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## Soldiers' and Sailors' Civil Relief Act of 1940

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## THE SOLDIERS AND SAILORS CIVIL RELIEF ACT OF 1940

On October 17, 1940, the Soldiers' and Sailors' Civil Relief Act was approved by the President.<sup>1</sup> The Act was adopted "to provide for, strengthen, and expedite the defense under the emergency conditions which are threatening the peace and security of the United States, the more successfully to fulfill the requirements of the national defense," and to enable those persons in military service "to devote their entire energy to the defense needs of the Nation."<sup>2</sup> The relief provided is the "temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons" who are in military service. The legal problems raised by this act are so extensive that it is impossible in this short note to do more than present a general outline of the provisions of the act itself.<sup>3</sup>

*General Provisions.* Article I is devoted principally to definitions. It limits its application to "persons in military service" who include (1) all members of the Army of the United States, (2) the United States Navy, (3) the Marine Corps, (4) the Coast Guard, and (5) all officers of the Public Health Service detailed by proper authority for duty either with the Army or Navy. "Military service" includes only those on active duty or engaged in training or education under the supervision of the United States preliminary to induction into the military service.<sup>4</sup>

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which decision had been affirmed by the appeal board. The case was decided prior to the declaration of war. *Application of Greenberg*, 39 F. Supp. 13, 15 (D. N. J. 1941).

<sup>1</sup> 54 STAT. 1178 (1940), 50 U.S.C.A. §§ 501-585 (Supp. 1941). Hereafter the Act will be cited by section number only.

<sup>2</sup> §100, 50 U.S.C.A. § 510. This act was passed "for the purpose of protecting the rights of persons in military service and any judgment affecting the rights of such persons may be opened, stayed or vacated, and a liberal construction should be accorded so that in probate proceedings in default of any appearance by an interested party, either male or female, an affidavit as to military service should be filed or other action taken in accordance with the Federal Act." *In re Cool's Estate*, 19 N. J. Misc. 236, 237, 18 A. (2d) 715, 716 (1941). See also, *The Sylph*, 42 F. Supp. 354, 355 (E. D. N. Y. 1941).

<sup>3</sup> For other articles on this topic, see: Jensen, *Civil Relief for Soldiers and Sailors: A Critical Analysis* (1941), 36 ILL. L. REV. 325; Bendetson, *A Discussion of the Soldiers' and Sailors' Civil Relief Act of 1940* (1940) 2 W. & L. L. REV. 1; Rogers, *The Soldiers' and Sailors' Civil Relief Act of 1940* (1941) 29 GEO. L. J. 748; Muench, *The Soldiers' and Sailors' Civil Relief Act of 1940* (1941) 6 JOHN MARSHALL L. Q. 190; Kuhns, *The Soldiers' and Sailors' Civil Relief Act of 1940* (1941) 20 NEB. L. R. 357.

<sup>4</sup> § 101, 50 U.S.C.A. § 511 (Supp. 1941). "It is apparent . . . that the . . . Act has application only to those in active service and those who are training or studying under the supervision of the United States preliminary to induction into military service, and that it can furnish no solace to [those who were] at the time of the entry of judgment, in retirement." Case held that a retired army officer was not entitled to the benefits of this chapter, which defined military service as signifying federal service on active duty. *Lang v. Lang*, 25 N. Y. S. (2d) 775, 777 (Misc. 1941). The Act "does not wholly prevent actions and judgments against persons 'in military service' within the definition of these

An important limitation on the operation of the act is contained in the definition of the "period of military service." For those in active service at the time of approval of the Act, the period of military service begins with the approval of the act. For those entering active service after the date of the act, the period runs from the date the person enters active service until the date of discharge or death while in active service.<sup>5</sup>

Section 104 protects persons secondarily liable and provides for the stay, postponement, or suspension, in the discretion of the court<sup>6</sup> to "sureties, guarantors, endorsers, and others subject to the obligation or liability,<sup>7</sup> the performance or enforcement of which is stayed, postponed, or suspended," as to a principal in active service.<sup>8</sup> Likewise a decree may be vacated or set aside in whole or in part for the protection of a person in service or for any surety, guarantor, endorser, or other person liable upon the contract or liability for the enforcement of which the judgment or decree was entered.

