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SOLDIERS' AND SAILORS' CIVIL RELIEF ACT



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FOREWORD

The Soldiers' and Sailors' Civil Relief Act of 1940 was enacted in the Seventy-sixth Congress, and was approved October 17, 1940. A similar enactment referable to World War I was approved March 8, 1918 during the Sixty-fifth Congress and bore the title "Soldiers' and Sailors' Civil Relief Act."

The purpose of the act is to provide for strengthening of national defense and to suspend the enforcement of civilian liabilities in certain cases of persons in the military service of the United States, the belief being that this is necessary to enable the persons called to perform military duties to devote their entire energy to the defense needs of the Nation.

For the purposes of article IV (insurance) of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, World War II was deemed to have terminated July 25, 1947, in accordance with the provisions of section 4, Public Law 239, Eightieth Congress. However, section 14, Public Law 759, Eightieth Congress, June 24, 1948, as amended, known as the Universal Military Training and Service Act, provides that all of the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, shall be applicable to all persons in the Armed Forces including those thereafter inducted or the Public Health Service until such time as the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, is "repealed or otherwise terminated by subsequent act of Congress." Thus, the Soldiers' and Sailors' Civil Relief Act is in full force and effect today and applies to all persons who are called upon to perform service in one of the branches of the Armed Forces of the United States.

The only section of this law which is centrally administered is article IV (insurance), by the Veterans' Administration. The other articles are administered locally by the various courts.

OLIN E. TEAGUE, *Chairman.*

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940, AS AMENDED

PUBLIC LAW 861, SEVENTY-SIXTH CONGRESS, AS AMENDED

ARTICLE I.—GENERAL PROVISIONS

SEC. 100 (*50 Appendix U.S.C. 510*). In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act remains in force.

SEC. 101 (*50 Appendix U.S.C. 511*). (1) The term "persons in military service" and the term "persons in the military service of the United States", as used in this Act, shall include the following persons and no others: All members of the Army of the United States,¹ the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. The term "military service", as used in this Act, shall signify Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms "active service" or "active duty" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) The term "period of military service", as used in this Act, shall include the time between the following dates: For persons in active service at the date of the approval of this Act it shall begin with the date of approval of this Act; for persons entering active service after the date of this Act, with the date of entering active service. It shall terminate with the date of discharge from active service or death while in active service, but in no case later than the date when this Act ceases to be in force.

(3) The term "person", when used in this Act with reference to the holder of any right alleged to exist against a person in military service or against a person secondarily liable under such right, shall include individuals, partnerships, corporations, and any other forms of business association.

¹ Also includes members of the Air Force by virtue of sec. 305(a), National Security Act of 1947 (5 U.S.C. 171 (1)).

(4) The term "court", as used in this Act, shall include any court of competent jurisdiction of the United States or of any State, whether or not a court of record.

SEC. 102 (*50 Appendix U.S.C. 512*). (1) The provisions of this Act shall apply to the United States, the several States and Territories, the District of Columbia, and all territory subject to the jurisdiction of the United States, including the Philippine Islands while under the sovereignty of the United States, and to proceedings commenced in any court therein, and shall be enforced through the usual forms of procedure obtaining in such courts or under such regulations as may be by them prescribed.

(2) When under this Act 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.

SEC. 103 (*50 Appendix U.S.C. 513*). (1) Whenever pursuant to any of the provisions of this Act the enforcement of any obligation or liability, the prosecution of any suit or proceeding, the entry or enforcement of any order, writ, judgment, or decree, or the performance of any other act, may be stayed, postponed, or suspended, such stay, postponement, or suspension may, in the discretion of the court, likewise be granted to sureties, guarantors, endorsers, accommodation makers, and others whether primarily or secondarily subject to the obligation or liability, the performance or enforcement of which is stayed, postponed, or suspended.

(2) When a judgment or decree is vacated or set aside in whole or in part, as provided in this Act, the same may, in the discretion of the court, likewise be set aside and vacated as to any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the contract or liability for the enforcement of which the judgment or decree was entered.

(3) Whenever, by reason of the military service of a principal upon a criminal bail bond the sureties upon such bond are prevented from enforcing the attendance of their principal and performing their obligation the court shall not enforce the provisions of such bond during the military service of the principal thereon and may in accordance with principles of equity and justice either during or after such service discharge such sureties and exonerate the bail.

