex Civ App) 176 SW2d 971.

If former 50 USCS Appx § 531 required showing of inability to pay because of military service, such showing was required only in instances where repossession was at issue in pending litigation; trial court did not err in not requiring plaintiff to prove inability to pay occasioned by military service status before granting judgment against bank, where bank, with awareness of plaintiff's military status, accomplished repossession in sale of automobile without first filing lawsuit. *Hanson v Crown Toyota Motors* (1977, Utah) 572 P2d 380.

5. Agreement of parties

Former 50 USCS Appx § 531 was inapplicable where seller removed equipment at request of and by agreement with buyer's agent. *Paillet v Ald, Inc.* (1967, La App 4th Cir) 194 So 2d 420.

6. Court's discretion

Former 50 USCS Appx § 531 gave court ample discretion to make such disposition of case as might be equitable to conserve interests of all parties. *Holtzman's Furniture Store v Schrapf* (1949, La App, Orleans) 39 So 2d 450.

7. Effect of stipulation or representation

Former 50 USCS Appx § 531 forbidding forfeiture of installment sales contracts had no application to situation where plaintiff, purchaser under land contract, himself appeared in court and entered into stipulation that contract should be cancelled by court unless installments then due be paid by certain date; in addition, there had been no denial of allegation in defendant's answer that plaintiff had been discharged from military service prior to trial of case. *Hansen v Ryan* (1945, Mo) 186 SW2d 595.

Defendant, assignee of conditional sales agreement, was in violation of former 50 USCS Appx § 531 in repossessing car after minor owner was inducted into military; argument that minor was estopped to claim ownership of car since assignee of contract had relied upon statement therein that father was purchaser was rejected in view of evidence that transfer of title to minor and his application for certificate of title were filed on record, so that assignee could readily ascertain this information. *Pacific Finance Corp. v Gilkerson* (1948, Tex Civ App) 217 SW2d 440.

8. Liability for violation

Where creditor, aware of debtor's military status, accomplished repossession and sale without first filing lawsuit, such action violated former *50 USCS Appx § 531(1)* and subjected creditor to liability under § 531(2). *Hanson v Crown Toyota Motors (1977, Utah) 572 P2d 380.*

9. Jurisdiction

Petitioner who issued and delivered to defendant sheriff summons, complaint, requisition affidavit, and undertaking in replevin, in accordance with relevant provision of local statute, was proceeding in action in court of competent jurisdiction as required by *50 USCS Appx § 531*, so that sheriff, in executing writ of replevin, would not be acting in violation of statute. *Universal C. I. T. Credit Corp. v Ganter (1944) 182 Misc 833, 44 NYS2d 908.*

10. Miscellaneous

Seller was entitled to replevy car purchased by one subsequently inducted into military service where latter breached contract which was entered into after induction and no hardship would result to buyer's dependents. *S & C Motors v Carden (1954) 223 Ark 164, 264 SW2d 627.*

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50 USCS Appx § 533

§ 533. Mortgages and trust deeds [Caution: See prospective amendment note below.]

(a) Mortgage as security. This section applies only to an obligation on real or personal property owned by a servicemember that--

- (1) originated before the period of the servicemember's military service and for which the servicemember is still obligated; and
- (2) is secured by a mortgage, trust deed, or other security in the nature of a mortgage.

(b) Stay of proceedings and adjustment of obligation. In an action filed during, or within 9 months after, a servicemember's period of military service to enforce an obligation described in subsection (a), the court may after a hearing and on its own motion and shall upon application by a servicemember when the servicemember's ability to comply with the obligation is materially affected by military service--

- (1) stay the proceedings for a period of time as justice and equity require, or
- (2) adjust the obligation to preserve the interests of all parties.

(c) Sale or foreclosure. A sale, foreclosure, or seizure of property for a breach of an obligation described in subsection (a) shall not be valid if made during, or within 9 months after, the period of the servicemember's military service except--

- (1) upon a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court; or
- (2) if made pursuant to an agreement as provided in section 107 [50 USCS Appx § 517].

(d) Penalties.

(1) Misdemeanor. A person who knowingly makes or causes to be made a sale, foreclosure, or seizure of property that is prohibited by subsection (c), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies. The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including consequential and punitive damages.

HISTORY:

(Oct. 17, 1940, ch 888, Title III, § 303, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2847; July 30, 2008, P.L. 110-289, Div B, Title II, § 2203(a), 122 Stat. 2849.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES**Explanatory notes:**

A prior § 533 (Act Oct. 17, 1940, ch 888, § 303, as added Oct. 6, 1942, ch 581, § 12, 56 Stat. 772) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to settlement of cases involving stayed proceedings to foreclose mortgage on, resume possession of, or terminate contract for purchase of, personal property. For similar provisions, see *50 USCS Appx § 534*.

Another prior § 533 (Act Oct. 17, 1940, ch 888, § 303, 54 Stat. 1183) was repealed by Act Oct. 6, 1942, ch 581, § 11, 56 Stat. 772. It related to stay of action to resume possession of motor vehicle, tractor, or their accessories, encumbered by purchase money mortgage, conditional sales contract, etc.

Prospective amendment:

Sunset of amendments made by Act July 30, 2008. Pursuant to § 2203(c)(2) of Act July 30, 2008, P.L. 110-289 (note to this section), the amendments made by such Act to this section shall expire on December 31, 2010; effective January 1, 2011, the provisions of subsecs. (b) and (c), as in effect on the day before the date of the enactment of such Act, are revived.

Amendments:

2008. Act July 30, 2008 (effective on enactment, as provided by § 2203(c)(1) of such Act, which appears as a note to this section), in subsecs. (b) and (c), in the introductory matter, substituted "9 months" for "90 days".

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

Effective date and sunset of July 30, 2008 amendments. Act July 30, 2008, P.L. 110-289, Div B, Title II, § 2203(c), 122 Stat. 2850, provides:

"(1) Effective date. The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

"(2) Sunset. The amendments made by subsection (a) shall expire on December 31, 2010. Effective January 1, 2011, the provisions of subsections (b) and (c) of section 303 of the Servicemembers Civil Relief Act [this section], as in effect on the day before the date of the enactment of this Act, are hereby revived."

NOTES:**Research Guide:****Federal Procedure:**

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:504, 506, 517, 519.

Am Jur:

53A Am Jur 2d, Military and Civil Defense §§ 409, 411-413.

Forms:

3 Fed Procedural Forms L Ed, Armed Forces, Civil Disturbances, and National Defense (2002) § 5:201.

Annotations:

Soldiers' and Sailors' Civil Relief Act of 1940, as amended, as affecting foreclosure of mortgages and trust deeds. 40 ALR2d 1262.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 Judges' Journal 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 Judges' Journal 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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I.IN GENERAL 1. Construction

Former 50 USCS Appx § 532(2) and § 532(3), concerning stay of proceedings and invalidation of foreclosures, were to be construed together. *Keller v Rodie* (1945) 326 Ill App 37, 61 NE2d 387.

2. Persons protected

Where person in military service claimed no interest in land as to which foreclosure was sought, but was secondarily liable for debt secured by mortgage, foreclosure was allowed to proceed, although entry of deficiency judgment would be stayed. *Dietz v Treupel* (1918) 184 App Div 448, 170 NYS 108.

Where 2-family house was owned by husband and wife who were separated under decree of separation which provided that wife, who prevailed in separation action, should reside in upper floor of premises, rent free, and should collect rents from lower floor apartment and from 2 garages and apply said rents toward carrying charges of house, and that profit remaining, if any, should be divided between parties, husband, who was in naval service of United States, still had sufficient interest in house to entitle him to stay of mortgage foreclosure proceedings against it. *Title Guarantee & Trust Co. v Zenker* (1944) 182 Misc 266, 48 NYS2d 338.

While stay of mortgage obligation will not ordinarily be granted in favor of corporation under Civil Relief Act, where it appeared that veteran, whose ability to comply with his obligation had been materially affected by his military service, was sole owner of all stock of corporation, relief would be granted under liberal construction of statute. *Application of Pickard* (1946) 187 Misc 400, 60 NYS2d 506.

Where plaintiff was owner or part owner of property, his rights as such were held to fall within former 50 USCS Appx § 532, and facts that maker of note was sued, and that father of plaintiff, who was his agent and in house, was

party, and that his brother was his co-owner, did not affect his rights under law. *Bassham v Evans* (1919, *Tex Civ App*) 216 SW 446.

In action to foreclose vendor's lien against real property, where it appeared that property had originally been conveyed to defendants, seller taking vendor's lien, that after several defaults and some controversy between parties new contract of sale was executed in which purchaser's son, who was in Navy at time, was named as purchaser, and that subsequently when both contracts were defaulted, action was brought, defendant's son was not entitled to any stay under Civil Relief Act, since he was no way involved in suit, which was to foreclose lien under original contract of sale to his parents, and none of rights which he might possess could be involved in action. *Rosier v McDaniel* (1944) 126 W Va 434, 28 SE2d 908.

Where mortgagor and her son agreed that in consideration of son's support of his mother and his making payments on mortgage the mother would convey to him premises subject to mortgage, son had equitable, as distinguished from moral, interest in property which would be protected under 50 USCS Appx §§ 501 et seq when he went into service, and which entitled him to intervene in foreclosure action. *Twitchell v Home Owners' Loan Corp.* (1942) 59 Ariz 22, 122 P2d 210.

One having contingent interest in mortgaged property as trust beneficiary was not entitled to object to judgment of foreclosure on grounds that he was in armed services at time of original foreclosure action and that continuance or stay of that proceeding would have been granted had application therefore been made; if he had been entitled to stay, trustee who had represented him in original action could have brought matter to attention of court, and beneficiary could not subsequently complain that his representative had failed to do this. *Lincoln Joint Stock Land Bank v Mitchell* (1948) 239 Iowa 995, 33 NW2d 388.

Although ownership prior to entry into service contemplated by act includes equitable ownership, where only evidence of such ownership was purchaser's statement that he would take property, and no price was stated, terms agreed upon, or contract consummated until after entry into service, stay was not available. *Fourth Nat'l Bank v Hill* (1957) 181 Kan 683, 314 P2d 312.

Although under state law mortgagee of property, as holder of legal title to mortgaged property, is its legal "owner," "owner" protected by Civil Relief Act is mortgagor or owner of equity of redemption. *Guleserian v Pilgrim Trust Co.* (1954) 331 Mass 431, 120 NE2d 193.

Real estate was not "owned" by person in military service within meaning of Federal Soldiers' and Sailors' Civil Relief Act, so as to invalidate foreclosure sale not under agreement or order of court, but under power in deed of trust, where, although consideration for land was paid by soldier, name of another was used for taking of title, for recording of deed, and for obtaining loan secured by recorded deed of trust, and where deed of trust and note secured thereby were negotiated to bona fide purchaser without notice of soldier's claim, and foreclosed upon default in payment, although record owner made unacknowledged, unrecorded conveyance of land to soldier prior to his entry in service. *Godwin v Gerling* (1951) 362 Mo 19, 239 SW2d 352, 40 ALR2d 1250.

II. STAY OF PROCEEDINGS 3. Concurrent federal-state jurisdiction

Federal district court was without jurisdiction to order stay of mortgage foreclosure proceedings brought in state court since 50 USCS Appx §§ 501 et seq gave concurrent jurisdiction to state courts to administer its provisions concerning stay of mortgage foreclosure proceedings. *Radding v Ninth Federal Sav. & Loan Assn.* (1944, DC NY) 55 F Supp 361.

4. Party who may move for stay

Motion by woman on behalf of her brother to stay action to foreclose mortgage on real property owned by brother on the ground of his induction into military service was authorized by former 50 USCS Appx § 532. *Brooklyn Trust Co. v Papa* (1941, *Sup*) 33 NYS2d 57.

In action involving motion for order directing mortgagor to pay alleged surplus derived from property to petitioner in reduction of mortgage, where mortgagor answered alleging that her husband, who was in military service, had always taken care of property and was familiar with income and disbursements, and that she had been unable to get in touch with him in respect to this proceeding, wife was allowed stay to enable her and her attorney to have opportunity to reach husband, since spirit of Civil Relief Act would be violated if summary relief sought were granted where foreclosure

might well result if wife was unable to make payment. *Application of Brooklyn Trust Co. (1944) 182 Misc 439, 48 NYS2d 601.*

5. Court's discretion

Former 50 USCS Appx § 532(2) required that courts make such disposition as might be equitable to conserve interests of all parties. *Railroad Federal Sav. & Loan Ass'n v Morrison (1943) 179 Misc 893, 40 NYS2d 319; Queens County Sav. Bank v Thaler (1943) 181 Misc 229, 44 NYS2d 4.*

6. Payment of obligation not affected by military service

In foreclosure proceeding court did not err in refusing to vacate order appointing receiver because of absence of defendant in military service, where it was not shown that defendant's military service or receivership would in any way impair his ability to conduct his defense. *Keller v Rodie (1945) 326 Ill App 37, 61 NE2d 387.*

Finding that default relied on in foreclosure proceeding had occurred prior to mortgagor's entry into military service resulted in finding that his inability to meet his obligations was not affected by military service and stay would be denied. *Franklin Soc. for Home-Building & Sav. v Flavin (1943) 265 App Div 720, 40 NYS2d 582, affd (1943) 291 NY 530, 50 NE2d 653, cert den (1943) 320 US 786, 88 L Ed 472, 64 S Ct 158.*

If in action to foreclose mortgage, defendant was prejudiced by his military service in conducting his defense, court could stay all proceedings. *Jamaica Sav. Bank v Bryan (1941) 175 Misc 978, 25 NYS2d 17.*

In action to foreclose mortgage, stay of proceedings under former 50 USCS Appx § 532 would be granted only if defendant's inability to comply with terms of mortgage results by reason of his military service, and such military service has materially affected ability to comply; plaintiff bringing action for foreclosure of mortgage was entitled to have incorporated in judgment finding by court that in its opinion ability of one of defendants to comply with terms of mortgage was not materially affected by reason of his military service, where it was shown that defendant was member of bar, presumably cognizant of his rights under act, that he was stationed at camp in neighboring state, but had not appeared or sought stay of action, that he was only nominal party to action, having merely 1/6 interest in subordinate mortgage, that no personal judgment was sought against him and that he had no equity of redemption or other claim or interest arising out of mortgage being foreclosed. *Hunt v Jacobson (1942) 178 Misc 201, 33 NYS2d 661.*

Where defendant was unmarried, was first lieutenant in dental corps, received total of \$ 3,048 per year, and failed to show what his income was prior to his induction and that his ability to pay interest on his obligation secured by mortgage had been materially affected by his induction, stay of foreclosure proceeding was denied. *Queens County Sav. Bank v Thaler (1943) 181 Misc 229, 44 NYS2d 4.*

Where, in action to foreclose mortgage, it appeared that because of military service of defendant moving for stay, he was unable to pay amount mortgage was in arrears, stay would be granted. *New York Life Ins. Co. v Litke (1943) 181 Misc 32, 45 NYS2d 576.*

Where, on application for stay of foreclosure proceeding evidence showed that defendant's financial condition was such that it would have been impossible at any time since action was begun to have redeemed property and that he acquired his interest in property under foreclosure after commencement of his military service with intent to delay just enforcement of plaintiff's rights by taking advantage of provisions of 50 USCS Appx §§ 501 et seq, stay would be denied for lack of showing that ability of defendant to comply with terms of mortgage obligation had been materially affected by reason of his military service. *Ninth Federal Sav. & Loan Ass'n v Parkway West Corp. (1943) 182 Misc 919, 48 NYS2d 762.*

Where one voluntarily enlists in United States Navy and fails to meet his obligation to make payments on contract agreement, he cannot use as his defense application of 50 USCS Appx §§ 501 et seq, where there is failure to prove that his service in Navy impaired his ability to meet his obligations. *Harvey v Home Owners' Loan Corp. (1946) 189 Misc 73, 67 NYS2d 586.*