*General Relief.* In the event that there is a default of appearance<sup>9</sup>

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words in § 101(1). *Petition of Institution for Savings in Newburyport and Its Vicinity*, 309 Mass. 12, 14, 33 N. E. (2d) 526, 527 (1941).

<sup>5</sup> § 101(2), 50 U.S.C.A. § 511(2) (Supp. 1941).

<sup>6</sup> As an illustration of the court's discretion, in one case, the court ordered proof to be submitted as to the income of a wife of a person in military service, "in view of the fact that she is subject to the obligation of the bond also" to aid the court in deciding whether the action should be stayed as to her.

<sup>7</sup> In one New York case, the rule of *ejusdem generis* was invoked in the interpretation of the passage. The court said that the rule requires an interpretation that the phrase, "and others subject to the obligation or liability," referred only to similar secondary obligations. Thus a co-maker upon a note signed by him and another person now in military service was held to be primarily liable as a maker, even though he did not receive any of the proceeds of the loan, and was not entitled to a stay of enforcement of his liability. *In re Itzkowitz*, 177 Misc. 269, 30 N. Y. S. (2d) 336 (1941). Generally, however, the courts will follow a more liberal view. *Modern Industrial Bank v. Zaentz*, 177 Misc. 132, 29 N. Y. S. (2d) 969 (1941), holding that this section "makes no distinction between primary and secondary obligors." Two co-makers on the note, who signed for the benefit of the third, maker, without participating in the consideration, and who was inducted into military service, were entitled to the protection of the Act, if a stay was created in favor of person in military service. *Akron Auto Finance Co. v. Stonebraker*, 66 Ohio App. 507, 522, 35 N. E. (2d) 585 (1941) (one signing a note "without receiving value therefor and for the purpose of lending his credit to another" is included in this phrase). See also, *Griswold v. Cady*, 27 N. Y. S. (2d) 302, 303 (1941).

<sup>8</sup> The phrase, "the performance or enforcement of which is stayed, postponed, or suspended" suggests that before other defendants "can secure a stay, it must first appear that a stay is already operative in favor of the obligor in the military service." *Modern Industrial Bank v. Zaentz*, 177 Misc. 132, 29 N. Y. S. (2d) 969, 973 (1941).

<sup>9</sup> "A default of any appearance by the defendant means a default in any one of several ways of making an appearance . . . A

by the defendant, the plaintiff is required to file an affidavit, before entering judgment, that the defendant is not in military service. If this is not possible, the plaintiff must file an affidavit that either the defendant is in the military service or that the plaintiff is unable to ascertain this fact. The court may then require the plaintiff to file a bond conditioned to indemnify the defendant (if in military service) against any loss or damage that he may suffer by reason of judgment, should the judgment be thereafter set aside in whole or in part. The court is further empowered to make any order which it deems necessary to protect the rights of the defendant under the act.<sup>10</sup> A person who knowingly files a false affidavit (required under this article) is guilty of a misdemeanor.<sup>11</sup>

If a person in military service does not appear in person or is not represented by authorized counsel, the court may appoint an attorney to represent him,<sup>12</sup> but such attorney shall not have power to waive any right of the person for whom he is appointed or bind him by his acts.<sup>13</sup>

If a judgment is rendered in any proceedings governed by this section against a person in military service, and he is prejudiced in his defense by reason of his service, he or his legal representative, if he has a meritorious defense, may have the case reopened, any time within 90 days after termination of service. However, the rights of bona fide purchasers under such judgment shall not be impaired by this relief.<sup>14</sup>

Any action or proceeding involving a person in military service, either as plaintiff or defendant may, on the court's own motion, and shall, on application by such person or one in his behalf, be stayed unless the person is not materially affected by reason of his military service.<sup>15</sup> Likewise if a fine or penalty has been incurred by reason of failure to perform any obligation, the court may grant relief against the enforcement of the fine or penalty if the person's ability to pay or per-

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party's conduct as well as other circumstances are to be considered in determining whether he has actually appeared. *In re Cool's Estate*, 19 N. J. Misc. 236, 18 A. (2d) 714, 717 (1941).

<sup>10</sup> § 200(1), 50 U.S.C.A. § 520(1) (Supp. 1941).