(4) Nothing contained in this Act shall prevent a waiver in writing of the benefits afforded by subsections (1) and (2) of this section by any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the obligation or liability, except that after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 no such waiver shall be valid unless it is executed as an instrument separate from the obligation or liability in respect of which it applies, and no such waiver shall be valid after the beginning of the period of military service if executed by an individual who subsequent to the execution of such waiver becomes a person in military service, or if executed by a dependent of such individual, unless executed by such individual or dependent during the period specified in section 106.

SEC. 104 (*50 Appendix U.S.C. 514*). Persons who serve with the forces of any nation with which the United States may be allied in the prosecution of any war in which the United States engages while this Act remains in force and who immediately prior to such service

were citizens of the United States shall, except in those cases provided for in section 512, be entitled to the relief and benefits afforded by this Act if such service is similar to military service as defined in this Act, unless they are dishonorably discharged therefrom, or it appears that they do not intend to resume United States citizenship.

SEC. 105 (*50 Appendix U.S.C. 515*). The Secretary of the Army and the Secretary of the Navy shall make provision, in such manner as each may deem appropriate for his respective Department, to insure the giving of notice of the benefits accorded by this Act to persons in and to persons entering military service. The Director of Selective Service shall cooperate with the Secretary of the Army and the Secretary of the Navy in carrying out the provisions of this section.

SEC. 106 (*50 Appendix U.S.C. 516*). Any person who has been ordered to report for induction under the Selective Training and Service Act of 1940, as amended, shall be entitled to the relief and benefits accorded persons in military service under articles I, II, and III of this Act during the period beginning on the date of receipt of such order and ending on the date upon which such person reports for induction; and any member of the Enlisted Reserve Corps who is ordered to report for military service shall be entitled to such relief and benefits during the period beginning on the date of receipt of such order and ending on the date upon which he reports for such service.

SEC. 107 (*50 Appendix U.S.C. 517*). Nothing contained in this Act shall prevent—

(a) the modification, termination, or cancelation of any contract, lease, or bailment or any obligation secured by mortgage, trust, deed, lien, or other security in the nature of a mortgage, or

(b) the repossession, retention, foreclosure, sale, forfeiture, or taking possession of property which is security for any obligation or which has been purchased or received under a contract, lease, or bailment, pursuant to a written agreement of the parties thereto (including the person in military service concerned, or the person to whom section 106 is applicable, whether or not such person is a party to the obligation), or their assignees, excuted during or after the period of military service of the person concerned or during the period specified in section 106.

ARTICLE II.—GENERAL RELIEF

SEC. 200 (*50 Appendix U.S.C. 520*). (1) In any action or proceeding commenced in any court, if there shall be a default of any appearance by the defendant, the plaintiff, before entering judgment shall file in the court an affidavit setting forth facts showing that the defendant is not in military service. If unable to file such affidavit plaintiff shall in lieu thereof file an affidavit setting forth either that the defendant is in the military service or that plaintiff is not able to determine whether or not defendant is in such service. If an affidavit is not filed showing that the defendant is not in the military service, no judgment shall be entered without first securing an order of court directing such entry, and no such order shall be made if the defendant is in such service until after the court shall have appointed an attorney to represent defendant and protect his interest, and the court shall on application make such appointment. Unless it appears that the defendant is not in such service the court may require, as a condition before judgment

is entered, that the plaintiff file a bond approved by the court conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any judgment should the judgment be thereafter set aside in whole or in part. And the court may make such other and further order or enter such judgment as in its opinion may be necessary to protect the rights of the defendant under this Act. Whenever, under the laws applicable with respect to any court, facts may be evidenced, established, or proved by an unsworn statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury, the filing of such an unsworn statement, declaration, verification, or certificate shall satisfy the requirement of this subdivision that facts be established by affidavit.¹

(2) Any person who shall make or use an affidavit required under this section, or a statement, declaration, verification, or certificate certified or declared to be true under penalty of perjury permitted under subdivision (1), knowing it to be false, shall be guilty of a misdemeanor and shall be punishable by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both.¹

(3) In any action or proceeding in which a person in military service is a party if such party does not personally appear therein or is not represented by an authorized attorney, the court may appoint an attorney to represent him; and in such case a like bond may be required and an order made to protect the rights of such person. But 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.