Trial court was not justified in denying stay of proceedings, although only showing as to defendant's ability to conduct his defense of chattel mortgage foreclosure action, as affected by his military service, was affidavit alleging that he was only one who had information as to certain elements in cause of action and his counterclaim therein, and that he was presently in army hospital and was likely to have to undergo operation; relief was justified under 50 USCS Appx § 521, which conditioned stay upon adverse effect of military service on party's ability to conduct his defense, and not

under 50 USCS Appx § 532, dealing with relief where military service interfered with serviceman's ability to meet his obligations. *Burke v Hyde Corp. (1943, Tex Civ App) 173 SW2d 364.*

7.--Burden of proof

Burden of proof that mortgagor's ability to comply with terms of his obligation was affected by his military service, was upon soldier seeking stay of foreclosure proceedings, at least where transactions involved were particularly within knowledge of soldier. *Radding v Ninth Federal Sav. & Loan Asso. (1944, DC NY) 55 F Supp 361.*

Aside from question whether applicant's military service adversely affected his ability to comply with terms of his obligation or to conduct his defense to action, person claiming right to mortgage stay under former 50 USCS Appx § 532 had to not only establish that he was one of those for whose general protection Act was promulgated, but had to also show that he was concerned with particular property or obligation involved in proceeding. *Twitchell v Home Owners' Loan Corp. (1942) 59 Ariz 22, 122 P2d 210.*

Act does not give serviceman complete immunity; he must show reasons why ability to pay has been materially affected. *Peterson v Shaffer (1960) 143 Colo 138, 352 P2d 281.*

Burden is upon one seeking stay of foreclosure proceeding because of military service to show that such service has in fact prevented or is preventing him from meeting obligations imposed by instrument sued upon. *Brooklyn Trust Co. v Papa (1941, Sup) 33 NYS2d 57.*

Although there were many equities on side of plaintiff seeking foreclosure, who was also serviceman, burden was on plaintiff to show that military service did not materially affect defendant's ability to meet his obligation, and any doubts as to application of statute should be resolved in favor of member of armed forces being sued. *Meyers v Schmidt (1944) 181 Misc 589, 46 NYS2d 420.*

8. Jury question

Whether or not any person interested in mortgage foreclosed after passage by Congress of Soldiers' and Sailors' Civil Relief Act was in military service of United States is question of fact for jury. *Morse v Stober (1919) 233 Mass 223, 123 NE 780, 9 ALR 78.*

9. Depreciation or deterioration of goods

In libel brought in federal district court in New York to foreclose mortgage on vessel, motion to stay sale of vessel under final decree would not be granted under 50 USCS Appx §§ 501 et seq., where it appeared that stay would cause depreciation in value of vessel, that market for its sale would not be so good later, and that respondent-owner deliberately permitted default to be taken when he was present in New York and had ample opportunity to confer with proctors in order to prepare defense. *The Sylph (1941, DC NY) 42 F Supp 354.*

On evidence that even if he had not been inducted, serviceman could not have raised money to pay notes, and that property was in such poor condition at time of trial it could not be used to raise necessary amount without extensive repair, court properly refused stay of foreclosure of chattel mortgage. *Peterson v Shaffer (1960) 143 Colo 138, 352 P2d 281.*

It was error to grant stay of action to foreclose chattel mortgage on automobile owned by serviceman and being used by his dependent mother while he was in Army, where it appeared that machine would probably depreciate if its use were continued for term of military service and mortgagee's equity would be destroyed, and no undue hardship would be imposed on serviceman or his dependent by ordering sale of car, which would protect his equity therein. *Commercial Sec. Co. v Kavanaugh (1943, La App 2d Cir) 13 So 2d 533.*

Where, in action to foreclose mortgage, defendant was shown to be in military service and his exact whereabouts somewhat in doubt, and there was no showing that his military service did not materially affect his ability to meet his obligations, but there were many equities in plaintiff's favor, such as deterioration of property, proceeding would be stayed with leave to plaintiff to renew motion for judgment after expiration of 60 days. *Meyers v Schmidt (1944) 181 Misc 589, 46 NYS2d 420.*

10. Interim relief granted to creditor

Fact that defendant had been in default before entering service did not preclude granting of stay, but from evidence that default was caused largely by husband's failure to take available work, stay would be conditioned upon making

regular monthly payments to reduce current and delinquent obligations. *Federal Nat'l Mortg. Asso. v Deziel* (1956, DC Mich) 136 F Supp 859.

Stay of mortgage foreclosure proceedings which required serviceman to pay only \$ 4.74 monthly to cover taxes and hazard insurance on property, and nothing toward principal, interest, or FHA mortgage insurance, was not abuse of discretion on part of trial court, although mortgagee insisted that since, as mortgagor had only \$ 400 equity in property at time of his induction, this equity would have disappeared by termination of his military service and he would have no incentive to make further payments, and mortgagee's investment would suffer. *Brown Service Ins. Co. v King* (1945) 247 Ala 311, 24 So 2d 219.

Motion to stay foreclosure was granted on condition that defendant pay taxes and interest on unpaid balance of mortgage. *Cortland Sav. Bank v Ivory* (1941, Sup) 27 NYS2d 313.

Under facts of the case, unconditional stay order in action to foreclose mortgage would not be granted, but stay would be granted on condition that defendants pay sum to be applied to payment of current taxes, the balance, if any, to be applied on account of tax arrears. *Nassau Sav. & Loan Ass'n v Ormond* (1942) 179 Misc 447, 39 NYS2d 92.

Stay of foreclosure proceedings was granted with provision permitting examination of soldier's wife not more than once every year, as to financial ability of defendants and occupancy of premises, or in lieu thereof furnishing by her of verified statement in respect to these matters. *O'Leary v Horgan* (1943) 179 Misc 518, 39 NYS2d 555.

In view of rental received from upper apartment of \$ 45 per month, it was fair to require payment of \$ 35 per month as condition for granting stay in action to foreclose mortgage on premises, said sum to be first applied to payment of taxes and balance to payment of interest. *Railroad Federal Sav. & Loan Ass'n v Morrison* (1943) 179 Misc 893, 40 NYS2d 319.

Stay of foreclosure proceedings on one-family house would be granted to dependent parents of defendant in military service in view of other sources of support, on condition that they pay current taxes on property in installments of \$ 10 per month, that every 3 months they file verified statement with plaintiff's attorney showing occupancy of premises and income therefrom, if any, and in event of change of circumstances plaintiff may upon notice make application to modify the stay. *Reid v Margolis* (1943) 181 Misc 222, 44 NYS2d 518.

11. Termination of stay

Motion to terminate stay and for leave to foreclose deed of trust was granted where motion was supported by affidavits showing that defendant had been discharged from military service more than 3 months earlier, that notice was served upon him and his counsel with respect to pendency of motion, and where defendant had not answered nor filed any pleading. *Union Cent. Life Ins. Co. v Crutcher* (1946, DC Mo) 66 F Supp 591.

III.SALE OR SEIZURE OF PROPERTY 12. Construction of terms; "otherwise"

Appointment of receiver for mortgaged premises in foreclosure suit was not forbidden by provisions of former 50 USCS Appx § 532(3) forbidding "seizure" of property for nonpayment of mortgage obligations, whether under power of sale, judgment entered upon warrant of attorney to confess judgment, "or otherwise;" term "or otherwise" was ejusdem generis with foregoing words, object of provision being to preclude defendant in service from being deprived of his property without notice or opportunity to make defense. *Keller v Rodie* (1945) 326 Ill App 37, 61 NE2d 387.

13.--"Order previously granted"

Words "order previously granted" in 1942 amendment of former 50 USCS Appx § 532(3) meant order granted previous to commencement of military service, and not one previous to enactment of amending act. *Stability Bldg. & Loan Ass'n v Liebowitz* (1942, Super Ct) 132 NJ Eq 477, 28 A2d 653.

In phrase "upon an order previously granted by the court and a return thereto made and approved by the court" in former 50 USCS Appx § 532(3), words "order previously made" meant order made before and at any time up to judgment of foreclosure; and "previous" was synonymous with "next prior to" or "next proceeding" and did not mean period prior to date of act or date soldier entered military services. *Syracuse Sav. Bank v Brown* (1943) 181 Misc 999, 42 NYS2d 156.

14. Sale before passage of Act

Former 50 USCS Appx § 532 did not apply to sale made before passage of statute. *Ebert v Poston* (1925) 266 US 548, 69 L Ed 435, 45 S Ct 188.

Amendments to Soldiers' and Sailors' Civil Relief Act did not operate retroactively so as to affect mortgage foreclosure sale had before enactment of such amendments. *Lincoln Joint Stock Land Bank v Mitchell* (1948) 239 Iowa 995, 33 NW2d 388.

15. Sale before entry into service

Former 50 USCS Appx § 532 did not apply to sale made before person entered military service. *Ebert v Poston* (1925) 266 US 548, 69 L Ed 435, 45 S Ct 188.

It was not necessary to appoint solicitor to represent serviceman and to issue further order directing sheriff to proceed with foreclosure sale where final decree of foreclosure and writ of execution pursuant thereto were issued prior to entry into military service of person having some interest in mortgaged property. *Stability Bldg. & Loan Ass'n v Liebowitz* (1942, Super Ct) 132 NJ Eq 477, 28 A2d 653.

Application for stay of mortgage foreclosure proceeding was denied where defendant's defaults in payment of principal and interest occurred long before his entry into armed services. *Franklin Soc. for Home-Building & Sav. v Flavin* (1943) 265 App Div 720, 40 NYS2d 582, affd (1943) 291 NY 530, 50 NE2d 653, cert den (1943) 320 US 786, 88 L Ed 472, 64 S Ct 158.

Relief under former 50 USCS Appx § 532, declaring foreclosure sales void under certain circumstances, was not available where applicants had been discharged from military service more than 3 months before foreclosure proceedings were brought. *Koury v Sood* (1948) 74 RI 486, 62 A2d 649.

16. Summary judgment

Mortgagee was not liable under Relief Act for selling servicemember's farm equipment at auction, since it thought that neighbor had servicemember's permission to sell equipment based on servicemember's authorization for neighbor to sell equipment at private sales and apply proceeds to loan balances, servicemember submitted no summary judgment evidence inferring that neighbor was agent of bank when equipment was sold, and neither mortgagee's acquiescence to neighbor's sale of equipment nor its organization of auction made it liable. *Engstrom v First Nat'l Bank* (1995, CA5 Tex) 47 F3d 1459, 31 FR Serv 3d 966, cert den (1995) 516 US 818, 133 L Ed 2d 35, 116 S Ct 75.

Plaintiff's motion for summary judgment was denied where answer filed for absent mortgagor by legal assistance officer at post where he was stationed made no attempt to controvert allegations of complaint in foreclosure action, but stated only that defendant was in armed forces and that defaults complained of occurred during his military service, which materially affected his ability to comply with terms of mortgage, and requested that proceedings be stayed. *Bowery Sav. Bank v Pellegrino* (1945) 185 Misc 912, 58 NYS2d 771.

17. Power of court to order certificate of title upon investigation

Former 50 USCS Appx § 532(3) did not preclude land court from ordering certificate of title to issue to purchaser at sale without court order under power in mortgage, upon finding made after adequate investigation that no person affected by foreclosure was in military service, even though finding might conceivably be wrong and some person in military service who had some interest in foreclosed land, and whose rights under Act would not be terminated by issuance of new certificate of title, might conceivably come to light later. *Petition of Institution for Sav.* (1941) 309 Mass 12, 33 NE2d 526, 137 ALR 448.

Effect of former 50 USCS Appx § 532(3), declaring invalid as to persons in military service foreclosure sales made under power of sale without court order, was to confer upon land court general equity jurisdiction, and not merely jurisdiction to determine whether any person concerned was in military service; such equity jurisdiction could be exercised where it appeared from pleadings that neither plaintiff nor defendants had any knowledge whether any of persons concerned might be in military service. *Lynn Institution for Sav. v Taff* (1943) 314 Mass 380, 50 NE2d 203.

18. Setting aside foreclosure

Complainant who sought cancellation of foreclosure deed and restoration of property to him was denied relief where bill in equity was defective in failing to show that complainant had ever required any part of equity of redemption to property, and, since provisions of former 50 USCS Appx § 532(3) authorizing setting aside of foreclosure made without order of court had been enacted subsequently to default of mortgagor, it would not retroactively affect foreclosure

had prior to date of enactment. *Cooper v Peak* (1949) 252 Ala 384, 41 So 2d 590, subsequent app (1952) 258 Ala 167, 61 So 2d 62, cert den (1953) 345 US 957, 97 L Ed 1377, 73 S Ct 939 and reh den (1953) 346 US 842, 98 L Ed 362, 74 S Ct 14.

Petition of serviceman to set aside foreclosure was properly denied where it appeared that serviceman had notice of foreclosure suit at time it was brought, and was represented by counsel therein, but took no interest in proceedings until 90th day after his discharge from service, some 2 years later, and there was nothing in his petition to set aside foreclosure decree which showed that he had meritorious and legal defense to action, or that his military service had adversely affected his defense thereto. *Radich v Bloomberg* (1947) 140 NJ Eq 289, 54 A2d 247, cert den (1947) 332 US 810, 92 L Ed 388, 68 S Ct 112.

19. Vacation of sale

Defendant mortgagor could set aside decree of foreclosure in favor of state, during absence of defendant in service, where he promptly moved to vacate decree upon his return from service. *Wilkin v Shell Oil Co.* (1951, CA10 Okla) 197 F2d 42, 1 OGR 1301, cert den (1952) 344 US 854, 97 L Ed 663, 73 S Ct 92, reh den (1952) 344 US 888, 97 L Ed 687, 73 S Ct 183 and cert den (1952) 344 US 854, 97 L Ed 663, 73 S Ct 95.

20.--Agreement or order of court

Soldiers' and Sailors' Civil Relief Act was not intended to afford its protection from mortgage foreclosure sale not under agreement or order of court, as against bona fide purchasers in justification of serviceman's calculated conduct in anticipation of his entry into service, by taking title to property so as to delay enforcement of mortgagee's rights, or by withholding from record notice of his acquisition of title and thereby providing means whereby fraud might be perpetrated against innocent third persons, even though serviceman's conduct is neither illegal nor actually fraudulent. *Godwin v Gerling* (1951) 362 Mo 19, 239 SW2d 352, 40 ALR2d 1250.

21.--Appellate review

Upon appeal from judgment dismissing petition for vacation of sale under power in deed of trust, appellate court will consider evidence in light most favorable to defendants and give due deference to findings of trial judge, so as to justify conclusion that neither trustee nor purchaser of deed of trust and note secured thereby had actual notice of claim to land by one other than record owner, who would be entitled by virtue of his military status to protection under Soldiers' and Sailors' Civil Relief Act. *Godwin v Gerling* (1951) 362 Mo 19, 239 SW2d 352, 40 ALR2d 1250.

22. Redemption

Serviceman who had only 1/12 interest as tenant in common in mortgaged property, which was sold under foreclosure during his period of military service, had his right of redemption extended under Civil Relief Act only as to his own 1/12 interest, and not as to interests of his cotenants; statute was for benefit of persons engaged in military service, and its only effect was to extend such right of redemption as already existed and not to create any additional right of redemption. *Stevahn v Meidinger* (1952) 79 ND 323, 57 NW2d 1.

Mortgagor was not entitled to redeem entire property where he showed that he became tenant in common in mortgaged property upon death of his father, original mortgagor, but at most should be allowed to redeem his own interests therein, since foreclosure was clearly effective as to other tenants in common. *Cooper v Peak* (1952) 258 Ala 167, 61 So 2d 62, cert den (1953) 345 US 957, 97 L Ed 1377, 73 S Ct 939 and reh den (1953) 346 US 842, 98 L Ed 362, 74 S Ct 14.

