

Calendar No. 963

110TH CONGRESS
2D SESSION

S. 3197

A bill to amend title 11, United States Code, to exempt for a limited period, from the application of the means-test presumption of abuse under chapter 7, qualifying members of reserve components of the Armed Forces and members of the National Guard who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 90 days.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2008

Mr. DURBIN (for himself, Mr. LEAHY, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 15, 2008

Reported by Mr. LEAHY, with an amendment

[Omit the part struck through and insert the part printed in *italic*]

A BILL

A bill to amend title 11, United States Code, to exempt for a limited period, from the application of the means-test presumption of abuse under chapter 7, qualifying members of reserve components of the Armed Forces and members of the National Guard who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 90 days.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Guard and
 5 Reservists Debt Relief Act of 2008”.

6 **SEC. 2. AMENDMENTS.**

7 Section 707(b)(2)(D) of title 11, United States Code,
 8 is amended—

9 ~~(1) in each of clauses (i) and (ii)—~~

10 ~~(A) by indenting the left margins of such~~
 11 ~~clauses 2 ems to the right; and~~

12 ~~(B) by redesignating such clauses as sub-~~
 13 ~~clauses (I) and (II), respectively;~~

14 ~~(2) by striking “if the debtor is a disabled vet-~~
 15 ~~eran” and inserting the following:~~

16 ~~“if—~~

17 ~~“(i) the debtor is a disabled veteran”;~~

18 ~~(3) by striking the period at the end and insert-~~
 19 ~~ing “; or”; and~~

20 ~~(4) by adding at the end the following:~~

21 ~~“(ii) while—~~

22 ~~“(I) the debtor is—~~

23 ~~“(aa) on, and during the 540-day pe-~~
 24 ~~riod beginning immediately after the debt-~~
 25 ~~or is released from, a period of active duty~~

1 ~~(as defined in section 101(d)(1) of title 10)~~
 2 ~~of not less than 90 days; or~~

3 ~~“(bb) performing, and during the~~
 4 ~~540-day period beginning immediately~~
 5 ~~after the debtor is no longer performing, a~~
 6 ~~homeland defense activity (as defined in~~
 7 ~~section 901(1) of title 32) performed for a~~
 8 ~~period of not less than 90 days; and~~

9 ~~“(H) if, after September 11, 2001, the~~
 10 ~~debtor while a member of a reserve component~~
 11 ~~of the Armed Forces or a member of the Na-~~
 12 ~~tional Guard, was called to such active duty or~~
 13 ~~performed such homeland defense activity.”.~~

14 ~~(1) in clauses (i) and (ii)—~~

15 ~~(A) by indenting the left margin of such~~
 16 ~~clauses 2 ems to the right, and~~

17 ~~(B) by redesignating such clauses as sub-~~
 18 ~~clauses (I) and (II), respectively,~~

19 ~~(2) by striking “testing, if the debtor is a dis-~~
 20 ~~abled veteran” and inserting the following:~~

21 ~~“testing—~~

22 ~~“(i) if the debtor is a disabled veteran”,~~

23 ~~(3) by striking the period at the end and insert-~~
 24 ~~ing “; or”, and~~

25 ~~(4) by adding at the end the following:~~

1 “(ii) with respect to the debtor, while the debtor
2 is—

3 “(I) on, and during the 540-day period be-
4 ginning immediately after the debtor is released
5 from, a period of active duty (as defined in sec-
6 tion 101(d)(1) of title 10) of not less than 90
7 days; or

8 “(II) performing, and during the 540-day
9 period beginning immediately after the debtor is
10 no longer performing, a homeland defense activ-
11 ity (as defined in section 901(1) of title 32) per-
12 formed for a period of not less than 90 days;
13 if after September 11, 2001, the debtor while a mem-
14 ber of a reserve component of the Armed Forces or a
15 member of the National Guard, was called to such ac-
16 tive duty or performed such homeland defense activ-
17 ity.”.

18 **SEC. 3. GAO STUDY.**

19 (a) COMPTROLLER GENERAL STUDY.—Not later
20 than 2 years after the effective date of this Act, the Comp-
21 troller General shall complete and transmit to the Speaker
22 of the House of Representatives and the President pro
23 tempore of the Senate, a study of the use and the effects
24 of the provisions of law amended (and as amended) by
25 this Act. Such study shall address, at a minimum—

1 (1) whether and to what degree members of re-
2 serve components of the Armed Forces and members
3 of the National Guard avail themselves of the bene-
4 fits of such provisions,

5 (2) whether and to what degree such members
6 are debtors in cases under title 11 of the United
7 States Code that are substantially related to service
8 that qualifies such members for the benefits of such
9 provisions,

10 (3) whether and to what degree such members
11 are debtors in cases under such title that are materi-
12 ally related to such service, and

13 (4) the effects that the use by such members of
14 section 707(b)(2)(D) of such title, as amended by
15 this Act, has on the bankruptcy system, creditors,
16 and the debt-incurrence practices of such members.

17 (b) FACTORS.—For purposes of subsection (a)—

18 (1) a case shall be considered to be substan-
19 tially related to the service of a member of a reserve
20 component of the Armed Forces or a member of the
21 National Guard that qualifies such member for the
22 benefits of the provisions of law amended (and as
23 amended) by this Act if more than 33 percent of the
24 aggregate amount of the debts in such case is in-
25 curred as a direct or indirect result of such service,

1 (2) a case shall be considered to be materially
2 related to the service of a member of a reserve com-
3 ponent of the Armed Forces or a member of the Na-
4 tional Guard that qualifies such member for the ben-
5 efits of such provisions if more than 10 percent of
6 the aggregate amount of the debts in such case is
7 incurred as a direct or indirect result of such serv-
8 ice, and

9 (3) the term “effects” means—

10 (A) with respect to the bankruptcy system
11 and creditors—

12 (i) the number of cases under title 11
13 of the United States Code in which mem-
14 bers of reserve components of the Armed
15 Forces and members of the National
16 Guard avail themselves of the benefits of
17 such provisions,

18 (ii) the aggregate amount of debt in
19 such cases,

20 (iii) the aggregate amount of debt of
21 such members discharged in cases under
22 chapter 7 of such title,

23 (iv) the aggregate amount of debt of
24 such members in cases under chapter 7 of
25 such title as of the time such cases are

1 converted to cases under chapter 13 of
2 such title,

3 (v) the amount of resources expended
4 by the bankruptcy courts and by the bank-
5 ruptcy trustees, stated separately, in cases
6 under title 11 of the United States Code in
7 which such members avail themselves of
8 the benefits of such provisions, and

9 (vi) whether and to what extent there
10 is any indicia of abuse or potential abuse
11 of such provisions, and

12 (B) with respect to debt-incurrence prac-
13 tices—

14 (i) any increase in the average levels
15 of debt incurred by such members before,
16 during, or after such service,

17 (ii) any indicia of changes in debt-in-
18 currence practices adopted by such mem-
19 bers in anticipation of benefitting from
20 such provisions in any potential case under
21 such title; and

22 (iii) any indicia of abuse or potential
23 abuse of such provisions reflected in the
24 debt-incurrence of such members.

1 **SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

2 (a) EFFECTIVE DATE.—Except as provided in sub-
3 section (b), this Act and the amendments made by this
4 Act shall take effect 60 days after the date of enactment
5 of this Act.

6 (b) APPLICATION OF AMENDMENTS.—The amend-
7 ments made by this Act shall apply only with respect to
8 cases commenced under title 11 of the United States Code
9 in the 3-year period beginning on the effective date of this
10 Act.

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