(4) If any judgment shall be rendered in any action or proceeding governed by this section against any person in military service during the period of such service or within thirty days thereafter, and it appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application, made by such person or his legal representative, not later than ninety days after the termination of such service, be opened by the court rendering the same and such defendant or his legal representative let in to defend; provided it is made to appear that the defendant has a meritorious or legal defense to the action or some part thereof. Vacating, setting aside, or reversing any judgment because of any of the provisions of this Act shall not impair any right or title acquired by any bona fide purchaser for value under such judgment.

SEC. 201 (50 *Appendix U.S.C. 521*). At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service.

SEC. 202 (50 *Appendix U.S.C. 522*). When an action for compliance with the terms of any contract is stayed pursuant to this Act

¹Amended by Public Law 86-721.

no fine or penalty shall accrue by reason of failure to comply with the terms of such contract during the period of such stay, and in any case where a person fails to perform any obligation and a fine or penalty for such nonperformance is incurred a court may, on such terms as may be just, relieve against the enforcement of such fine or penalty if it shall appear that the person who would suffer by such fine or penalty was in the military service when the penalty was incurred and that by reason of such service the ability of such person to pay or perform was thereby materially impaired.

SEC. 203 (*50 Appendix U.S.C. 523*). In any action or proceeding commenced in any court against a person in military service, before or during the period of such service, or within sixty days thereafter, the court may, in its discretion, on its own motion, or on application to it by such person or some person on his behalf shall, unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of his military service—

(a) Stay the execution of any judgment or order entered against such person, as provided in this Act; and

(b) Vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this Act.

SEC. 204 (*50 Appendix U.S.C. 524*). Any stay of any action, proceeding, attachment, or execution, ordered by any court under the provisions of this Act may, except as otherwise provided, be ordered for the period of military service and three months thereafter or any part of such period, and subject to such terms as may be just, whether as to payment in installments of such amounts and at such times as the court may fix or otherwise. Where the person in military service is a codefendant with others the plaintiff may nevertheless by leave of court proceed against the others.

SEC. 205. (*50 Appendix U.S.C. 525*). The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.

SEC. 206 (*50 Appendix U.S.C. 526*). No obligation or liability bearing interest at a rate in excess of 6 per centum per annum incurred by a person in military service prior to his entry into such service shall, during any part of the period of military service which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, bear interest at a rate in excess of 6 per centum per annum unless, in the opinion of the court, upon application thereto by the obligee, the ability of such person in military service to pay interest upon such obligation or liability at a rate in excess

of 6 per centum per annum is not materially affected by reason of such service, in which case the court may make such order as in its opinion may be just. As used in this section the term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) in respect of such obligation or liability.

SEC. 207 (*50 Appendix U.S.C. 527*). Section 205 of this Act shall not apply with respect to any period of limitation prescribed by or under the internal revenue laws of the United States.

ARTICLE III.—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS,
ASSIGNMENTS, LEASES

SEC. 300 (*50 Appendix U.S.C. 530*). (1) No eviction or distress shall be made during the period of military service in respect of any premises for which the agreed rent does not exceed \$150¹ per month, occupied chiefly for dwelling purposes by the wife, children, or other dependents of a person in military service, except upon leave of court granted upon application therefor or granted in an action or proceeding affecting the right of possession.

(2) On any such application or in any such action the court may, in its discretion, on its own motion, and shall, on application, unless in the opinion of the court the ability of the tenant to pay the agreed rent is not materially affected by reason of such military service, stay the proceedings for not longer than three months, as provided in this Act, or it may make such other order as may be just. Where such stay is granted or other order is made by the court, the owner of the premises shall be entitled, upon application therefor, to relief in respect of such premises similar to that granted persons in military service in sections 301, 302, and 500 of this Act to such extent and for such period as may appear to the court to be just.

(3) Any person who shall knowingly take part in any eviction or distress otherwise than as provided in subsection (1) hereof, or attempts so to do, shall be guilty of a misdemeanor, and shall be punishable by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both.

(4) The Secretary of the Army, the Secretary of the Navy, or the Secretary of the Treasury with respect to the Coast Guard, as the case may be, is hereby empowered, subject to such regulations as he may prescribe, to 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 other dependents of such person.

SEC. 301 (*50 Appendix U.S.C. 531*). (1) No person who has received, or whose assignor has received, under a contract for the purchase of real or personal property, or of lease or bailment with a view to purchase of such property, a deposit or installment of the purchase price, or a deposit or installment under the contract, lease, or bailment, 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, shall exercise any right or option under such contract to rescind or terminate the contract or resume possession of the property for

¹ Amended by sec. 10 of Public Law 89-358.

nonpayment of any installment thereunder due or for any other breach of the terms thereof occurring prior to or during the period of such military service, except by action in a court of competent jurisdiction.