Effect of redemption by serviceman was to vest in him equitable title, subject to prior interest of creditors for whose benefit trust was originally created. *Illinois Nat'l Bank v Gwinn* (1952) 348 Ill App 9, 107 NE2d 764.

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*** CURRENT THROUGH PL 110-353, APPROVED 10/7/2008 ***
*** WITH GAPS OF 110-343, 110-344, 110-346 and 110-351 ***

TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
SERVICEMEMBERS CIVIL RELIEF ACT
TITLE III. RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENTS, LEASES

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50 USCS Appx § 534

§ 534. Settlement of stayed cases relating to personal property

(a) Appraisal of property. When a stay is granted pursuant to this Act in a proceeding to foreclose a mortgage on or to repossess personal property, or to rescind or terminate a contract for the purchase of personal property, the court may appoint three disinterested parties to appraise the property.

(b) Equity payment. Based on the appraisal, and if undue hardship to the servicemember's dependents will not result, the court may order that the amount of the servicemember's equity in the property be paid to the servicemember, or the servicemember's dependents, as a condition of foreclosing the mortgage, repossessing the property, or rescinding or terminating the contract.

HISTORY:

(Oct. 17, 1940, ch 888, Title III, § 304, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2848.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 534 (Act Oct. 17, 1940, ch 888, § 304, as added Oct. 6, 1942, ch 581, § 12, 56 Stat. 772; March 18, 1991, P.L. 102-12, § 9(a), 105 Stat. 40) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to the termination of leases by lessees. For similar provisions, see *50 USCS Appx § 535*.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:504, 506, 519.

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 412.

Forms:

3 Fed Procedural Forms L Ed, Armed Forces, Civil Disturbances, and National Defense (2002) §§ 5:199, 200, 202, 203.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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*** CURRENT THROUGH PL 110-353, APPROVED 10/7/2008 ***
*** WITH GAPS OF 110-343, 110-344, 110-346 and 110-351 ***

TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
SERVICEMEMBERS CIVIL RELIEF ACT
TITLE III. RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENTS, LEASES

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50 USCS Appx § 535

§ 535. Termination of residential or motor vehicle leases

(a) Termination by lessee.

(1) In general. The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after--

(A) the lessee's entry into military service; or

(B) the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.

(2) Joint leases. A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.

(b) Covered leases. This section applies to the following leases:

(1) Leases of premises. A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if--

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a change of permanent station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.

(2) Leases of motor vehicles. A lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation if--

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days); or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders--

(i) for a change of permanent station--

(I) from a location in the continental United States to a location outside the continental United States; or

(II) from a location in a State outside the continental United States to any location outside that State; or

(ii) to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 180 days.

(c) Manner of termination.

(1) In general. Termination of a lease under subsection (a) is made--

(A) by delivery by the lessee of written notice of such termination, and a copy of the servicemember's military orders, to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee); and

(B) in the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee), not later than 15 days after the date of the delivery of written notice under subparagraph (A).

(2) Delivery of notice. Delivery of notice under paragraph (1)(A) may be accomplished--

(A) by hand delivery;

(B) by private business carrier; or

(C) by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and depositing the written notice in the United States mails.

(d) Effective date of lease termination.

(1) Lease of premises. In the case of a lease described in subsection (b)(1) that provides for monthly payment of rent, termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered. In the case of any other lease described in subsection (b)(1), termination of the lease under subsection (a) is effective on the last day of the month following the month in which the notice is delivered.

(2) Lease of motor vehicles. In the case of a lease described in subsection (b)(2), termination of the lease under subsection (a) is effective on the day on which the requirements of subsection (c) are met for such termination.

(e) Arrearages and other obligations and liabilities. Rents or lease amounts unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. In the case of the lease of a motor vehicle, the lessor may not impose an early termination charge, but any taxes, summonses, and title and registration fees and any other obligation and liability of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

(f) Rent paid in advance. Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent) within 30 days of the effective date of the termination of the lease.

(g) Relief to lessor. Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.

(h) Penalties.

(1) Misdemeanor. Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies. The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential or punitive damages.

(i) Definitions.

(1) Military orders. The term "military orders", with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.

(2) CONUS. The term "continental United States" means the 48 contiguous States and the District of Columbia.

HISTORY:

(Oct. 17, 1940, ch 888, Title III, § 305, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2848; Dec. 10, 2004, P.L. 108-454, Title VII, § 704, 118 Stat. 3624.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 535 (Act Oct. 17, 1940, ch 888, § 305, as added Oct. 6, 1942, ch 581, § 12, 56 Stat. 773; March 18, 1991, P.L. 102-12, § 9(a), 105 Stat. 40) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to the protection of the assignor of a life insurance policy, enforcement of storage liens, and penalties. For similar provisions, see *50 USCS Appx §§ 536 and 537*.

Amendments:

2004. Act Dec. 10, 2004, substituted subsec. (a) for one which read:

"(a) Termination by lessee. The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after--

"(1) the lessee's entry into military service; or

"(2) the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.";

in subsec. (b), in para. (1)(B), inserted ", or as an individual in support of a military operation," and substituted para. (2)(B) for one which read: "(B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station outside of the continental United States or to deploy with a military unit for a period of not less than 180 days."; and added subsec. (i).

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:504, 506, 520.

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 410.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

Interpretive Notes and Decisions:

1. Public policy 2. Leases terminated prior to enactment date 3. Applicability to lessees other than service member 4. Appropriate court; relief available 5. Return of security deposit

1. Public policy

It is not against public policy for serviceman to terminate lease under specified conditions. *Bronson v Chamberlain* (1945, *Mun Ct*) 53 NYS2d 172.

2. Leases terminated prior to enactment date

In action on contract guaranteeing performance by defendant of rental contract between defendant's son and plaintiff, where lessee gave up possession upon his induction in August 1941, and recovery was sought for rent for September and October 1941, prior to enactment, former 50 USCS Appx § 534 was inapplicable; and court would not decide as matter of law that lessee's induction canceled lease, since such result would depend upon facts and circumstances in particular case. *Jefferson Estates, Inc. v Wilson* (1943, *Sup App T*) 39 NYS2d 502.

3. Applicability to lessees other than service member

Fact that lease was made in behalf of lessee's son did not entitle lessee to cancel lease when son entered service. *Erlich v Landman* (1943) 179 Misc 972, 40 NYS2d 516, *affd* (1943) 266 App Div 900, 43 NYS2d 743.

50 USCS Appx §§ 501 et seq does not expressly or by implication extend its benefits to any person other than person entering service and his dependents; partners of person inducted into military service were not in any sense "dependents" under former § 534; if sole lessee was inducted into armed forces, lease was terminated; but, where lease was executed by two or more lessees, and one of them was inducted into armed forces, lease was terminated only as to lessee so inducted. *Patrikes v J. C. H. Service Stations, Inc.* (1943) 180 Misc 917, 41 NYS2d 158, *affd* (1943) 180 Misc 927, 46 NYS2d 233, *app den* (1943) 266 App Div 924, 44 NYS2d 472.

4. Appropriate court; relief available

Declaratory relief was available in action for termination of lease pursuant to former 50 USCS Appx § 534; in a declaratory judgment suit a circuit court having equity jurisdiction was an "appropriate court." *Bal Harbour Towers, Inc. v Keller* (1969, *Fla App D3*) 227 So 2d 219.

5. Return of security deposit

Where, in action by co-lessees to recover amount deposited with defendant as surety for performance of lease upon giving notice of termination of lease because one of lessees was inducted into armed forces, court was without jurisdiction to determine respective rights of partners in joint fund as between themselves, motion for summary judgment for plaintiffs was denied and motion to dismiss granted; since 50 USCS Appx § 501 et seq. was silent as to return of the security upon lease, judicial interpretation was rendered necessary. *Patrikes v J. C. H. Service Stations, Inc.* (1943) 180 Misc 917, 41 NYS2d 158, *affd* (1943) 180 Misc 927, 46 NYS2d 233, *app den* (1943) 266 App Div 924, 44 NYS2d 472.

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TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
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50 USCS Appx § 536

§ 536. Protection of life insurance policy

(a) Assignment of policy protected. If a life insurance policy on the life of a servicemember is assigned before military service to secure the payment of an obligation, the assignee of the policy (except the insurer in connection with a policy loan) may not exercise, during a period of military service of the servicemember or within one year thereafter, any right or option obtained under the assignment without a court order.

(b) Exception. The prohibition in subsection (a) shall not apply--

- (1) if the assignee has the written consent of the insured made during the period described in subsection (a);
- (2) when the premiums on the policy are due and unpaid; or
- (3) upon the death of the insured.

(c) Order refused because of material affect. A court which receives an application for an order required under subsection (a) may refuse to grant such order if the court determines the ability of the servicemember to comply with the terms of the obligation is materially affected by military service.

(d) Treatment of guaranteed premiums. For purposes of this subsection, premiums guaranteed under the provisions of title IV of this Act [*50 USCS Appx §§ 541 et seq.*] shall not be considered due and unpaid.

(e) Penalties.

(1) Misdemeanor. A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies. The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

HISTORY:

(Oct. 17, 1940, ch 888, Title III, § 306, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2850.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

50 USCS Appx § 536

A prior § 536 (Act Oct. 17, 1940, ch 888, § 306, as added Oct. 6, 1942, ch 581, § 12, 56 Stat. 773) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to the extension of benefits to dependents. For similar provisions, see *50 USCS Appx § 538*.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:504, 506, 521, 522.

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 416.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 537

§ 537. Enforcement of storage liens

(a) Liens.

(1) Limitation on foreclosure or enforcement. A person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement.

(2) Lien defined. For the purposes of paragraph (1), the term "lien" includes a lien for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason.

(b) Stay of proceedings. In a proceeding to foreclose or enforce a lien subject to this section, the court may on its own motion, and shall if requested by a servicemember whose ability to comply with the obligation resulting in the proceeding is materially affected by military service--

(1) stay the proceeding for a period of time as justice and equity require; or

(2) adjust the obligation to preserve the interests of all parties. The provisions of this subsection do not affect the scope of section 303 [50 USCS Appx § 533].

(c) Penalties.

(1) Misdemeanor. A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies. The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

HISTORY:

(Oct. 17, 1940, ch 888, Title III, § 307, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2851.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as 50 USCS Appx § 501 note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:504, 506, 521, 522.

Am Jur:

53A Am Jur 2d, *Military and Civil Defense* § 416.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

Interpretive Notes and Decisions:

Evidence was sufficient to support defendant's conviction of attempt to enforce storage lien for servicemember's car while servicemember was on active duty in Saudi Arabia; defendant refused to negotiate with numerous people who attempted to redeem car, storage charges far exceeded repair charges, which were excessive to begin with and based on repairs not authorized, and when defendant sold car he pocketed entire amount and gave buyer papers necessary to begin foreclosure proceedings on car. *United States v Bomar* (1993, CA5 Tex) 8 F3d 226.

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50 USCS Appx § 538

§ 538. Extension of protections to dependents

Upon application to a court, a dependent of a servicemember is entitled to the protections of this title if the dependent's ability to comply with a lease, contract, bailment, or other obligation is materially affected by reason of the servicemember's military service.

HISTORY:

(Oct. 17, 1940, ch 888, Title III, § 308, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2851.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:504, 506.

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 399.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 *Advoc* (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 *J Kan BA* 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 *Res Gestae* 13, September 2004.

Interpretive Notes and Decisions:

1. Generally 2. Spouse 3. Parents 4. Business associates

1. Generally

In proceeding for order to stay mortgage foreclosure, provisions of former 50 USCS Appx § 531 in regard to installment contracts were extended to dependents of persons in military service. *Nassau Sav. & Loan Ass'n v Ormond* (1942) 179 *Misc* 447, 39 *NYS2d* 92.

2. Spouse

Obligations incurred by spouse of serviceman which were incurred prior to both marriage and husband's induction into military service are subject to protections provided by Soldiers' and Sailors' Civil Relief Act. *Tucson Telco Fed. Credit Union v Bowser* (1969) 9 *Ariz App* 242, 451 *P2d* 322.

3. Parents

Fact that defendant acquired record title from his dependent parents to one-family house covered by mortgage being foreclosed about one month after his induction into army was immaterial on question of his right to stay, since benefits of 50 USCS Appx §§ 501 et seq have been extended to dependents. *Reid v Margolis* (1943) 181 *Misc* 222, 44 *NYS2d* 518.

4. Business associates

Partners were not "dependents" of person in military service within meaning of former 50 USCS Appx § 536 since they did not look "to another for support and maintenance. . . for the reasonable necessities of life." *Patrikes v J. C. H. Service Stations, Inc.* (1943) 180 *Misc* 917, 41 *NYS2d* 158, *affd* (1943) 180 *Misc* 927, 46 *NYS2d* 233, *app den* (1943) 266 *App Div* 924, 44 *NYS2d* 472.

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50 USCS Appx § 540

§ 540. [Omitted]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Oct. 17, 1940, ch 888, § 400, 54 Stat. 1183; Oct. 6, 1942, ch 581, § 13, 56 Stat. 773; July 11, 1956, ch 570, § 1, 70 Stat. 528; March 18, 1991, P.L. 102-12, § 9(11), 105 Stat. 40) was omitted in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. It contained definitions applicable to provisions relating to insurance. For similar provisions, see *50 USCS Appx § 541*.

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50 USCS Appx § 541

§ 541. Definitions

For the purposes of this title [*50 USCS Appx §§ 541 et seq.*]:

(1) Policy. The term "policy" means any individual contract for whole, endowment, universal, or term life insurance (other than group term life insurance coverage), including any benefit in the nature of such insurance arising out of membership in any fraternal or beneficial association which--

(A) provides that the insurer may not--

(i) decrease the amount of coverage or require the payment of an additional amount as premiums if the insured engages in military service (except increases in premiums in individual term insurance based upon age); or

(ii) limit or restrict coverage for any activity required by military service; and

(B) is in force not less than 180 days before the date of the insured's entry into military service and at the time of application under this title [*50 USCS Appx §§ 541 et seq.*].

(2) Premium. The term "premium" means the amount specified in an insurance policy to be paid to keep the policy in force.

(3) Insured. The term "insured" means a servicemember whose life is insured under a policy.

(4) Insurer. The term "insurer" includes any firm, corporation, partnership, association, or business that is chartered or authorized to provide insurance and issue contracts or policies by the laws of a State or the United States.

HISTORY:

(Oct. 17, 1940, ch 888, Title IV, § 401, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2851.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 541 (Act Oct. 17, 1940, ch 888, § 401, 54 Stat. 1183; Oct. 6, 1942, ch 581, § 13, 56 Stat. 774; March 18, 1991, P.L. 102-12, § 9(12), 105 Stat. 40) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to persons entitled to benefits of article IV, applications, and the amount of insurance protected. For similar provisions, see *50 USCS Appx § 542*.

NOTES:

Code of Federal Regulations:

Department of Veterans Affairs--Soldiers' and Sailors' Civil Relief, 38 CFR Part 7.

Research Guide:

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 425.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 Judges' Journal 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 Judges' Journal 27, Summer 2006.

Pottorff. Contemporary applications of the Soldiers' and Sailors' Civil Relief Act. 132 Mil L Rev 115, Spring 1991.

Chapelle. Legal primer for advising the deployed servicemember. 34 Res Gestae 494, May 1991.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

Anderson; Armstrong. Soldiers' and Sailors' Civil Relief Act: a legal shield for military personnel. 4 Utah BJ 8, April 1991.