<sup>11</sup> § 200(2), 50 U.S.C.A. § 520(2) (Supp. 1941).

<sup>12</sup> "Ordinarily the services rendered by . . . counsel so appointed are to be regarded as a patriotic duty for which no compensation would be expected by members of a profession deeply imbued with a sense of public responsibility." *In re Cool's Estate*, 19 N. J. Misc. 236, 18 A. (2d) 714, 717 (1941).

<sup>13</sup> § 200(3), 50 U.S.C.A. § 520(3) (Supp. 1941).

<sup>14</sup> § 200(4), 50 U.S.C.A. § 520(4) (Supp. 1941).

<sup>15</sup> § 201, 50 U.S.C.A. § 521 (Supp. 1941). The protective features are afforded "only in those cases in which the rights of the persons in military service might be prejudiced without their presence to either prosecute the action or conduct the defense, and it is only in those cases that the courts are authorized to stay the proceedings for the duration of their absence." *Charles Tolmas, Inc. v. Streiffer*, 5 So. (2d) 372, 374 (La., 1941). Thus, the fact that a defendant is in military service is not, in itself, a defense to an action. *Jamaica Sav. Bank v. Bryan*, 175 Misc. 978, 25 N. Y. S. 17, 19 (1941). See also, *Clarke v. Clarke*, 25 N. Y. S. (2d) 69 (1941).

form was materially impaired by reason of the person's military service.<sup>16</sup>

The court is granted discretionary power, if the ability of the defendant to comply with the judgment or order is materially affected by reason of his military service, to (a) stay the execution of any judgment or order entered against such person; and (b) vacate, or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment.<sup>17</sup>

A stay may be granted for a maximum period, including the period of military service plus three months. The court is given power to fix just terms of payment both as regards the amount and time of payment.<sup>18</sup> Where the person in military service is a co-defendant, the plaintiff may nevertheless by leave of the court proceed against the other defendants.<sup>19</sup>

Section 205 provides that the period of military service shall not be included in computing any period for the bringing of an action by or against a person in military service or by or against his heirs, executors, administrators, or assigns, whether the cause of action accrued prior to or during the period of his service.<sup>20</sup>

*Rent, Installment Contracts, Mortgages.* Article III provides relief for those in military service and for their dependents from obligations arising out of rents, installment contracts and mortgages. Where the agreed rent is \$80 or less, eviction or distress is forbidden, except on leave of the court, where the dwelling is occupied by the wife, children, or other dependents of the person in military service. Where the ability of the tenant is materially affected by reason of such military service, the court has the discretionary power to stay the proceedings for not longer than three months, or it may make such other order as may be just. The Secretary of War, Navy or Treasury may order an allotment of the pay of a person in military service in reasonable proportion to discharge the rent of premises occupied for dwelling purposes by the wife, children, or the dependents of such person.<sup>21</sup>

The act provides that no vendor who, prior to the date of approval of this Act, has received, or whose assignor has received, under a contract for the purchase of property, a deposit or installment of the

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<sup>16</sup> § 202, 50 U.S.C.A. § 522 (Supp. 1941).

<sup>17</sup> § 203, 50 U.S.C.A. § 523 (Supp. 1941).

<sup>18</sup> § 204, 50 U.S.C.A. § 524 (Supp. 1941). *Korsch v. Lambing*, 28 N. Y. S. (2d) 167 (1941) (Stay of proceedings was ordered in favor of defendant, a necessary witness to defense of this action and unable to defend because of his service "until three months after the defendant's termination of military service or until such time as his military service does not materially affect the defense of this action.")

<sup>19</sup> § 204, 50 U.S.C.A. § 524 (Supp. 1941).

<sup>20</sup> § 205, 50 U.S.C.A. § 525 (Supp. 1941).