(2) Any person who shall knowingly resume possession of property which is the subject of this section otherwise than as provided in subsection (1) of this section or in section 107, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both.

(3) Upon the hearing of such action the court may order the repayment of prior installments or deposits or any part thereof, as a condition of terminating the contract and resuming possession of the property, or may, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, order a stay of proceedings, as provided in this Act unless, in the opinion of the court, the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service; or it may make such other disposition of the case as may be equitable to conserve the interests of all parties.

SEC. 302 (*50 Appendix U.S.C. 532*). (1) The provisions of this section shall apply only to obligations secured by mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service at the commencement of the period of the military service and still so owned by him which obligations originated prior to such person's period of military service.

(2) In any proceedings commenced in any court during the period of military service to enforce such obligation arising out of nonpayment of any sum thereunder due or out of any other breach of the terms thereof occurring prior to or during the period of such service the court may, after hearing, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service—

(a) stay the proceedings as provided in this Act; or

(b) make such other disposition of the case as may be equitable to conserve the interests of all parties.

(3) No sale, foreclosure, or seizure of property for nonpayment of any sum due under any such obligation, or for any other breach of the terms thereof, whether under a power of sale, under a judgment entered upon warrant of attorney to confess judgment contained therein, or otherwise, shall be valid if made after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 and during the period of military service or within three months thereafter, except pursuant to an agreement as provided in section 107, unless upon an order previously granted by the court and a return thereto made and approved by the court.

(4) Any person who shall knowingly make or cause to be made any sale, foreclosure, or seizure of property, defined as invalid by subsection (3) hereof, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both.

SEC. 303 (50 *Appendix U.S.C. 533*). Where a proceeding to foreclose a mortgage upon or to resume possession of personal property, or to rescind or terminate a contract for the purchase thereof, has been stayed as provided in this Act, the court may, unless in its opinion and undue hardship would result to the dependents of the person in military service, appoint three disinterested parties to appraise the property and, based upon the report of the appraisers, order such sum, if any, as may be just, paid to the person in military service or his dependent, as the case may be, as a condition of foreclosing the mortgage, resuming possession of the property, or rescinding or terminating the contract.

SEC. 304 (50 *Appendix U.S.C. 534*). (1) The provisions of this section shall apply to any lease covering premises occupied for dwelling, professional, business, agricultural, or similar purposes in any case in which (a) such lease was executed by or on the behalf of a person who, after the execution of such lease, entered military service, and (b) the premises so leased have been occupied for such purposes, or for a combination of such purposes, by such person or by him and his dependents.

(2) Any such lease may be terminated by notice in writing delivered to the lessor (or his grantee) or to the lessor's (or his grantee's) agent by the lessee at any time following the date of the beginning of his period of military service. Delivery of such notice may be accomplished by placing it in an envelope properly stamped and duly addressed to the lessor (or his grantee) or to the lessor's (or his grantee's) agent and depositing the notice in the United States mails. Termination of any such lease providing for monthly payment of rent shall not be effective until thirty days after the first date on which the next rental payment is due and payable subsequent to the date when such notice is delivered or mailed. In the case of all other leases, termination shall be effected on the last day of the month following the month in which such notice is delivered or mailed and in such case any unpaid rental for a period preceding termination shall be proratably computed and any rental paid in advance for a period succeeding termination shall be refunded by the lessor (or his assignee). Upon application by the lessor to the appropriate court prior to the termination period provided for in the notice, any relief granted in this subsection shall be subject to such modifications or restrictions as in the opinion of the court justice and equity may in the circumstances require.

(3) Any person who shall knowingly seize, hold, or detail the personal effects, clothing, furniture, or other property, of any person who has lawfully terminated a lease covered by this section, or in any manner interfere with the removal of such property from the 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 so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment, not to exceed one year or by fine not to exceed \$1,000, or both.

SEC. 305 (50 *Appendix U.S.C. 535*). (1) Where any life insurance policy on the life of a person in military service has been assigned prior to such person's period of military service to secure the payment of any obligation of such person, no assignee of such policy (except the insurer in connection with a policy loan) shall, during the period of

military service of the insured or within one year thereafter, except upon the consent in writing of the insured made during such period or when the premiums thereon are due and unpaid or upon the death of the insured, exercise any right or option by virtue of such assignment unless upon leave of court granted upon an application made therefor by such assignee. The court may thereupon refuse to grant such leave unless in the opinion of the court the ability of the obligor to comply with the terms of the obligation is not materially affected by reason of his military service. For the purpose of this subsection premiums which are guaranteed under the provisions of article IV of this Act shall not be deemed to be due and unpaid.