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50 USCS Appx § 542

§ 542. Insurance rights and protections

(a) Rights and protections. The rights and protections under this title [*50 USCS Appx §§ 541 et seq.*] apply to the insured when--

- (1) the insured,
- (2) the insured's legal representative, or
- (3) the insured's beneficiary in the case of an insured who is outside a State,

applies in writing for protection under this title [*50 USCS Appx §§ 541 et seq.*], unless the Secretary of Veterans Affairs determines that the insured's policy is not entitled to protection under this title [*50 USCS Appx §§ 541 et seq.*].

(b) Notification and application. The Secretary of Veterans Affairs shall notify the Secretary concerned of the procedures to be used to apply for the protections provided under this title [*50 USCS Appx §§ 541 et seq.*]. The applicant shall send the original application to the insurer and a copy to the Secretary of Veterans Affairs.

(c) Limitation on amount. The total amount of life insurance coverage protection provided by this title [*50 USCS Appx §§ 541 et seq.*] for a servicemember may not exceed \$ 250,000, or an amount equal to the Servicemember's Group Life Insurance maximum limit, whichever is greater, regardless of the number of policies submitted.

HISTORY:

(Oct. 17, 1940, ch 888, Title IV, § 402, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2852.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 542 (Act Oct. 17, 1940, ch 888, § 402, 54 Stat. 1183; Oct. 6, 1942, ch 581, § 13, 56 Stat. 774; March 18, 1991, P.L. 102-12, § 9(13), 105 Stat. 40) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to the form of the application, and reports to Veterans' Administration by the insurer, and provided that the policy is deemed modified upon application for protection. For similar provisions, see *50 USCS Appx § 543*.

NOTES:

Code of Federal Regulations:

Department of Veterans Affairs--Soldiers' and Sailors' Civil Relief, 38 CFR Part 7.

Research Guide:

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Huckabee. Operations Desert Shield and Desert Storm: resurrection of the Soldiers' and Sailors' Civil Relief Act. 132 *Mil L Rev* 141, Spring 1991.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 543

§ 543. Application for insurance protection

(a) Application procedure. An application for protection under this title [50 USCS Appx §§ 541 et seq.] shall--

(1) be in writing and signed by the insured, the insured's legal representative, or the insured's beneficiary, as the case may be;

(2) identify the policy and the insurer; and

(3) include an acknowledgement that the insured's rights under the policy are subject to and modified by the provisions of this title [50 USCS Appx §§ 541 et seq.].

(b) Additional requirements. The Secretary of Veterans Affairs may require additional information from the applicant, the insured and the insurer to determine if the policy is entitled to protection under this title [50 USCS Appx §§ 541 et seq.].

(c) Notice to the Secretary by the insurer. Upon receipt of the application of the insured, the insurer shall furnish a report concerning the policy to the Secretary of Veterans Affairs as required by regulations prescribed by the Secretary.

(d) Policy modification. Upon application for protection under this title [50 USCS Appx §§ 541 et seq.], the insured and the insurer shall have constructively agreed to any policy modification necessary to give this title [50 USCS Appx §§ 541 et seq.] full force and effect.

HISTORY:

(Oct. 17, 1940, ch 888, Title IV, § 403, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2852.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 543 (Act Oct. 17, 1940, ch 888, § 403, 54 Stat. 1184; Oct. 6, 1942, ch 581, § 13, 56 Stat. 775; March 18, 1991, P.L. 102-12, § 9(14), 105 Stat. 40) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to the determination of policies entitled to protection, notice to parties, lapse of policies for nonpayment of premiums, etc. For similar provisions, see 50 USCS Appx § 544.

NOTES:

Code of Federal Regulations:

Department of Veterans Affairs--Soldiers' and Sailors' Civil Relief, 38 CFR Part 7.

Research Guide:

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 544

§ 544. Policies entitled to protection and lapse of policies

(a) Determination. The Secretary of Veterans Affairs shall determine whether a policy is entitled to protection under this title [50 USCS Appx §§ 541 et seq.] and shall notify the insured and the insurer of that determination.

(b) Lapse protection. A policy that the Secretary determines is entitled to protection under this title [50 USCS Appx §§ 541 et seq.] shall not lapse or otherwise terminate or be forfeited for the nonpayment of a premium, or interest or indebtedness on a premium, after the date on which the application for protection is received by the Secretary.

(c) Time application. The protection provided by this title [50 USCS Appx §§ 541 et seq.] applies during the insured's period of military service and for a period of two years thereafter.

HISTORY:

(Oct. 17, 1940, ch 888, Title IV, § 404, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2853.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 544 (Act Oct. 17, 1940, ch 888, § 404, 54 Stat. 1184; Oct. 6, 1942, ch 581, § 13, 56 Stat. 775; March 18, 1991, P.L. 102-12, § 9(15), 105 Stat. 40) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to rights and privileges of the insured during the period of protection. For similar provisions, see 50 USCS Appx § 545.

NOTES:

Code of Federal Regulations:

Department of Veterans Affairs--Soldiers' and Sailors' Civil Relief, 38 CFR Part 7.

Research Guide:

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 545

§ 545. Policy restrictions

(a) Dividends. While a policy is protected under this title [*50 USCS Appx §§ 541 et seq.*], a dividend or other monetary benefit under a policy may not be paid to an insured or used to purchase dividend additions without the approval of the Secretary of Veterans Affairs. If such approval is not obtained, the dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with the insurer.

(b) Specific restrictions. While a policy is protected under this title [*50 USCS Appx §§ 541 et seq.*], cash value, loan value, withdrawal of dividend accumulation, unearned premiums, or other value of similar character may not be available to the insured without the approval of the Secretary. The right of the insured to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this title [*50 USCS Appx §§ 541 et seq.*].

HISTORY:

(Oct. 17, 1940, ch 888, Title IV, § 405, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2853.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 545 (Act Oct. 17, 1940, ch 888, § 405, 54 Stat. 1184; Oct. 6, 1942, ch 581, § 13, 56 Stat. 775; March 18, 1991, P.L. 102-12, § 9(16), 105 Stat. 40) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to the deduction of unpaid premiums upon settlement of policies maturing during protection. For similar provisions, see *50 USCS Appx § 546*.

NOTES:

Code of Federal Regulations:

Department of Veterans Affairs--Soldiers' and Sailors' Civil Relief, 38 CFR Part 7.

Research Guide:

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 546

§ 546. Deduction of unpaid premiums

(a) Settlement of proceeds. If a policy matures as a result of a servicemember's death or otherwise during the period of protection of the policy under this title [*50 USCS Appx §§ 541 et seq.*], the insurer in making settlement shall deduct from the insurance proceeds the amount of the unpaid premiums guaranteed under this title [*50 USCS Appx §§ 541 et seq.*], together with interest due at the rate fixed in the policy for policy loans.

(b) Interest rate. If the interest rate is not specifically fixed in the policy, the rate shall be the same as for policy loans in other policies issued by the insurer at the time the insured's policy was issued.

(c) Reporting requirement. The amount deducted under this section, if any, shall be reported by the insurer to the Secretary of Veterans Affairs.

HISTORY:

(Oct. 17, 1940, ch 888, Title IV, § 406, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2853.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 546 (Act Oct. 17, 1940, ch 888, § 406, 54 Stat. 1184; Oct. 6, 1942, ch 581, § 13, 56 Stat. 775; April 3, 1948, ch 170, § 6, 62 Stat. 160) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to the guaranty of premiums and interest by the United States, settlement of amounts due upon expiration of protection, subrogation of the United States, and crediting debt repayments. For similar provisions, see *50 USCS Appx § 547*.

NOTES:

Code of Federal Regulations:

Department of Veterans Affairs--Soldiers' and Sailors' Civil Relief, 38 CFR Part 7.

Research Guide:

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

Interpretive Notes and Decisions:

Former 50 USCS Appx §§ 540-548 was clarification of Soldiers' and Sailors' Civil Relief Act, not change in rights or obligations of serviceman; amount advanced by federal government was properly offset against special dividends declared upon insured serviceman's national service life insurance policy. *Morton v United States* (1953, DC NY) 113 F Supp 496.

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50 USCS Appx § 547

§ 547. Premiums and interest guaranteed by United States

(a) Guarantee of premiums and interest by the United States.

(1) Guarantee. Payment of premiums, and interest on premiums at the rate specified in section 406 [50 USCS Appx § 546], which become due on a policy under the protection of this title [50 USCS Appx §§ 541 et seq.] is guaranteed by the United States. If the amount guaranteed is not paid to the insurer before the period of insurance protection under this title [50 USCS Appx §§ 541 et seq.] expires, the amount due shall be treated by the insurer as a policy loan on the policy.

(2) Policy termination. If, at the expiration of insurance protection under this title [50 USCS Appx §§ 541 et seq.], the cash surrender value of a policy is less than the amount due to pay premiums and interest on premiums on the policy, the policy shall terminate. Upon such termination, the United States shall pay the insurer the difference between the amount due and the cash surrender value.

(b) Recovery from insured of amounts paid by the United States.

(1) Debt payable to the United States. The amount paid by the United States to an insurer under this title [50 USCS Appx §§ 541 et seq.] shall be a debt payable to the United States by the insured on whose policy payment was made.

(2) Collection. Such amount may be collected by the United States, either as an offset from any amount due the insured by the United States or as otherwise authorized by law.

(3) Debt not dischargeable in bankruptcy. Such debt payable to the United States is not dischargeable in bankruptcy proceedings.

(c) Crediting of amounts recovered. Any amounts received by the United States as repayment of debts incurred by an insured under this title [50 USCS Appx §§ 541 et seq.] shall be credited to the appropriation for the payment of claims under this title [50 USCS Appx §§ 541 et seq.].

HISTORY:

(Oct. 17, 1940, ch 888, Title IV, § 407, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2853.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 547 (Act Oct. 17, 1940, ch 888, § 407, 54 Stat. 1185; Oct. 6, 1942, ch 581, § 13, 56 Stat. 775; Sept. 2, 1958, P.L. 85-857, § 14(76), 72 Stat. 1272; March 18, 1991, P.L. 102-12, § 9(17), 105 Stat. 40) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to regulations, and the finality of determinations. For similar provisions, see *50 USCS Appx §§ 548 and 549*.

NOTES:

Code of Federal Regulations:

Department of Veterans Affairs--Soldiers' and Sailors' Civil Relief, 38 CFR Part 7.

Research Guide:

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 *Advoc (Boise)* 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 *J Kan BA* 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 *Res Gestae* 13, September 2004.

Interpretive Notes and Decisions:

1. Generally
2. Amount to be reimbursed

1. Generally

Under provisions of former *50 USCS Appx § 546* government was required to pay premiums due on policy of insured while in the service, if insured did not pay same. *United States v Nichols* (1952, *DC Iowa*) 105 *F Supp* 543, app dismd (1953, *CA8 Iowa*) 202 *F2d* 958.

2. Amount to be reimbursed

Serviceman is required to repay amount of premiums advanced, plus interest, for purpose was not primarily to afford additional insurance for inducted serviceman but to protect his vested private rights. *United States v Hendler* (1955, *CA10 Colo*) 225 *F2d* 106.

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50 USCS Appx § 548

§ 548. Regulations

The Secretary of Veterans Affairs shall prescribe regulations for the implementation of this title [*50 USCS Appx §§ 541 et seq.*].

HISTORY:

(Oct. 17, 1940, ch 888, Title IV, § 408, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2854.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 548 (Act Oct. 17, 1940, ch 888, § 408, 54 Stat. 1185; Oct. 6, 1942, ch 581, § 13, 56 Stat. 776) was repealed by Act March 18, 1991, P.L. 102-12, § 9(18), 105 Stat. 40. It provided for continuation of the effectiveness of provisions of law governing applications for protection prior to Oct. 6, 1942.

NOTES:

Code of Federal Regulations:

Department of Veterans Affairs--Soldiers' and Sailors' Civil Relief, 38 CFR Part 7.

Research Guide:

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 *Advoc (Boise)* 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 *J Kan BA* 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 549

§ 549. Review of findings of fact and conclusions of law

The findings of fact and conclusions of law made by the Secretary of Veterans Affairs in administering this title [*50 USCS Appx §§ 541 et seq.*] are subject to review on appeal to the Board of Veterans' Appeals pursuant to chapter 71 of title 38, United States Code [*38 USCS §§ 7101 et seq.*], and to judicial review only as provided in chapter 72 of such title [*38 USCS §§ 7251 et seq.*].

HISTORY:

(Oct. 17, 1940, ch 888, Title IV, § 409, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2854.)

NOTES:

Code of Federal Regulations:

Department of Veterans Affairs--Soldiers' and Sailors' Civil Relief, 38 CFR Part 7.

Research Guide:

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 Judges' Journal 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 Judges' Journal 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 549

§ 549--554. [Omitted]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

These sections (§§ 549-554--Act Oct. 17, 1940, ch 888, §§ 409-414, 54 Stat. 1185, 1186) were omitted in the general amendment of Article IV by Act Oct. 6, 1942, ch 581, § 13, 56 Stat. 773. They continued in force as to applications for protection executed prior to Oct. 6, 1942, as provided by Act Oct. 17, 1940, ch 888, § 408, 54 Stat. 1185, as amended, which appeared as *50 USCS Appx § 548*, prior to its repeal. Prior to omission, these sections read:

§ 549. Deduction of unpaid premiums from proceeds of policies

"In the event that the military service of any person being the holder of a policy receiving the benefits of this article shall be terminated by death, the amount of any unpaid premiums, with interest at the rate provided for in the policy for policy loans, shall be deducted from the proceeds of the policy and shall be included in the next monthly report of the insurer as premiums paid.";

§ 550. Lapsing of policy for failure to pay past due premiums upon termination of service

"If the insured does not within one year after the termination of his period of military service pay to the insurer all past due premiums with interest thereon from their several due dates at the rate provided in the policy for policy loans, the policy shall at the end of such year immediately lapse and become void, and the insurer shall thereupon become liable to pay the cash surrender value thereof, if any: Provided, That if the insured is in the military service when this Act ceases to be in force, such lapse shall occur and surrender value be payable at the expiration of one year after the date when this Act ceases to be in force.";

§ 551. Accounts stated between insurers and United States

"At the expiration of one year after the date when this Act ceases to be in force there shall be an account stated between each insurer and the United States, in which there shall be credited to the insurer the total amount of the certificates held as security under this article, together with accrued interest to the date of the account, and in which there shall be credited to the United States the amount of the cash surrender value of each policy lapsed or forfeited as provided in section 410, but not in any case a greater amount on any policy than the total of the unpaid premiums with interest thereon at the rate provided for in the policy for policy loans.";

§ 552. Payment of balances due insurers by Secretary of Treasury

"The balance in favor of the insurer in each case shall be certified by the Administrator of Veterans' Affairs to the Secretary of the Treasury, who shall pay to the insurer the amount thereof, which is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, upon the surrender by the insurer of the certificates delivered to it from time to time by the Administrator of Veterans' Affairs under the provisions of this article.";

§ 553. Policies excepted from application of article

"This article shall not apply to any policy which is void or which may at the option of the insured be voidable, if the insured is in military service, either in this country or abroad, nor to any policy which as a result of being in military service, either in this country or abroad, provides for the payment of any sum less than the face thereof or for the payment of an additional amount as premium."; and

§ 554. Insurers within application of article

"This article shall apply only to insurance companies or associations which are required by the law under which they are organized or doing business to maintain a reserve, or, which if not so required, have made or shall make provision for the collection from all those insured in such insurer of a premium to cover the special war risk of those insured persons who are in military service.".

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50 USCS Appx § 560

§ 560. [Omitted]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Oct. 17, 1940, ch 888, § 500, 54 Stat. 1186; Oct. 6, 1942, ch 581, § 14, 56 Stat. 776) was omitted in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. It related to taxes respecting personalty, money, credits, or realty, sale of property to enforce collection, redemption of property sold, and penalty for nonpayment. For similar provisions, see *50 USCS Appx § 561*.