<sup>21</sup> § 300, 50 U.S.C.A. § 530 (Supp. 1941). The provisions of this section with relation to landlord and tenant actions are quite different from and not to be confused with the provisions (§302) dealing with mortgages and trust funds. *Union Labor Life Ins. Co. v. Wendeborn*, 19 N. J. Misc. 496, 21 A. (2d) 317, 319 (1941).

purchase price from a person or from the assignor of a person who, after the date of payment of such deposit or installment, has entered military service, can rescind the contract or resume possession of the property for nonperformance during the period of and as a result of military service, without resort to the courts. However, the Act does permit a mutual agreement between the parties subsequent to the making of the contract, and during or after the period of military service of the person concerned, permitting a modification of those provisions. The court may order the repayment of prior installments or deposits, or a part thereof, as a condition of terminating the contract or the repossession of the property. The court may also stay the proceedings, or make such other disposition of the case as will conserve the interests of all parties.<sup>22</sup>

The court may stay the proceedings, or make such other disposition of the case as may be equitable to conserve the interests of all parties.<sup>23</sup> In cases involving obligations, originating prior to the date of approval of the act, and in the nature of a mortgage upon real or personal property owned by a person in military service.<sup>24</sup> No sale under a power of sale or under a judgment, entered upon warrant of attorney to confess judgment, contained in any such obligation is valid if made during the period of military service or within three months thereafter, unless on an order of sale previously granted by the court.<sup>25</sup> An express exception is made in the case of motor vehicles, tractors, and the accessories of either permitting repossession by the vendor. If, however, more than 50 per cent of the purchase price has been paid, then the proceedings may be stayed; and in all situations, the court may require the plaintiff to file a bond to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any judgment or order should that judgment or order be set aside in whole or in part.<sup>26</sup>

*Insurance.* Any person in military service seeking the insurance benefits of the Act is guaranteed a maximum insurance of \$5,000 irrespective of the number of policies held will be maintained by the

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<sup>22</sup> § 301, 50 U.S.C.A. § 531 (Supp. 1941).

<sup>23</sup> § 302(2), 50 U.S.C.A. § 532(2) (Supp. 1941). For an example of an instance where the court tries "to conserve the interests of all parties," see *Cortland Sav. Bank v. Ivory*, 27 N. Y. S. (2d) 313 (1941), where the court would stay proceeding on condition that defendant pay a certain proportion of his income from the service.

<sup>24</sup> § 302(1), 50 U.S.C.A. § 532(1) (Supp. 1941). *Jamaica Sav. Bank v. Bryan*, 176 Misc. 215, 25 N. Y. S. (2d) 641 (1941), (provisions inapplicable where member of National Guard, whose military duties didn't require his full time, was a nominal defendant only and the property mortgaged was in the name of his wife); *The Sylph*, 42 F. Supp. 354 (E.D.N.Y. 1941) (protection not afforded to defendant in military service when it appeared that he deliberately defaulted though having access to counsel and that he failed to comply with terms of his obligations which were not affected by reason of his military service). See also, *Petition of Institution for Savings*, 309 Mass. 12 at 15, 33 N. E. (2d) 526 at 527 (1941).

<sup>25</sup> § 302(3), 50 U.S.C.A. § 532(3) (Supp. 1941).

<sup>26</sup> § 303, 50 U.S.C.A. § 533 (Supp. 1941).

government.<sup>27</sup> Only those policies on the level premium or legal reserve plan come under the benefits of this section.<sup>28</sup> Furthermore, only those policies are benefitted on which a premium was paid before the date of approval of the act or not less than thirty days before entry into the military service. The act does not extend to any policy on which due premiums have been unpaid for over a year at the time when application for these benefits are made, or to any policy on which there is still outstanding an indebtedness of 50 per cent or more of the cash surrender value of the policy.<sup>29</sup>

The United States has a first lien upon any policy receiving these benefits to indemnify it against loss, and written consent must be obtained from the Veterans' Administration before any dividend is paid or any loan or settlement is made.<sup>30</sup> The person insured has one year after the termination of his period of military service to pay the insurer all past due premiums with interest thereon from their several due dates, and if there is failure to do so, the policy becomes void.<sup>31</sup>

*Taxes and Public Lands.* No sale of real property owned and occupied (for dwelling, agricultural, or business purposes) by a person in service or his dependents at the commencement of his period of military service and still occupied by his dependents or employees,<sup>32</sup> shall be made to enforce the collection of any tax or assessment, and the court may stay such proceedings or such sale for a period extending not more than six months after the termination of the period of military service of such person.<sup>33</sup> If the property is sold in accordance with the law, a person in military service may redeem the property at any time, not later than six months after the termination of his service.<sup>34</sup>