(2) No person shall exercise any right to foreclose or enforce any lien for storage of household goods, furniture, or personal effects of a person in military service during such person's period of military service and for three months thereafter except upon an order previously granted by a court upon application therefor and a return thereto made and approved by the court. In such proceeding the court may, after hearing, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to pay the storage charges due is not materially affected by reason of his military service—

(a) stay the proceedings as provided in this Act; or

(b) make such other disposition of the case as may be equitable to conserve the interest of all parties.

The enactment of the provisions of this subsection shall not be construed in any way as affecting or as limiting the scope of section 302 of this Act.

(3) Any person who shall knowingly take any action contrary to the provisions of this section, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed \$1,000 or both.

SEC. 306 (*50 Appendix U.S.C. 536*). Dependents of a person in military service shall be entitled to the benefits accorded to persons in military service under the provisions of this article upon application to a court therefor, unless in the opinion of the court the ability of such dependents to comply with the terms of the obligation, contract, lease, or bailment has not been materially impaired by reason of the military service of the person upon whom the applicants are dependent.

ARTICLE IV.—INSURANCE

SEC. 400 (*50 Appendix U.S.C. 540*). As used in this article—

(a) The term "policy" shall include any contract of life insurance or policy on a life, endowment, or term plan, including any benefit in the nature of life insurance arising out of membership in any fraternal or beneficial association, which does not provide for the payment of any sum less than the face value thereof or for the payment of an additional amount as premiums if the insured engages in the military service of the United States as defined in section 101 of article I of this Act or which does not contain any limitation or restriction upon coverage relating to engagement in or pursuit of certain types of activities which a person might be required to engage in by virtue of his being in such military service, and (1) which is in force

on a premium-paying basis at the time of application for benefits hereunder, and (2) which was made and a premium paid thereon before the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 or not less than one hundred and eighty days¹ before the date the insured entered into the military service. The provisions of this Act shall not be applicable to policies or contracts of life insurance issued under the War Risk Insurance Act, as amended, the World War Veterans Act, as amended, or the National Service Life Insurance Act of 1940, as amended.

(b) The term "premium" shall include the amount specified in the policy as the stipend to be paid by the insured at regular intervals during the period therein stated.

(c) The term "insured" shall include any person in the military service of the United States as defined in section 101, article I, of this Act, whose life is insured under and who is the owner and holder of and has an interest in a policy as above defined.

(d) The term "insurer" shall include any firm, corporation, partnership, or association chartered or authorized to engage in the insurance business and to issue a policy as above defined by the laws of a State of the United States or the United States.

SEC. 401 (*50 Appendix U.S.C. 541*). The benefits and privileges of this article shall apply to any insured, when such insured, or a person designated by him, or, in case the insured is outside the continental United States (excluding Alaska and the Panama Canal Zone), a beneficiary, shall make written application for protection under this article, unless the Administrator of Veterans' Affairs in passing upon such application as provided in this article shall find that the policy is not entitled to protection hereunder. The Veterans' Administration shall give notice to the military and naval authorities of the provisions of this article, and shall include in such notice an explanation of such provisions for the information of those desiring to make application for the benefits thereof. The original of such application shall be sent by the insured to the insurer, and a copy thereof to the Veterans' Administration. The total amount of insurance on the life of one insured under policies protected by the provisions of this article shall not exceed \$10,000. If an insured makes application for protection of policies on his life totaling insurance in excess of \$10,000, the Administrator is authorized to have the amount of insurance divided into two or more policies so that the protection of this article may be extended to include policies for a total amount of insurance not to exceed \$10,000, and a policy which affords the best security to the Government shall be given preference.

SEC. 402. (*50 Appendix U.S.C. 542*). Any writing signed by the insured and identifying the policy and the insurer, and agreeing that his rights under the policy are subject to and modified by the provisions of this article, shall be sufficient as an application for the benefits of this article, but the Veterans' Administration may require the insured and insurer to execute such other forms as may be deemed advisable. Upon receipt of the application of the insured the insurer shall furnish such report to the Veterans' Administration concerning the policy as shall be prescribed by regulations. The insured who has made application for protection under this article and the insurer shall be deemed to have agreed to such modification of the policy as may

¹ Increased from 30 to 180 days by Public Law 697, 84th Cong. July 11, 1956.

be required to give this article full force and effect with respect to such policy.