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50 USCS Appx § 561

§ 561. Taxes respecting personal property, money, credits, and real property

(a) Application. This section applies in any case in which a tax or assessment, whether general or special (other than a tax on personal income), falls due and remains unpaid before or during a period of military service with respect to a servicemember's--

- (1) personal property (including motor vehicles); or
- (2) real property occupied for dwelling, professional, business, or agricultural purposes by a servicemember or the servicemember's dependents or employees--
 - (A) before the servicemember's entry into military service; and
 - (B) during the time the tax or assessment remains unpaid.

(b) Sale of property.

(1) Limitation on sale of property to enforce tax assessment. Property described in subsection (a) may not be sold to enforce the collection of such tax or assessment except by court order and upon the determination by the court that military service does not materially affect the servicemember's ability to pay the unpaid tax or assessment.

(2) Stay of court proceedings. A court may stay a proceeding to enforce the collection of such tax or assessment, or sale of such property, during a period of military service of the servicemember and for a period not more than 180 days after the termination of, or release of the servicemember from, military service.

(c) Redemption. When property described in subsection (a) is sold or forfeited to enforce the collection of a tax or assessment, a servicemember shall have the right to redeem or commence an action to redeem the servicemember's property during the period of military service or within 180 days after termination of or release from military service. This subsection may not be construed to shorten any period provided by the law of a State (including any political subdivision of a State) for redemption.

(d) Interest on tax or assessment. Whenever a servicemember does not pay a tax or assessment on property described in subsection (a) when due, the amount of the tax or assessment due and unpaid shall bear interest until paid at the rate of 6 percent per year. An additional penalty or interest shall not be incurred by reason of nonpayment. A lien for such unpaid tax or assessment may include interest under this subsection.

(e) Joint ownership application. This section applies to all forms of property described in subsection (a) owned individually by a servicemember or jointly by a servicemember and a dependent or dependents.

HISTORY:

50 USCS Appx § 561

(Oct. 17, 1940, ch 888, Title V, § 501, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2854.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 561 (Act Oct. 17, 1940, ch 888, § 501, 54 Stat. 1187) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to rights in public lands and grazing lands. For similar provisions, see *50 USCS Appx § 562*.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:54, 500-505, 509-512, 514, 516, 517, 520, 522-524.

Am Jur:

53A Am Jur 2d, Military and Civil Defense §§ 409, 417, 419, 420.

Annotations:

Provisions of Soldiers' and Sailors' Civil Relief Act relating to taxation of property of military personnel. 32 ALR2d 618.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Murchison. Impact of the Soldiers' and Sailors' Civil Relief Act on State Taxation of Mobile Homes. 19 *Air Force L Rev* 235, 1977.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

Interpretive Notes and Decisions:

I. IN GENERAL 1. Validity 2. Relationship with other laws 3. Applicability to long-standing tax deficits 4. Interest rate

II. TAX SALES 5. Generally 6. Real property; purpose for which used 7. --Jointly-owned property

III. REDEMPTION 8. Generally 9. Effect on particular state laws 10. Real property; purpose for which used 11. Need for affidavit 12. Validity of sale and tax deeds in interim period 13. Jointly owned property

I. IN GENERAL 1. Validity

Extension of period of redemption of property sold for failure to pay irrigation assessment by former 50 USCS Appx § 560 was valid exercise of war power even though any attempt by state to do so would have been invalid impairment of contract obligation. *United States v Alberts* (1945, DC Wash) 59 F Supp 298.

Taxpayer failed to cite any provision of Soldier's and Sailor's Civil Relief Act of 1940, 50 USCS app., § 501 et seq., or any other law that supported his argument that U.S. was prohibited from filing any tax liens on his property during time he served in Operation Desert Storm, and evidence showed that taxpayer had already been given penalty and interest abatements during his alleged periods of military service; therefore, U.S. tax liens on taxpayer's properties were valid. *United States v Key* (2004, ND Tex) 308 F Supp 2d 727, 93 AFTR 2d 947.

2. Relationship with other laws

Former 50 USCS Appx §§ 525 and 560 supplemented each other, § 560 giving greater protection to restricted types of real property, while § 525 extended in terms to all land; to have adopted contrary construction would have attributed to Congress purpose to protect only certain classes of property, which could not be done without drastically contracting language of § 525 and ignoring its beneficent purpose. *Le Maistre v Leffers* (1948) 333 US 1, 92 L Ed 429, 68 S Ct 371.

3. Applicability to long-standing tax deficits

Soldiers' and Sailors' Civil Relief Act was not intended to completely exempt career serviceman owning property, who knows of his tax obligations and is not handicapped because of military status, from paying usual taxes assessed on his property; thus, career serviceman was not entitled to exemption of period of redemption where he had been in military almost 16 years before he bought property, and tax deed was not issued until 3 years after tax certificate was issued and after he had owned property for over 4 years, during which time he paid no taxes. *King v Zagorski* (1968, Fla App D2) 207 So 2d 61.

Provisions of former 50 USCS Appx § 560 did not invalidate state statute providing for summary foreclosure of long standing tax delinquencies and conveyance of marketable title without any right of redemption; federal statute was not unworkable in connection with state statute. *Spitcaufsky v Hatten* (1944) 353 Mo 94, 182 SW2d 86, 160 ALR 990 (ovrld in part by Director of Dep't of Revenue v Parcels of Land Encumbered with *Delinquent Tax Liens* (1977, Mo) 555 SW2d 293).

4. Interest rate

Provisions of former 50 USCS Appx § 560 that whenever any tax or assessment should not be paid when due, it should bear interest until paid at rate of 6 percent per annum and no other penalty or other interest, and that any lien for such unpaid taxes or assessment should also include such interest, was not applicable in determining penalty which one seeking to redeem land sold for taxes should pay, under state statute assessing penalty of 18 percent on taxes delinquent prior to 1929, and 8 percent in subsequent years. *Parks v Stith* (1951) 204 Okla 625, 232 P2d 614.

In action to enforce paving assessment lien which was made against estate of serviceman's mother in her lifetime, judgment entered could properly bear interest at rate greater than 6 percent notwithstanding provisions of act; judgment, both as to principal and interest, was limited so that it could only be made out of property mother left, and when serviceman came into property after his mother's death it was already liable for payment of her obligations, so that properly considered, judgment was not against serviceman at all but merely obligation which his mother incurred during her lifetime, and liability therefore was limited to property which she left. *Lofstedt v Gulf Paving Co.* (1944, Tex Civ App) 185 SW2d 203, affd (1945) 144 Tex 17, 188 SW2d 155.

II. TAX SALES 5. Generally

County tax collector could not order sale of property when right of redemption was held by serviceman who had acquired such right prior to entry into service. *Margraf v County of Los Angeles* (1956, 2nd Dist) 144 Cal App 2d 647, 301 P2d 490.

Former 50 USCS Appx § 560 did not prevent sale of property property belonging to person in military service for tax deficiency. *Day v Jones* (1947) 112 Utah 286, 187 P2d 181.

6. Real property; purpose for which used

Serviceman having himself testified that neither he nor his dependents occupied land in question for any of statutory purposes at time of his military service, former 50 USCS Appx § 560 by its own terms was not applicable to protect him against tax sale. *Peterson v Johnson* (1952) 39 Cal 2d 745, 249 P2d 17.

7. --Jointly-owned property

Action to foreclose tax lien would not be stayed under former 50 USCS Appx § 560 on motion of attorney appointed to protect rights of 2 defendants in military service where record showed that such defendants owned two-fifths interest in the premises consisting of frame building used as bar and grill and summer resort hotel, their mother and two sisters owned remaining three-fifths interest, taxes had not been paid for about 20 years, taxes, interest, and penalties in substantial sum also remained unpaid, and none of defendants had answered complaint but all were in default. *Waldron v People* (1944) 181 Misc 443, 46 NYS2d 587.

III. REDEMPTION 8. Generally

Length of time spent in military service was added as extension to redemption period of realty sold under foreclosure in state of Alabama. *Peace v Bullock* (1949) 252 Ala 155, 40 So 2d 82.

Soldiers' and Sailors' Civil Relief Act supplements time within which servicemen may redeem land from tax sale under state law and redemption period is extended thereby. *Schuman v Riley* (1947) 211 Ark 863, 204 SW2d 162.

9. Effect on particular state laws

State cannot, during period of taxpayer's military service, terminate his right of redemption of land sold to state for nonpayment of taxes. *Margraf v County of Los Angeles* (1956, 2nd Dist) 144 Cal App 2d 647, 301 P2d 490.

10. Real property; purpose for which used

Where it was not shown that property in question was owned or occupied by serviceman for agricultural or dwelling purposes as specified in former 50 USCS Appx § 560, provisions of § 560 giving serviceman right to redeem within 6 months from date of termination of his service were not applicable. *Karger v Stead* (1949) 192 Md 230, 64 A2d 155.

Former 50 USCS Appx § 560 extended redemption date, notwithstanding property had not been used as dwelling, business, or for agricultural purposes. *Hedrick v Bigby* (1957) 228 Ark 40, 305 SW2d 674.

Land had not been occupied for agricultural purposes so as to bring it within operation of former 50 USCS Appx § 560 authorizing serviceman to redeem it from tax sale within 6 months from termination of his service, where serviceman admitted that he never lived on, farmed, grazed, or leased for any of these purposes land in question, but only went upon land immediately after buying it, assumed control, and rode past it 2 or 3 times a year to see if anyone was trespassing. *Day v Jones* (1947) 112 Utah 286, 187 P2d 181.

11. Need for affidavit

Failure of serviceman to file affidavit required by act, showing existence of factual conditions in order to claim extension of redemption period for tax forfeited realty owned and occupied for agricultural purposes, was fatal to right of redemption; later amendment eliminating requirement of affidavit was immaterial, since, prior to its adoption, period of redemption was terminated by deed to city. *McCaslin v Hamblen* (1951) 37 Cal 2d 196, 231 P2d 1.

12. Validity of sale and tax deeds in interim period

Former 50 USCS Appx § 560 operated to toll running of period after which purchaser at tax sale of serviceman's property may apply for tax deed, for as long as serviceman remains in military service. *Le Maistre v Leffers* (1948) 333 US 1, 92 L Ed 429, 68 S Ct 371.

Tax certificates and deeds are rendered voidable during relief period within which redemption can be made, but such instruments are not rendered void ab initio merely because they are issued during said period; essential purpose of Relief Act is merely to toll time of redemption during relief periods allowed because of military service. *Thomas v Moorman* (1967, Fla) 199 So 2d 719, cert den (1967) 389 US 959, 19 L Ed 2d 368, 88 S Ct 336, reh den (1968) 390 US 912, 19 L Ed 2d 888, 88 S Ct 814.

Since provisions of former 50 USCS Appx §§ 525 and 560 were complementary and not conflicting at time plaintiff serviceman's land was sold for taxes, period of redemption computed under § 525 had not expired and sale was void under terms of state statute so that purchaser received no title. *Day v Jones* (1947) 112 Utah 286, 187 P2d 181.

13. Jointly owned property

Soldier, cotenant of property sold on foreclosure, even if he had equity of redemption, was only entitled to redeem his proportionate interest, unless mortgagee required him to redeem all interests. *Cooper v Peak* (1952) 258 Ala 167, 61 So 2d 62, cert den (1953) 345 US 957, 97 L Ed 1377, 73 S Ct 939 and reh den (1953) 346 US 842, 98 L Ed 362, 74 S Ct 14.

Under former 50 USCS Appx § 560(3), soldier was entitled to redeem not only for himself but also for his cotenant. *Hedrick v Bigby* (1957) 228 Ark 40, 305 SW2d 674.

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*** WITH GAPS OF 110-343, 110-344, 110-346 and 110-351 ***

TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
SERVICEMEMBERS CIVIL RELIEF ACT
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50 USCS Appx § 562

§ 562. Rights in public lands

(a) Rights not forfeited. The rights of a servicemember to lands owned or controlled by the United States, and initiated or acquired by the servicemember under the laws of the United States (including the mining and mineral leasing laws) before military service, shall not be forfeited or prejudiced as a result of being absent from the land, or by failing to begin or complete any work or improvements to the land, during the period of military service.

(b) Temporary suspension of permits or licenses. If a permittee or licensee under the Act of June 28, 1934 (*43 U.S.C. 315 et seq.*), enters military service, the permittee or licensee may suspend the permit or license for the period of military service and for 180 days after termination of or release from military service.

(c) Regulations. Regulations prescribed by the Secretary of the Interior shall provide for such suspension of permits and licenses and for the remission, reduction, or refund of grazing fees during the period of such suspension.

HISTORY:

(Oct. 17, 1940, ch 888, Title V, § 502, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2855.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The mining laws, referred to in this section, are classified generally to *30 USCS §§ 1 et seq.*

"Mineral leasing laws", referred to in this section, are defined in *30 USCS §§ 505, 530 and 541e* to include: Act Oct. 20, 1914, ch 330, 38 Stat. 741, which was repealed by Act Sept. 9, 1959, P.L. 86-252, § 1, 73 Stat. 490; Act Feb. 25, 1920, ch 85, 41 Stat. 437, which is generally classified to *30 USCS §§ 181 et seq.* and is popularly known as the Mineral Lands Leasing Act; Act April 17, 1926, ch 158, 44 Stat. 301; which is generally classified to *30 USCS §§ 271 et seq.*; Act Feb. 7, 1927, ch 66, 44 Stat. 1057, which is generally classified to *30 USCS §§ 281 et seq.*; and Act Dec. 24, 1970, P.L. 91-581, 84 Stat. 1566, which is generally classified to *30 USCS §§ 1001 et seq.* and popularly known as the Geothermal Stream Act of 1970. For full classification of these Acts, consult USCS Tables volumes.

Explanatory notes:

50 USCS Appx § 562

A prior § 562 (Act Oct. 17, 1940, ch 888, § 502, 54 Stat. 1187) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to homestead entries and settlement claims, and service as equivalent to residence and cultivation.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 381.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 563

§ 563. Desert-land entries

(a) Desert-land rights not forfeited. A desert-land entry made or held under the desert-land laws before the entrance of the entryman or the entryman's successor in interest into military service shall not be subject to contest or cancellation--

- (1) for failure to expend any required amount per acre per year in improvements upon the claim;
- (2) for failure to effect the reclamation of the claim during the period the entryman or the entryman's successor in interest is in the military service, or for 180 days after termination of or release from military service; or
- (3) during any period of hospitalization or rehabilitation due to an injury or disability incurred in the line of duty.

The time within which the entryman or claimant is required to make such expenditures and effect reclamation of the land shall be exclusive of the time periods described in paragraphs (2) and (3).

(b) Service-related disability. If an entryman or claimant is honorably discharged and is unable to accomplish reclamation of, and payment for, desert land due to a disability incurred in the line of duty, the entryman or claimant may make proof without further reclamation or payments, under regulations prescribed by the Secretary of the Interior, and receive a patent for the land entered or claimed.

(c) Filing requirement. In order to obtain the protection of this section, the entryman or claimant shall, within 180 days after entry into military service, cause to be filed in the land office of the district where the claim is situated a notice communicating the fact of military service and the desire to hold the claim under this section.

HISTORY:

(Oct. 17, 1940, ch 888, Title V, § 503, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2856.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The "desert-land laws", referred to in this section, are classified generally to *43 USCS §§ 321 et seq.*

Explanatory notes:

50 USCS Appx § 563

A prior § 563 (Act Oct. 17, 1940, ch 888, § 503, 54 Stat. 1187) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to death or incapacity during or resulting from service as affecting rights, and perfection of rights.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Related Statutes & Rules:

Desert lands, *43 USCS §§ 321 et seq.*

Research Guide:

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 381.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 564

§ 564. Mining claims

(a) Requirements suspended. The provisions of section 2324 of the Revised Statutes of the United States (*30 U.S.C.* 28) specified in subsection (b) shall not apply to a servicemember's claims or interests in claims, regularly located and recorded, during a period of military service and 180 days thereafter, or during any period of hospitalization or rehabilitation due to injuries or disabilities incurred in the line of duty.