Special privileges are granted to all persons who have commenced or acquired claims to government-owned or controlled land, under federal homestead, mining leases, and desert-land laws, who are hampered or hindered in performing fully the obligations necessary to ripen and complete their claims.<sup>35</sup>

The collection of income, a tax on the income of a person whose ability to pay is materially impaired by reason of his military service, is deferred for a period not more than six months after the termination of his service. Furthermore, no interest and no penalty for non-payment shall accrue for such period of deferment.<sup>36</sup>

*Administrative Remedies.* Section 600 provides that where any interest, property, or contract, has, since the date of the approval of

<sup>27</sup> §§ 401, 402; 50 U.S.C.A. §§ 541, 542 (Supp. 1941).

<sup>28</sup> § 400, 50 U.S.C.A. § 540 (Supp. 1941).

<sup>29</sup> § 402, 50 U.S.C.A. § 542 (Supp. 1941).

<sup>30</sup> §§ 407, 408; 50 U.S.C.A. §§ 547, 548 (Supp. 1941).

<sup>31</sup> § 410, 50 U.S.C.A. § 550 (Supp. 1941).

<sup>32</sup> § 500, 50 U.S.C.A. § 560 (Supp. 1941).

<sup>33</sup> § 500(2), 50 U.S.C.A. § 560(2) (Supp. 1941).

<sup>34</sup> § 500(3), 50 U.S.C.A. § 560(3) (Supp. 1941).

<sup>35</sup> § 501-511, 50 U.S.C.A. §§ 561-571 (Supp. 1941).

<sup>36</sup> § 513, 50 U.S.C.A. § 573 (Supp. 1941).

this Act, been transferred or acquired with intent to delay the just enforcement of such right the court shall enter such judgment or make such order as might lawfully be entered or made, regardless of the other provisions of this Act.

A certificate signed by the proper officer of the branch of military service concerning a particular individual shall be prima facie evidence with reference to the following facts: (1) that a person has not been, or is, or has been in military service, (2) the time when and the place where such person entered military service, (3) his residence at that time, and the rank, branch, and unit of such service that he entered, (4) the date within which he was in military service, (5) the monthly pay received by such person at the date of issuing the certificate, and (6) the time when and the place where such person died or was discharged from such service.<sup>37</sup> A person reported missing is presumed to continue in the service until accounted for.<sup>38</sup>

*Conclusion.* The Soldiers' and Sailors' Civil Relief Act of 1940 was enacted with the avowed purpose of temporarily suspending legal proceedings which would otherwise prejudice the civil rights of those persons in the military service. Since the act is designed to give *relief* to soldiers and sailors, it seems that the courts can best give effect to the legislative intent by construing the provisions of the act liberally. The act itself has many inadequacies. A maximum moratorium of three months after termination of military service is hardly sufficient protection. Most men will be unable to discharge their indebtedness so quickly after they return to civilian life. The economic consequences of so speedy repayment will be due not only to the individuals involved but to the entire community. It can be anticipated that further extensions will be necessary at the conclusion of the present conflict.

On the whole, the act is commendable. Without unnecessary delay,<sup>39</sup> Congress has enacted a plan which if reasonably administered will extend relief to and bolster the morale of our fighting forces.

## SOCIAL SECURITY TO MEN IN SERVICE

The Social Security rights and benefits of men in the service, their dependents, and their survivors were materially affected by the

<sup>37</sup> § 601, 50 U.S.C.A. 581 (Supp. 1941).

<sup>38</sup> "Sec. 601(3) Where a person in military service has been reported missing he shall be presumed to continue in the service until accounted for, and no period herein limited which begins or ends with the death of such person shall begin or end until the death of such person is in fact reported to or found by the Department of War or Navy, or any court or board thereof, or until such death is found by a court of competent jurisdiction: *Provided*, That no period herein limited which begins or ends with the death of such person shall be extended hereby beyond a period of six months after the time when this Act ceases to be in force."

<sup>39</sup> In World War I, The Soldiers' and Sailors' Civil Relief Act was not adopted until March 2, 1918, over a year after our nation's entry into the war, 40 STAT. 440 (1918), 50 U.S.C.A. App. §§ 101-165 (Supp. 1941).