SEC. 403. (50 *Appendix U.S.C. 543*). The Administrator of Veterans' Affairs shall find whether the policy is entitled to protection under this article and shall notify the insured and the insurer of such finding. Any policy found by the Administrator of Veterans' Affairs to be entitled to protection under this article shall not, subsequent to date of application, and during the period of military service of the insured or during two years after the expiration of such service, lapse or otherwise terminate or be forfeited for the nonpayment of a premium becoming due and payable, or the nonpayment of any indebtedness or interest.

SEC. 404 (50 *Appendix U.S.C. 544*). No dividend or other monetary benefit under a policy shall be paid to an insured or used to purchase dividend additions while a policy is protected by the provisions of this article except with the consent and approval of the Veterans' Administration. If such consent is not procured, such 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. No cash value, loan value, or withdrawal of dividend accumulation, or unearned premium, or other value of similar character shall be available to the insured while the policy is protected under this article except upon approval by the Veterans' Administration. The insured's right to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this article.

SEC. 405 (50 *Appendix U.S.C. 545*). In the event of maturity of a policy as a death claim or otherwise before the expiration of the period of protection under the provisions of this article, the insurer in making settlement will deduct from the amount of insurance the premiums guaranteed under this article, together with interest thereon at the rate fixed in the policy for policy loans. If no rate of interest is specifically fixed in the policy, the rate shall be the rate fixed for policy loans in other policies issued by the insurer at the time the policy brought under the Act was issued. The amount deducted by reason of the protection afforded by this article shall be reported by the insurer to the Administrator of Veterans' Affairs.

SEC. 406 (50 *Appendix U.S.C. 546*). Payment of premiums and interest thereon at the rate specified in section 405 hereof becoming due on a policy while protected under the provisions of this article is guaranteed by the United States, and if the amount so guaranteed is not paid to the insurer prior to the expiration of the period of insurance protection under this article, the amount then due shall be treated by the insurer as a policy loan on such policy, but if at the expiration of said period the cash surrender value is less than the amount then due, the policy shall then cease and terminate and the United States shall pay the insurer the difference between such amount and the cash surrender value. The amount paid by the United States to an insurer on account of applications approved under the provisions of this article as amended, shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other Act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law. Any moneys received as repayment of debts incurred under this article, as originally enacted and as

amended, shall be credited to the appropriation for the payment of claims under this article.

SEC. 407 (*50 Appendix U.S.C. 547*). The Administrator of Veterans' Affairs is hereby authorized and directed to provide by regulations for such rules of procedure and forms as he may deem advisable in carrying out the provisions of this article. The findings of fact and conclusions of law made by the Administrator of Veterans' Affairs in administering the provisions of this article shall be final, and shall not be subject to review by any other official or agency of the Government.

SEC. 408 (*50 Appendix U.S.C. 548*). (1) The provisions of this article in force immediately prior to the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942 (hereinafter in this section called "such provisions") shall remain in full force and effect with respect to all valid applications for protection executed prior to the date of enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942 and all policies to which such applications pertain shall continue to be entitled to the protection granted thereby.

(2) Any insurer under a policy accepted under such provisions shall, subject to the approval of the Administrator of Veterans' Affairs and upon complete surrender by it to the United States, within ninety days after the date of enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942, of all certificates issued in accordance with such provisions together with all right to payment thereunder, be entitled to the guarantee of unpaid premiums and interest thereon and the mode of settlement for such policies as provided by this article, as amended. The privileges and benefits granted by the foregoing sentence shall be in lieu of the method of settlement, and the requirement for accounts and reports prescribed by such provisions. In the event any such insurer fails to surrender within the said ninety days all such certificates and rights to payment, the accounts, reports, and settlements required to be made by such insurer under such provisions shall continue to be made as required and shall be governed by such provisions.

ARTICLE V.—TAXES AND PUBLIC LANDS

SEC. 500 (*50 Appendix U.S.C. 560*). (1) The provisions of this section shall apply when any taxes or assessments whether general or special (other than taxes on income), whether falling due prior to or during the period of military service, in respect of personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid.