(b) Requirements. The provisions in section 2324 of the Revised Statutes that shall not apply under subsection (a) are those which require that on each mining claim located after May 10, 1872, and until a patent has been issued for such claim, not less than \$ 100 worth of labor shall be performed or improvements made during each year.

(c) Period of protection from forfeiture. A mining claim or an interest in a claim owned by a servicemember that has been regularly located and recorded shall not be subject to forfeiture for nonperformance of annual assessments during the period of military service and for 180 days thereafter, or for any period of hospitalization or rehabilitation described in subsection (a).

(d) Filing requirement. In order to obtain the protections of this section, the claimant of a mining location shall, before the end of the assessment year in which military service is begun or within 60 days after the end of such assessment year, cause to be filed in the office where the location notice or certificate is recorded a notice communicating the fact of military service and the desire to hold the mining claim under this section.

HISTORY:

(Oct. 17, 1940, ch 888, Title V, § 504, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2856.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 564 (Act Oct. 17, 1940, ch 888, § 504, 54 Stat. 1187; March 18, 1991, P.L. 102-12, § 9(19), 105 Stat. 40) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to desert-land entries and the suspension of requirements. For similar provisions, see *50 USCS Appx § 563*.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Related Statutes & Rules:

Mining claims, *30 USCS § 28*.

Research Guide:

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 381.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

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50 USCS Appx § 565

§ 565. Mineral permits and leases

(a) Suspension during military service. A person holding a permit or lease on the public domain under the Federal mineral leasing laws who enters military service may suspend all operations under the permit or lease for the duration of military service and for 180 days thereafter. The term of the permit or lease shall not run during the period of suspension, nor shall any rental or royalties be charged against the permit or lease during the period of suspension.

(b) Notification. In order to obtain the protection of this section, the permittee or lessee shall, within 180 days after entry into military service, notify the Secretary of the Interior by registered mail of the fact that military service has begun and of the desire to hold the claim under this section.

(c) Contract modification. This section shall not be construed to supersede the terms of any contract for operation of a permit or lease.

HISTORY:

(Oct. 17, 1940, ch 888, Title V, § 505, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2857.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The "Federal mineral leasing laws", referred to in this section, are defined in *30 USCS §§ 505, 530 and 541e* to include: Act Oct. 20, 1914, ch 330, 38 Stat. 741, which was repealed by Act Sept. 9, 1959, P.L. 86-252, § 1, 73 Stat. 490; Act Feb. 25, 1920, ch 85, 41 Stat. 437, which is generally classified to *30 USCS §§ 181 et seq.* and is popularly known as the Mineral Lands Leasing Act; Act April 17, 1926, ch 158, 44 Stat. 301; which is generally classified to *30 USCS §§ 271 et seq.*; Act Feb. 7, 1927, ch 66, 44 Stat. 1057, which is generally classified to *30 USCS §§ 281 et seq.*; and Act Dec. 24, 1970, P.L. 91-581, 84 Stat. 1566, which is generally classified to *30 USCS §§ 1001 et seq.* and popularly known as the Geothermal Stream Act of 1970. For full classification of these Acts, consult USCS Tables volumes.

Explanatory notes:

50 USCS Appx § 565

A prior § 565 (Act Oct. 17, 1940, ch 888, § 505, 54 Stat. 1188; March 18, 1991, P.L. 102-12, § 9(20), 105 Stat. 41) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to mining claims and the suspension of requirements. For similar provisions, see *50 USCS Appx § 564*.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Code of Federal Regulations:

Bureau of Land Management, Secretary of the Interior--Waivers from annual maintenance fees, 43 CFR Part 3835.

Bureau of Land Management, Secretary of the Interior--Annual assessment work requirements for mining claims, 43 CFR Part 3836.

Bureau of Land Management, Secretary of the Interior--Acquiring a delinquent co-claimant's interests in a mining claim or site, 43 CFR Part 3837.

Research Guide:

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 381.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 *Advoc (Boise)* 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 *J Kan BA* 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

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Thompson. The Servicemembers Civil Relief Act. 48 *Res Gestae* 13, September 2004.

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50 USCS Appx § 566

§ 566. Perfection or defense of rights

(a) Right to take action not affected. This title shall not affect the right of a servicemember to take action during a period of military service that is authorized by law or regulations of the Department of the Interior, for the perfection, defense, or further assertion of rights initiated or acquired before entering military service.

(b) Affidavits and proofs.

(1) In general. A servicemember during a period of military service may make any affidavit or submit any proof required by law, practice, or regulation of the Department of the Interior in connection with the entry, perfection, defense, or further assertion of rights initiated or acquired before entering military service before an officer authorized to provide notary services under *section 1044a of title 10, United States Code*, or any superior commissioned officer.

(2) Legal status of affidavits. Such affidavits shall be binding in law and subject to the same penalties as prescribed by *section 1001 of title 18, United State Code*.

HISTORY:

(Oct. 17, 1940, ch 888, Title V, § 506, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2857.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 566 (Act Oct. 17, 1940, ch 888, § 506, 54 Stat. 1188; March 18, 1991, P.L. 102-12, § 9(21), 105 Stat. 41) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to mineral permits and leases, the suspension of operations and the term of permits and leases. For similar provisions, see *50 USCS Appx § 565*.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 381.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
SERVICEMEMBERS CIVIL RELIEF ACT
TITLE V. TAXES AND PUBLIC LANDS

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50 USCS Appx § 567

§ 567. Distribution of information concerning benefits of title

(a) Distribution of information by Secretary concerned. The Secretary concerned shall issue to servicemembers information explaining the provisions of this title [*50 USCS Appx §§ 561 et seq.*].

(b) Application forms. The Secretary concerned shall provide application forms to servicemembers requesting relief under this title [*50 USCS Appx §§ 561 et seq.*].

(c) Information from Secretary of the Interior. The Secretary of the Interior shall furnish to the Secretary concerned information explaining the provisions of this title (other than sections 501, 510, and 511) [*50 USCS Appx §§ 561 et seq.*, other than §§ 561, 570, and 571] and related application forms.

HISTORY:

(Oct. 17, 1940, ch 888, Title V, § 507, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2857.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 567 (Act Oct. 17, 1940, ch 888, § 507, 54 Stat. 1188; March 18, 1991, P.L. 102-12, § 9(22), 105 Stat. 41) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to the right to take action for perfection, defense, etc., of rights as unaffected, and affidavits and proofs. For similar provisions, see *50 USCS Appx § 566*.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 381.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 568

§ 568. Land rights of servicemembers

(a) No age limitations. Any servicemember under the age of 21 in military service shall be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including mining and mineral leasing laws, as those servicemembers who are 21 years of age.

(b) Residency requirement. Any requirement related to the establishment of a residence within a limited time shall be suspended as to entry by a servicemember in military service until 180 days after termination of or release from military service.

(c) Entry applications. Applications for entry may be verified before a person authorized to administer oaths under *section 1044a of title 10, United States Code*, or under the laws of the State where the land is situated.

HISTORY:

(Oct. 17, 1940, ch 888, Title V, § 508, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2857.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The mining laws, referred to in this section, are classified generally to *30 USCS §§ 1 et seq.*

"Mineral leasing laws", referred to in this section, are defined in *30 USCS §§ 505, 530 and 541e* to include: Act Oct. 20, 1914, ch 330, 38 Stat. 741, which was repealed by Act Sept. 9, 1959, P.L. 86-252, § 1, 73 Stat. 490; Act Feb. 25, 1920, ch 85, 41 Stat. 437, which is generally classified to *30 USCS §§ 181 et seq.* and is popularly known as the Mineral Lands Leasing Act; Act April 17, 1926, ch 158, 44 Stat. 301; which is generally classified to *30 USCS §§ 271 et seq.*; Act Feb. 7, 1927, ch 66, 44 Stat. 1057, which is generally classified to *30 USCS §§ 281 et seq.*; and Act Dec. 24, 1970, P.L. 91-581, 84 Stat. 1566, which is generally classified to *30 USCS §§ 1001 et seq.* and popularly known as the Geothermal Stream Act of 1970. For full classification of these Acts, consult USCS Tables volumes.

Explanatory notes:

50 USCS Appx § 568

A prior § 568 (Act Oct. 17, 1940, ch 888, § 508, 54 Stat. 1189) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to irrigation rights, and the suspension of residence requirements.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 381.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 569

§ 569. Regulations

The Secretary of the Interior may issue regulations necessary to carry out this title [*50 USCS Appx §§ 561 et seq.*] (other than sections 501, 510, and 511 [*50 USCS Appx §§ 561, 570, and 571*]).

HISTORY:

(Oct. 17, 1940, ch 888, Title V, § 509, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2858.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 569 (Act Oct. 17, 1940, ch 888, § 509, 54 Stat. 1189; Oct. 6, 1942, ch 581, § 15, 56 Stat. 776) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to distribution of information concerning benefits of article V, and the furnishing of forms. For similar provisions, see *50 USCS Appx § 567*.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. *45 Judges' Journal* 27, Summer 2006.
Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 570

§ 570. Income taxes

(a) Deferral of tax. Upon notice to the Internal Revenue Service or the tax authority of a State or a political subdivision of a State, the collection of income tax on the income of a servicemember falling due before or during military service shall be deferred for a period not more than 180 days after termination of or release from military service, if a servicemember's ability to pay such income tax is materially affected by military service.

(b) Accrual of interest or penalty. No interest or penalty shall accrue for the period of deferment by reason of nonpayment on any amount of tax deferred under this section.

(c) Statute of limitations. The running of a statute of limitations against the collection of tax deferred under this section, by seizure or otherwise, shall be suspended for the period of military service of the servicemember and for an additional period of 270 days thereafter.

(d) Application limitation. This section shall not apply to the tax imposed on employees by *section 3101 of the Internal Revenue Code of 1986* [26 USCS § 3101].

HISTORY:

(Oct. 17, 1940, ch 888, Title V, § 510, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2858.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 570 (Act Oct. 17, 1940, ch 888, § 510, 54 Stat. 1189; March 18, 1991, P.L. 102-12, § 9(23), 105 Stat. 41) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section provided that homestead entrymen be permitted to leave entries to perform farm labor.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

20 Fed Proc L Ed, Internal Revenue §§ 48:553, 557.

Am Jur:

35 *Am Jur 2d, Federal Tax Enforcement* §§ 220, 224.

53A *Am Jur 2d, Military and Civil Defense* § 418.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 *Advoc (Boise)* 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 *J Kan BA* 20, October 2005.

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50 USCS Appx § 571

§ 571. Residence for tax purposes

(a) Residence or domicile. A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(b) Military service compensation. Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) Personal property.

(1) Relief from personal property taxes. The personal property of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2) Exception for property within member's domicile or residence. This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's domicile or residence.

(3) Exception for property used in trade or business. This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) Relationship to law of state of domicile. Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(d) Increase of tax liability. A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(e) Federal Indian reservations. An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(f) Definitions. For purposes of this section:

(1) Personal property. The term "personal property" means intangible and tangible property (including motor vehicles).

(2) Taxation. The term "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

(3) Tax jurisdiction. The term "tax jurisdiction" means a State or a political subdivision of a State.

HISTORY:

(Oct. 17, 1940, ch 888, Title V, § 511, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2858.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 571 (Act Oct. 17, 1940, ch 888, § 511, 54 Stat. 1189) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to the land rights of servicemembers under 21. For similar provisions, see *50 USCS Appx § 568*.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Am Jur:

7A Am Jur 2d, Automobiles and Highway Traffic § 92.

53A Am Jur 2d, Military and Civil Defense § 421.

71 Am Jur 2d, State and Local Taxation § 262.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 *Advoc* (Boise) 13, November 2005.

Murchison. Impact of Soldiers' and Sailors' Civil Relief Act on State Taxation of Mobile Homes. 19 *AF L Rev* 237, 1977.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 *J Kan BA* 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Minor. Inclusion of Nonresident Military Income in State Apportionment-Of-Income Formulas: Violation of the Soldiers' and Sailors' Civil Relief Act? 102 *Mil L Rev* 97, Fall, 1983.

Thompson. The Servicemembers Civil Relief Act. 48 *Res Gestae* 13, September 2004.

Interpretive Notes and Decisions:

1. Purpose 2. Sales and use taxes 3. Income tax 4. Tax on particular items; mobile home 5.--Motor vehicles 6. Home state fee proviso 7.--Lack of coverage of subject matter by home state 8. Change in residence; particular actions of service member 9. School tuition

1. Purpose

Purpose of former 50 USCS Appendix § 574 was to relieve nonresident serviceman of burden of supporting governments of states where he was present solely in compliance with military order *California v Buzard* (1966) 382 US 386, 15 L Ed 2d 436, 86 S Ct 478.

Former 50 USCS Appx § 574 was enacted to protect armed forces members from multiple taxation of their income and personalty in cases where servicemen were stationed outside of their states of legal domicile; it reserved right to tax serviceman in respect of personalty to his state of legal residence by withdrawing jurisdictional basis for such taxation from state in which serviceman was stationed. *United States v Illinois* (1975, ED Ill) 387 F Supp 638.

2. Sales and use taxes

Nonresident serviceman present in state solely pursuant to military orders were not subject to state's sales and use taxes. *United States v Sullivan* (1968, CA2 Conn) 398 F2d 672, revd on other grounds (1969) 395 US 169, 23 L Ed 2d 182, 89 S Ct 1648.

3. Income tax

State graduated income tax that took into account amount of nontaxable military pay received by non-resident serviceman stationed within that state for computation of amount of tax levy on nonmilitary state income did not violate former 50 USCS Appx § 574 since mere inclusion of military compensation in formula determining rate of tax on income from state sources did not constitute tax on military income of nonresident individual. *United States v Kansas* (1987, CA10 Kan) 810 F2d 935.

Kansas tax laws that required military personnel who were not residents or domiciliaries of Kansas, to reflect military income on Kansas personal income tax returns and included such military income in formula to determine rate of taxation applied to taxpayer's Kansas income did not conflict with Soldiers' and Sailors' Civil Relief Act of 1940 (former 50 USCS Appx § 574). *United States v Kansas* (1984, DC Kan) 580 F Supp 512, affd (1987, CA10 Kan) 810 F2d 935.

State could consider domicile of Public Health Service officers in deciding whether they were subject to state income tax but could not presume domicile based on domicile of officer's spouse, because spouse's choice to journey to state where officer was stationed did not reflect officer's intention to remain in state, and such presumption was preempted under former 50 USCS Appx § 574. *United States v Minnesota* (2000, DC Minn) 97 F Supp 2d 973.

4. Tax on particular items; mobile home

State tax levied on mobile home owned by nonresident military personnel stationed at Air Force base was tax "in respect of" personal property within meaning of former 50 USCS Appx § 574. *United States v County of Champaign* (1975, CA7 Ill) 525 F2d 374.

Nonresident servicemen's house trailers which had not been permanently attached to land although connected to water, sewerage, and electrical facilities were personal property exempt from state taxation. *United States v Chester County Board of Assessment, etc.* (1968, ED Pa) 281 F Supp 1001.

Mobile homes which were not permanently affixed to realty and were occupied by servicemen who had not established permanent residence in area were tangible personal property within meaning of former 50 USCS Appx § 574 and were exempt from local taxation. *United States v Shelby County* (1974, WD Tenn) 385 F Supp 1187.

5.--Motor vehicles

Former 50 USCS Appx § 574 did not have effect of permitting servicemen to escape obligation of registering and licensing motor vehicle, but state could not exact a "license fee" of 2 per cent of car's market value as condition of registering and licensing car where serviceman was non-resident and car was purchased in another state. *California v Buzard* (1966) 382 US 386, 15 L Ed 2d 436, 86 S Ct 478.

Most sensible inference to be drawn from language of former 50 USCS Appx § 574 was that only taxes on "use" of property from which servicemen were exempted were special registration taxes imposed annually by all states on use of motor vehicles, and presence of word "use" could not be deemed to have added all use taxes to coverage of this provision. *Sullivan v United States* (1969) 395 US 169, 23 L Ed 2d 182, 89 S Ct 1648.

Premium exacted annually from owner of registered motor vehicles by agency of government of Puerto Rico and used solely to compensate victims of automobile accidents in no fault insurance plan was not tax on personal property

within meaning of former 50 USCS Appx § 574 and nonresident servicemen stationed in Puerto Rico were not immune from tax. *United States v Puerto Rico* (1973, CA1 Puerto Rico) 478 F2d 451.

Soldiers' and Sailors' Civil Relief Act exempted nonresident serviceman from payment of motor vehicle registration fee which was collected annually, measured by value of vehicle, and designed to raise revenue. *United States v Wyoming* (1975, DC Wyo) 402 F Supp 229.

Municipality was enjoined from enforcing its motor vehicle license fee against nonresident servicemen stationed at adjacent fort under former 50 USCS § 574, because fee was "revenue raising." *United States v Highwood* (1989, ND Ill) 712 F Supp 138.

Automobile of serviceman stationed in Arizona but who had retained his Indiana domicile and paid to that state all required license fees for automobile was not subject to Arizona vehicle tax because serviceman's wife used automobile in going to and from her work. *Christian v Strange* (1964) 96 Ariz 106, 392 P2d 575.

Person in the armed forces of the United States present in the state of Maine but who is a resident of, or is domiciled in a state other than the state of Maine, is entitled to register his motor vehicles in the state of Maine without first paying its excise tax. *Stephenson v Curtis* (1968, Me) 238 A2d 613.

6. Home state fee proviso

Proviso of former 50 USCS Appx § 574(2)(b) was to be read as assuring that section would not permit servicemen to escape obligation of registering and licensing their motor vehicles. *California v Buzard* (1966) 382 US 386, 15 L Ed 2d 436, 86 S Ct 478.

Mississippi cannot exact an ad valorem tax on a serviceman's house trailer on which he has not paid the registration fee of his home state; failure to pay the motor vehicle "license, fee, or excise" of home state entitles host state only to exact motor vehicle taxes qualifying as "licenses, fees, or excises." *Snapp v Neal* (1966) 382 US 397, 15 L Ed 2d 445, 86 S Ct 485.

7.--Lack of coverage of subject matter by home state

Former 50 USCS Appx § 574 was valid exercise of power supplemental to war power; assessment of Denver taxes on household furnishings of army officer resident in that city as result of military assignment was invalid, although Louisiana, state of his civilian domicile, had not taxed property in question. *Dameron v Brodhead* (1953) 345 US 322, 97 L Ed 1041, 73 S Ct 721, 32 ALR2d 612.

Former 50 USCS Appx § 574(2) prevented imposition of ad valorem property taxes even though serviceman's home state did not tax property. *Sullivan v United States* (1969) 395 US 169, 23 L Ed 2d 182, 89 S Ct 1648.

8. Change in residence; particular actions of service member

Army captain ordinarily resident in Pennsylvania who was assigned to duty in Chicago and made his home in Park Forest, Illinois, a Chicago suburb, was not "resident" in that suburb, under former 50 USCS Appx § 574, so as to be liable for motor vehicle tax there; fact that officer had voted in suburb's school election did not deprive him of benefit of § 574, although Illinois law made residence within state essential qualification for such voting, since § 574 expressly preserved original residence; fact that officer had illegally voted was immaterial on question of his tax liability. *Woodroffe v Park Forest* (1952, DC Ill) 107 F Supp 906.

Federal Soldiers' and Sailors' Civil Relief Act did not preempt state regulation, which set requirements for residency because act only applied to two areas, taxation and voting; servicemember did not have right to receive state's Permanent Fund Dividend (PFD) because did not rebut presumption that he was not resident of state. *Eagle v Dep't of Revenue* (2007, Alaska) 153 P3d 976.

9. School tuition

Former 50 USCS Appx § 574(1) precluded school board from imposing tuition requirement on children of military personnel where it would present possibility of multiple state taxation. *United States v Onslow County Bd. of Education* (1984, CA4 NC) 728 F2d 628.

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50 USCS Appx § 572

§ 572. [Omitted]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Oct. 17, 1940, ch 888, § 512, 54 Stat. 1190; Oct. 6, 1942, ch 581, § 16, 56 Stat. 776) was omitted in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. It related to the extension of benefits to persons serving with war allies of United States.

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50 USCS Appx § 573

§ 573. [Omitted]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Oct. 17, 1940, ch 888, § 513, 54 Stat. 1190) was omitted in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. It related to income taxes, the deferment of collection, interest, and statute of limitations. For similar provisions, see *50 USCS Appx § 570*.

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50 USCS Appx § 574

§ 574. [Omitted]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Oct. 17, 1940, ch 888, § 514, as added Oct. 6, 1942, ch 581, § 17, 56 Stat. 777; July 3, 1944, ch 397, § 1, 58 Stat. 722; Oct. 9, 1962, P.L. 87-771, 76 Stat. 768; March 18, 1991, P.L. 102-12, § 9(24), 105 Stat. 41) was omitted in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. It related to residence for tax purposes. For similar provisions, see *50 USCS Appx § 571*.

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TITLE VI. ADMINISTRATIVE REMEDIES

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50 USCS Appx § 580

§ 580. [Omitted]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Oct. 17, 1940, ch 888, § 600, 54 Stat. 1190; March 18, 1991, P.L. 102-12, § 9(25), 105 Stat. 41) was omitted in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. It related to transfers to take advantage of this Act. For similar provisions, see *50 USCS Appx § 581*.

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TITLE VI. ADMINISTRATIVE REMEDIES

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50 USCS Appx § 581

§ 581. Inappropriate use of Act

If a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred or acquired with the intent to delay the just enforcement of such right by taking advantage of this Act [*50 USCS Appx §§ 501 et seq.*], the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition.

HISTORY:

(Oct. 17, 1940, ch 888, Title VI, § 601, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2859.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 581 (Act Oct. 17, 1940, ch 888, § 601, 54 Stat. 1190; March 18, 1991, P.L. 102-12, § 9(26), 105 Stat. 41) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to certificates of service and persons reported missing. For similar provisions, see *50 USCS Appx § 582*.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

5 Weinstein's Federal Evidence (Matthew Bender 2nd ed.), ch 902, Self-Authentication § 902.12.
3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:54, 500-505, 509-512, 514, 516, 520, 522-524.

Am Jur:

53A Am Jur 2d, *Military and Civil Defense* § 397.

Forms:

3 Fed Procedural Forms L Ed, *Armed Forces, Civil Disturbances, and National Defense* (2002) § 5:190.

Annotations:

Soldiers' and Sailors' Civil Relief Act of 1940, as amended, as affecting foreclosure of mortgages and trust deeds. 40 ALR2d 1262.

Law Review Articles:

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Pottorff. Contemporary applications of the Soldiers' and Sailors' Civil Relief Act. 132 *Mil L Rev* 115, Spring 1991.

Huckabee, Operations Desert Shield and Desert Storm: resurrection of the Soldiers' and Sailors' Civil Relief Act. 132 *Mil L Rev* 141, Spring 1991.

Chapelle. Legal primer for advising the deployed servicemember. 34 *Res Gestae* 494, May 1991.

Thompson. The Servicemembers Civil Relief Act. 48 *Res Gestae* 13, September 2004.

Anderson; Armstrong. Soldiers' and Sailors' Civil Relief Act: a legal shield for military personnel. 4 *Utah BJ* 8, April 1991.

Interpretive Notes and Decisions:

1. Particular transfers 2. --Mortgaged property

1. Particular transfers

Transfer of title to attorney's nephew, who was member of armed forces protected by 50 USCS Appx § 501, did not clearly establish purpose of transfer as being solely and exclusively to cloud title and harass owner so as to amount to act of moral turpitude and dishonesty within meaning of state law for disciplining attorneys. *Sullivan v State Bar of California* (1946) 28 *Cal 2d* 488, 170 *P2d* 888 (ovrld in part by *Stratmore v State Bar of California* (1975) 14 *Cal 3d* 887, 123 *Cal Rptr* 101, 538 *P2d* 229, 92 ALR3d 803).

Where property was transferred to petitioner in application for stay of proceedings solely for purpose of taking advantage of 50 USCS Appx §§ 501 et seq, motion to stay proceedings will be denied. *Flushing Sav. Bank v Hallewell* (1942, *Sup*) 35 *NYS2d* 521.

2. --Mortgaged property

Provisions of former 50 USCS Appx § 580, precluding relief upon finding that property had been transferred to soldier for purposes of taking advantage of Act, precluded grant of stay in mortgage foreclosure proceeding where it was found that property was transferred to applicant on day of his induction into service, and that from all facts and circumstances it appeared that such transfer was made with intention to take advantage of benefits of statute. *Radding v Ninth Federal Sav. & Loan Asso.* (1944, DC NY) 55 *F Supp* 361.

Since 1942 amendments to former 50 USCS Appx § 536 extended protection of act to serviceman's dependents, it was immaterial that mortgaged property might have been conveyed to son in attempt to take advantage of his status as

soldier, since there was no doubt, under evidence, that his parents, former owners of property, were dependent upon him. *Reid v Margolis* (1943) 181 Misc 222, 44 NYS2d 518.

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50 USCS Appx § 582

§ 582. Certificates of service; persons reported missing

(a) Prima facie evidence. In any proceeding under this Act [*50 USCS Appx §§ 501 et seq.*], a certificate signed by the Secretary concerned is prima facie evidence as to any of the following facts stated in the certificate:

- (1) That a person named is, is not, has been, or has not been in military service.
- (2) The time and the place the person entered military service.
- (3) The person's residence at the time the person entered military service.
- (4) The rank, branch, and unit of military service of the person upon entry.
- (5) The inclusive dates of the person's military service.
- (6) The monthly pay received by the person at the date of the certificate's issuance.
- (7) The time and place of the person's termination of or release from military service, or the person's death during military service.

(b) Certificates. The Secretary concerned shall furnish a certificate under subsection (a) upon receipt of an application for such a certificate. A certificate appearing to be signed by the Secretary concerned is prima facie evidence of its contents and of the signer's authority to issue it.

(c) Treatment of servicemembers in missing status. A servicemember who has been reported missing is presumed to continue in service until accounted for. A requirement under this Act [*50 USCS Appx §§ 501 et seq.*] that begins or ends with the death of a servicemember does not begin or end until the servicemember's death is reported to, or determined by, the Secretary concerned or by a court of competent jurisdiction.

HISTORY:

(Oct. 17, 1940, ch 888, Title VI, § 602, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2859.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 582 (Act Oct. 17, 1940, ch 888, § 602, 54 Stat. 1191) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to the revocation, modification, or extension of interlocutory orders. For similar provisions, see *50 USCS Appx § 583*.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense § 5:508.
12A Fed Proc L Ed, Evidence §§ 33:378, 584.

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 430.

Forms:

10 *Bender's Federal Practice Forms*, Forms 55:60, 55:61, 55:62, Federal Rules of Civil Procedure.

Law Review Articles:

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. *41 Judges' Journal* 28, Spring 2002.
Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. *45 Judges' Journal* 27, Summer 2006.
Thompson. The Servicemembers Civil Relief Act. *48 Res Gestae* 13, September 2004.

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50 USCS Appx § 583

§ 583. Interlocutory orders

An interlocutory order issued by a court under this Act [*50 USCS Appx §§ 501 et seq.*] may be revoked, modified, or extended by that court upon its own motion or otherwise, upon notification to affected parties as required by the court.

HISTORY:

(Oct. 17, 1940, ch 888, Title VI, § 603, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2860.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 583 (Act Oct. 17, 1940, ch 888, § 603, 54 Stat. 1191) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to separability of provisions.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense § 5:523.

Law Review Articles:

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. *45 Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 584

§ 584. [Omitted]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Oct. 17, 1940, ch 888, § 604, 54 Stat. 1191; March 18, 1991, P.L. 102-12, § 9(27), 105 Stat. 41) was omitted in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. It provided for termination of the Act.

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50 USCS Appx § 585

§ 585. [Omitted]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Oct. 17, 1940, ch 888, § 605, 54 Stat. 1191) was omitted as obsolete. It related to the inapplicability of the Soldiers' and Sailors' Relief Act of 1918, former *50 USC Appx. §§ 101* et seq., to service performed after Oct. 17, 1940.

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50 USCS Appx § 590

§ 590. [Omitted]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Oct. 17, 1940, ch 888, § 700, as added Oct. 6, 1942, ch 581, § 18, 56 Stat. 777) was omitted in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. It provided for stay of enforcement of obligations, liabilities, taxes, etc. For similar provisions, see *50 USCS Appx § 591*.

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50 USCS Appx § 591

§ 591. Anticipatory relief

(a) Application for relief. A servicemember may, during military service or within 180 days of termination of or release from military service, apply to a court for relief--

- (1) from any obligation or liability incurred by the servicemember before the servicemember's military service; or
- (2) from a tax or assessment falling due before or during the servicemember's military service.

(b) Tax liability or assessment. In a case covered by subsection (a), the court may, if the ability of the servicemember to comply with the terms of such obligation or liability or pay such tax or assessment has been materially affected by reason of military service, after appropriate notice and hearing, grant the following relief:

- (1) Stay of enforcement of real estate contracts.

(A) In the case of an obligation payable in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, the court may grant a stay of the enforcement of the obligation--

- (i) during the servicemember's period of military service; and
- (ii) from the date of termination of or release from military service, or from the date of application if made after termination of or release from military service.

(B) Any stay under this paragraph shall be--

- (i) for a period equal to the remaining life of the installment contract or other instrument, plus a period of time equal to the period of military service of the servicemember, or any part of such combined period; and
- (ii) subject to payment of the balance of the principal and accumulated interest due and unpaid at the date of termination or release from the applicant's military service or from the date of application in equal installments during the combined period at the rate of interest on the unpaid balance prescribed in the contract or other instrument evidencing the obligation, and subject to other terms as may be equitable.

- (2) Stay of enforcement of other contracts.

(A) In the case of any other obligation, liability, tax, or assessment, the court may grant a stay of enforcement--

- (i) during the servicemember's military service; and
- (ii) from the date of termination of or release from military service, or from the date of application if made after termination or release from military service.

(B) Any stay under this paragraph shall be--

- (i) for a period of time equal to the period of the servicemember's military service or any part of such period; and
- (ii) subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination or release from military service, or the date of application, in equal periodic installments during this extended pe-

ried at the rate of interest as may be prescribed for this obligation, liability, tax, or assessment, if paid when due, and subject to other terms as may be equitable.

(c) Affect of stay on fine or penalty. When a court grants a stay under this section, a fine or penalty shall not accrue on the obligation, liability, tax, or assessment for the period of compliance with the terms and conditions of the stay.

HISTORY:

(Oct. 17, 1940, ch 888, Title VII, § 701, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2860.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 591 (Act Oct. 17, 1940, ch 888, § 701, as added Oct. 24, 1972, P.L. 92-540, Title V, § 504(2), 86 Stat. 1098; March 18, 1991, P.L. 102-12, § 3, 105 Stat. 34) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to power of attorney. For similar provisions, see *50 USCS Appx § 592*.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense §§ 5:54, 500-505, 509-512, 514, 516, 520, 522-524.

Am Jur:

53A Am Jur 2d, Military and Civil Defense §§ 391, 412, 417, 420.