(2) No sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon application made therefor by the collector of taxes or other officer whose duty it is to enforce the collection of taxes or assessments. The court thereupon, unless in its opinion the ability of the persons in military service to pay such taxes or assessments is not materially affected by reason of such service, may stay such proceedings or such sale, as provided in this Act, for a period extending not more than six months after the termination of the period of military service of such person.

(3) When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service, but in no case later than six months after the date when this Act ceases to be in force; but this shall not be taken to shorten any period, now or hereafter provided by the laws of any State or Territory for such redemption.

(4) Whenever any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest until paid at the rate of 6 per centum per annum, and no other penalty or interest shall be incurred by reason of such nonpayment. Any lien for such unpaid taxes or assessment shall also include such interest thereon.

SEC. 501 (*50 Appendix U.S.C. 561*). (1) No right to any lands owned or controlled by the United States initiated or acquired under any laws of the United States, including the mining and mineral leasing laws, by any person prior to entering military service shall during the period of such service be forfeited or prejudiced by reason of his absence from the land or his failure to perform any work or make any improvements thereon or his failure to do any other act required by or under such laws.

(2) If a permittee or licensee under the Act of June 28, 1934 (48 Stat. 1269), enters military service, he may elect to suspend his permit or license for the period of his military service and six months thereafter, and the Secretary of the Interior by regulations shall provide for such suspension of permits and licenses and for the remission, reduction, or refund of grazing fees during such suspension.

(3) This section shall not be construed to control specific requirements contained in this article.

SEC. 502 (*50 Appendix U.S.C. 562*). If any person whose application for a homestead entry has been allowed or who has made application for homestead entry which may thereafter be allowed, after such entry or application enters military service, or if any person who has a valid settlement claim enters military service, the Department of the Interior shall construe his military service to be equivalent to residence and cultivation upon the tract entered or settled upon for the period of such service. From the effective date of this Act no contest shall be initiated on the ground of abandonment and no allegation of abandonment shall be sustained against any such person, unless it shall be alleged in the preliminary affidavit or affidavits of contest and proved at the hearing in cases initiated subsequent to the effective date of this Act that the alleged absence from the land was not due to such military service. If such person is discharged on account of wounds received or disability incurred in the line of duty, the term of his enlistment and any period of hospitalization due to such wounds or disability shall be deducted from the required length of residence, without reference to the time of actual service. No patent shall issue to any such person who has not resided upon, improved, and cultivated his homestead for a period of at least one year.

SEC. 503 (*50 Appendix U.S.C. 563*). (1) If any person whose application for a homestead entry has been allowed or who has made application for homestead entry which may thereafter be allowed or who has a valid settlement claim dies while in military service or as

a result of such service, his widow, if unmarried, or in the case of her death or marriage, his minor children, or his or their legal representatives, may proceed forthwith to make final proof upon such entry or upon an application which is allowed after the applicant's death, or upon a homestead application thereafter allowed based on a valid settlement claim, and shall be entitled to receive a patent for such land. The death of such person while in military service or as a result of such service shall be construed to be equivalent to a performance of all requirements as to residence and cultivation upon such homestead or claim, notwithstanding the provisions of section 502 of this Act.

(2) If such person is honorably discharged and because of physical incapacities due to such service is unable to return to the land, he may make final proof without further residence, improvement, or cultivation, at such time and place as the Secretary of the Interior may authorize and receive a patent to the land entered.

(3) The Act of July 28, 1917 (40 Stat. 248), is repealed.

SEC. 504 (*50 Appendix U.S.C. 564*). (1) No desert-land entry made or held under the desert-land laws prior to the entrance of the entryman or his successor in interest into military service shall be subject to contest or cancellation for failure to make or expend the sum of \$1 per acre per year in improvements upon the claim or to effect the reclamation of the claim during the period the entryman or his successor in interest is engaged in military service or during a period of six months thereafter or during any period of hospitalization because of wounds or disability incurred in the line of duty. The time within which such entryman or claimant is required to make such expenditures and effect reclamation of the land shall be exclusive of his period of service and the six-months' period and any such period of hospitalization.

(2) If such entryman or claimant is honorably discharged and because of physical incapacities due to such service is unable to accomplish reclamation of, and payment for, the land, he may make proof without further reclamation or payments under such rules as the Secretary of the Interior may prescribe and receive patent for the land entered or claimed.

(3) In order to obtain the benefits of this section, such entryman or claimant shall, within six months after the effective date of this Act or within six months after his entrance into military service, file or cause to be filed in the land office of the district in which his claim is situated a notice that he has entered military service and that he desires to hold the desert claim under this section.