Annotations:

Construction of §§ 301 and 700 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, relating to installment contracts for purchase of property. 24 ALR2d 1074.

Provisions of Soldiers' and Sailors' Civil Relief Act relating to taxation of property of military personnel. 32 ALR2d 618.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 Judges' Journal 27, Summer 2006.

Chandler. The Impact of a Request for a Stay of Proceedings Under the Soldiers' and Sailors' Civil Relief Act. *102 Mil L Rev* 169, Fall, 1983.

Pottorff. Contemporary applications of the Soldiers' and Sailors' Civil Relief Act. *132 Mil L Rev* 115, Spring 1991.

Huckabee. Operations Desert Shield and Desert Storm: resurrection of the Soldiers' and Sailors' Civil Relief Act. *132 Mil L Rev* 141, Spring 1991.

Chapelle, Legal primer for advising the deployed servicemember. 34 Res Gestae 494, May 1991.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

Anderson; Armstrong. Soldiers' and Sailors' Civil Relief Act: a legal shield for military personnel. 4 *Utah BJ* 8, April 1991.

Interpretive Notes and Decisions:

1. Stay of mortgage obligations
2. Stay of tax obligation

1. Stay of mortgage obligations

In action on original petition by mortgagor to have his obligations thereon stayed for period of military service plus further period equal to remaining life of mortgage plus period of time equal to period of military service, under former *50 USCS Appx § 590*, although no foreclosure proceeding had been brought by mortgagee, statute authorized relief of type sought, purpose being to allow serviceman to arrange his affairs in businesslike way in advance so as to prevent any accumulation of arrears from becoming due at one time. *Application of Marks (1944)* 181 Misc 497, 46 NYS2d 755.

Finding that serviceman's ability to meet his mortgage obligations was materially affected by his military service, made on motion to stay foreclosure action while he was in military service, was conclusive of that issue on further application, brought after termination of military service, for stay of obligation under provisions of former *50 USCS Appx § 590*. *Morris Plan Industrial Bank v Petluck (1946)* 187 Misc 87, 60 NYS2d 162.

Veteran, owner of all stock in corporation which owned and operated mortgaged department building, who had had his ability to meet mortgage obligations affected by his military service, was entitled to stay of obligation under former *50 USCS Appx § 590*, after his discharge, but since he did not reside on premises and it appeared that they were fully rented, that conditions were generally favorable to refinancing or sale, and condemnation of property was imminent, stay was not extended for period equal to full term of veteran's military service. *Application of Pickard (1946)* 187 Misc 400, 60 NYS2d 506.

2. Stay of tax obligation

Where defendant, member of armed forces, rented property in question to his aunt and uncle for about half its rental value, property had been conveyed to defendant by his father and mother for nominal sum about two years before he was inducted into army, father and mother had given this aid to defendant's aunt and uncle prior to conveyance to him, and defendant had other resources of his own, defendant's motion for relief from taxes due on property in question and interest accrued on mortgage on property would be denied. *Brooklyn Trust Co. v Shapiro (1943)* 180 Misc 454, 41 NYS2d 286.

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50 USCS Appx § 592

§ 592. Power of attorney

(a) Automatic extension. A power of attorney of a servicemember shall be automatically extended for the period the servicemember is in a missing status (as defined in *section 551(2) of title 37, United States Code*) if the power of attorney--

- (1) was duly executed by the servicemember--
 - (A) while in military service; or
 - (B) before entry into military service but after the servicemember--
 - (i) received a call or order to report for military service; or
 - (ii) was notified by an official of the Department of Defense that the person could receive a call or order to report for military service;
- (2) designates the servicemember's spouse, parent, or other named relative as the servicemember's attorney in fact for certain, specified, or all purposes; and
- (3) expires by its terms after the servicemember entered a missing status.

(b) Limitation on power of attorney extension. A power of attorney executed by a servicemember may not be extended under subsection (a) if the document by its terms clearly indicates that the power granted expires on the date specified even though the servicemember, after the date of execution of the document, enters a missing status.

HISTORY:

(Oct. 17, 1940, ch 888, Title VII, § 702, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2861.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 592 (Act Oct. 17, 1940, ch 888, § 702, as added March 18, 1991, P.L. 102-12, § 4, 105 Stat. 34; Feb. 10, 1996, P.L. 104-106, Div A, Title XV, § 1501(e)(3), 110 Stat. 501) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to professional liability protection for certain persons ordered to active duty in the armed forces. For similar provisions, see *50 USCS Appx § 593*.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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50 USCS Appx § 593

§ 593. Professional liability protection

(a) Applicability. This section applies to a servicemember who--

(1) after July 31, 1990, is ordered to active duty (other than for training) pursuant to sections 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12307 of title 10, United States Code, or who is ordered to active duty under section 12301(d) of such title during a period when members are on active duty pursuant to any of the preceding sections; and

(2) immediately before receiving the order to active duty--

(A) was engaged in the furnishing of health-care or legal services or other services determined by the Secretary of Defense to be professional services; and

(B) had in effect a professional liability insurance policy that does not continue to cover claims filed with respect to the servicemember during the period of the servicemember's active duty unless the premiums are paid for such coverage for such period.

(b) Suspension of coverage.

(1) Suspension. Coverage of a servicemember referred to in subsection (a) by a professional liability insurance policy shall be suspended by the insurance carrier in accordance with this subsection upon receipt of a written request from the servicemember by the insurance carrier.

(2) Premiums for suspended contracts. A professional liability insurance carrier--

(A) may not require that premiums be paid by or on behalf of a servicemember for any professional liability insurance coverage suspended pursuant to paragraph (1); and

(B) shall refund any amount paid for coverage for the period of such suspension or, upon the election of such servicemember, apply such amount for the payment of any premium becoming due upon the reinstatement of such coverage.

(3) Nonliability of carrier during suspension. A professional liability insurance carrier shall not be liable with respect to any claim that is based on professional conduct (including any failure to take any action in a professional capacity) of a servicemember that occurs during a period of suspension of that servicemember's professional liability insurance under this subsection.

(4) Certain claims considered to arise before suspension. For the purposes of paragraph (3), a claim based upon the failure of a professional to make adequate provision for a patient, client, or other person to receive professional services or other assistance during the period of the professional's active duty service shall be considered to be based on an action or failure to take action before the beginning of the period of the suspension of professional liability insurance under this subsection, except in a case in which professional services were provided after the date of the beginning of such period.

(c) Reinstatement of coverage.

(1) Reinstatement required. Professional liability insurance coverage suspended in the case of any servicemember pursuant to subsection (b) shall be reinstated by the insurance carrier on the date on which that servicemember transmits to the insurance carrier a written request for reinstatement.

(2) Time and premium for reinstatement. The request of a servicemember for reinstatement shall be effective only if the servicemember transmits the request to the insurance carrier within 30 days after the date on which the servicemember is released from active duty. The insurance carrier shall notify the servicemember of the due date for payment of the premium of such insurance. Such premium shall be paid by the servicemember within 30 days after receipt of that notice.

(3) Period of reinstated coverage. The period for which professional liability insurance coverage shall be reinstated for a servicemember under this subsection may not be less than the balance of the period for which coverage would have continued under the insurance policy if the coverage had not been suspended.

(d) Increase in premium.

(1) Limitation on premium increases. An insurance carrier may not increase the amount of the premium charged for professional liability insurance coverage of any servicemember for the minimum period of the reinstatement of such coverage required under subsection (c)(3) to an amount greater than the amount chargeable for such coverage for such period before the suspension.

(2) Exception. Paragraph (1) does not prevent an increase in premium to the extent of any general increase in the premiums charged by that carrier for the same professional liability coverage for persons similarly covered by such insurance during the period of the suspension.

(e) Continuation of coverage of unaffected persons. This section does not--

(1) require a suspension of professional liability insurance protection for any person who is not a person referred to in subsection (a) and who is covered by the same professional liability insurance as a person referred to in such subsection; or

(2) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.

(f) Stay of civil or administrative actions.

(1) Stay of actions. A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a servicemember whose professional liability insurance coverage has been suspended under subsection (b) shall be stayed until the end of the period of the suspension if--

(A) the action was commenced during the period of the suspension;

(B) the action is based on an act or omission that occurred before the date on which the suspension became effective; and

(C) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional liability negligence or other professional liability of the servicemember.

(2) Date of commencement of action. Whenever a civil or administrative action for damages is stayed under paragraph (1) in the case of any servicemember, the action shall have been deemed to have been filed on the date on which the professional liability insurance coverage of the servicemember is reinstated under subsection (c).

(g) Effect of suspension upon limitations period. In the case of a civil or administrative action for which a stay could have been granted under subsection (f) by reason of the suspension of professional liability insurance coverage of the defendant under this section, the period of the suspension of the coverage shall be excluded from the computation of any statutory period of limitation on the commencement of such action.

(h) Death during period of suspension. If a servicemember whose professional liability insurance coverage is suspended under subsection (b) dies during the period of the suspension--

(1) the requirement for the grant or continuance of a stay in any civil or administrative action against such servicemember under subsection (f)(1) shall terminate on the date of the death of such servicemember; and

(2) the carrier of the professional liability insurance so suspended shall be liable for any claim for damages for professional negligence or other professional liability of the deceased servicemember in the same manner and to the same extent as such carrier would be liable if the servicemember had died while covered by such insurance but before the claim was filed.

(i) Definitions. For purposes of this section:

(1) Active duty. The term "active duty" has the meaning given that term in *section 101(d)(1) of title 10, United States Code*.

(2) Profession. The term "profession" includes occupation.

(3) Professional. The term "professional" includes occupational.

HISTORY:

(Oct. 17, 1940, ch 888, Title VII, § 703, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2862.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 593 (Act Oct. 17, 1940, ch 888, § 703, as added March 18, 1991, P.L. 102-12, § 5(b), 105 Stat. 37) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to health insurance reinstatement upon reemployment. For similar provisions, see *50 USCS Appx § 594*.

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Federal Procedure:

3 Fed Proc L Ed, Armed Forces, Civil Disturbances, and National Defense § 5:512.

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 425.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.

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*** CURRENT THROUGH PL 110-353, APPROVED 10/7/2008 ***
*** WITH GAPS OF 110-343, 110-344, 110-346 and 110-351 ***

TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
SERVICEMEMBERS CIVIL RELIEF ACT
TITLE VII. FURTHER RELIEF

Go to the United States Code Service Archive Directory

50 USCS Appx § 594

§ 594. Health insurance reinstatement

(a) Reinstatement of health insurance. A servicemember who, by reason of military service as defined in section 703(a)(1) [50 USCS Appx § 593(a)(1)], is entitled to the rights and protections of this Act shall also be entitled upon termination or release from such service to reinstatement of any health insurance that--

- (1) was in effect on the day before such service commenced; and
- (2) was terminated effective on a date during the period of such service.

(b) No exclusion or waiting period. The reinstatement of health care insurance coverage for the health or physical condition of a servicemember described in subsection (a), or any other person who is covered by the insurance by reason of the coverage of the servicemember, shall not be subject to an exclusion or a waiting period, if--

- (1) the condition arose before or during the period of such service;
- (2) an exclusion or a waiting period would not have been imposed for the condition during the period of coverage; and
- (3) in a case in which the condition relates to the servicemember, the condition has not been determined by the Secretary of Veterans Affairs to be a disability incurred or aggravated in the line of duty (within the meaning of section 105 of title 38, United States Code [38 USCS § 105]).

(c) Exceptions. Subsection (a) does not apply to a servicemember entitled to participate in employer-offered insurance benefits pursuant to the provisions of chapter 43 of title 38, United States Code [38 USCS §§ 4301 et seq.].

(d) Time for applying for reinstatement. An application under this section must be filed not later than 120 days after the date of the termination of or release from military service.

(e) Limitation on premium increases.

(1) Premium protection. The amount of the premium for health insurance coverage that was terminated by a servicemember and required to be reinstated under subsection (a) may not be increased, for the balance of the period for which coverage would have been continued had the coverage not been terminated, to an amount greater than the amount chargeable for such coverage before the termination.

(2) Increases of general applicability not precluded. Paragraph (1) does not prevent an increase in premium to the extent of any general increase in the premiums charged by the carrier of the health care insurance for the same health insurance coverage for persons similarly covered by such insurance during the period between the termination and the reinstatement.

HISTORY:

(Oct. 17, 1940, ch 888, Title VII, § 704, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2864; June 15, 2006, P.L. 109-233, Title III, § 302, 120 Stat. 406.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 594 (Act Oct. 17, 1940, ch 888, § 704, as added Dec. 28, 2001, P.L. 107-107, Div A, Title XVI, § 1603, 115 Stat. 1276) was replaced in the general revision of Act Oct. 17, 1940, ch 888, by § 1 of Act Dec. 19, 2003, P.L. 108-189. Such section related to guarantee of residency for military personnel. For similar provisions, see *50 USCS Appx § 595*.

Amendments:

2006. Act June 15, 2006, in subsec. (b)(3), substituted "in a case in which the" for "if the"; and added subsec. (e).

Other provisions:

Applicability of section. This section applies to any case that is not final before December 12, 2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Am Jur:

53A Am Jur 2d, Military and Civil Defense § 425.

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. Judges' Guide to the Soldiers' and Sailors' Civil Relief Act. 41 *Judges' Journal* 28, Spring 2002.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

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*** WITH GAPS OF 110-343, 110-344, 110-346 and 110-351 ***

TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
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50 USCS Appx § 595

§ 595. Guarantee of residency for military personnel

For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 *U.S.C.* 431)) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence--

- (1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;
- (2) be deemed to have acquired a residence or domicile in any other State; or
- (3) be deemed to have become a resident in or a resident of any other State.

HISTORY:

(Oct. 17, 1940, ch 888, Title VII, § 705, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2865.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 *Advoc* (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 *J Kan BA* 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 *Judges' Journal* 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 *Res Gestae* 13, September 2004.

Interpretive Notes and Decisions:

Federal Soldiers' and Sailors' Civil Relief Act did not preempt state regulation, which set requirements for residency because act only applied to two areas, taxation and voting; servicemember did not have right to receive state's Permanent Fund Dividend (PFD) because he did not rebut presumption that he was not resident of state. *Eagle v Dep't of Revenue* (2007, Alaska) 153 P3d 976.

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TITLE 50. WAR AND NATIONAL DEFENSE
TITLE 50 APPENDIX -- WAR AND NATIONAL DEFENSE
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50 USCS Appx § 596

§ 596. Business or trade obligations

(a) Availability of non-business assets to satisfy obligations. If the trade or business (without regard to the form in which such trade or business is carried out) of a servicemember has an obligation or liability for which the servicemember is personally liable, the assets of the servicemember not held in connection with the trade or business may not be available for satisfaction of the obligation or liability during the servicemember's military service.

(b) Relief to obligors. Upon application to a court by the holder of an obligation or liability covered by this section, relief granted by this section to a servicemember may be modified as justice and equity require.

HISTORY:

(Oct. 17, 1940, ch 888, Title VII, § 706, as added Dec. 19, 2003, P.L. 108-189, § 1, 117 Stat. 2865.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Applicability of section. This section applies to any case that is not final before 12/19/2003, pursuant to § 3 of Act Dec. 19, 2003, P.L. 108-189, which appears as *50 USCS Appx § 501* note.

NOTES:

Research Guide:

Law Review Articles:

Dahle. The Servicemembers Civil Relief Act of 2003: Protecting the rights of Guard and Reserve members. 48 Ad-voc (Boise) 13, November 2005.

Pottorff. The Servicemembers Civil Relief Act: A Modern Replacement for the SSCR. 74 J Kan BA 20, October 2005.

Sullivan. The Servicemembers Civil Relief Act: A Judge's Checklist. 45 Judges' Journal 27, Summer 2006.

Thompson. The Servicemembers Civil Relief Act. 48 Res Gestae 13, September 2004.