SEC. 505 (*50 Appendix U.S.C. 565*). (1) The provisions of section 2324 of the Revised Statutes of the United States, which require that on each mining claim located after May 10, 1872, and until patent has been issued therefor not less than \$100 worth of labor shall be performed or improvements made during each year shall not apply during the period of his service or until six months after the termination of such service or during any period of hospitalization because of wounds or disability incurred in line of duty to claims or interests in claims which are owned by a person in military service and which have been regularly located and recorded. No mining claim or any interest in a claim which is owned by such a person and which has been regularly located and recorded shall be subject to forfeiture by nonperformance of the annual assessments during the period of such

military service, or until six months after the termination of such service or of such hospitalization.

(2) In order to obtain the benefits of this section, the claimant of any mining location shall, before the expiration of the assessment year during which he enters military service, file or cause to be filed in the office where the location notice or certificate is recorded a notice that he has entered such service and that he desires to hold his mining claim under this section.

SEC. 506 (*50 Appendix U.S.C. 566*). (1) Any person holding a permit or lease on the public domain under the Federal mineral leasing laws who enters military service may, at his election, suspend all operations under his permit or lease for a period of time equivalent to the period of his military service and six months thereafter. The term of the permit or lease shall not run during such period of suspension nor shall any rentals or royalties be charged against the permit or lease during the period of suspension.

(2) In order to obtain the benefit of this section, such permittee or lessee shall, within six months after the effective date of this Act, or six months after his entrance into military service, notify the Bureau of Land Management by registered mail of his entrance into such service and of his desire to avail himself of the benefits of this section.

(3) This section shall not be construed to supersede the terms of any contract for operation of a permit or lease.

SEC. 507 (*50 Appendix U.S.C. 567*). Nothing in this article shall be construed to limit or affect the right of a person in military service to take any action during his period of service which may be authorized by law or the regulations of the Department of the Interior for the perfection, defense, or further assertion of rights initiated or acquired prior to the date of entering military service. It shall be lawful for any person while in such service to make any affidavit or submit any proof which may be required by law or the practice or regulations of the Bureau of Land Management in connection with the entry, perfection, defense, or further assertion of any rights initiated or acquired prior to entering such service, before the officer in immediate command and holding a commission in the branch of the service in which the person is engaged. Such affidavits shall be as binding in law and with like penalties as if taken before an officer designated by the Secretary of the Interior of a United States land office. The Secretary of the Interior may issue rules and regulations to effectuate the purposes of sections 501 to 512, inclusive.

SEC. 508 (*40 Appendix U.S.C. 568*). The Secretary of the Interior is hereby authorized, in his discretion, to suspend as to persons in military service during the period while this Act remains in force and for a period of six months thereafter or during any period of hospitalization because of wounds or disability incurred in line of duty that provision of the act known as the "Reclamation Act" requiring residence upon lands in private ownership or within the neighborhood for securing water for the irrigation of the same, and he is authorized to permit the use of available water thereon upon such terms and conditions as he may deem proper.

SEC. 509 (*50 Appendix U.S.C. 569*). The Secretary of the Interior shall issue through appropriate military and naval channels a notice for distribution by appropriate military and naval authorities to persons in the military service explaining the provisions of this article

except as to sections 500, 513, and 514 hereof and shall furnish forms to be distributed in like manner to those desiring to make application for its benefits except as to said sections.

SEC. 510 (*50 Appendix U.S.C. 570*). (1) During the pendency of any war in which the United States may be engaged while this Act remains in force any homestead entryman shall be entitled to a leave of absence from his entry for the purpose of performing farm labor. The time actually spend in farm labor shall be counted as constructive residence, if within fifteen days after leaving his entry to engage in such labor the entryman files a notice of absence in the land office of the district in which his entry is situated, and if at the expiration of the calendar year the entryman files in that office a written statement under oath and corroborated by two witnesses giving the date or dates when he left his entry, the date or dates of his return, and the place where and person for whom he was engaged in farm labor during such period or periods of absence.

(2) Nothing in this section shall excuse any homestead entryman from making improvements or performing the cultivation upon his entry required by law. The provisions of this section shall apply only to persons whose applications have been allowed or filed prior to the effective date of this Act.

SEC. 511 (*50 Appendix U.S.C. 571*). Any person under the age of twenty-one who serves in the military service while this Act remains in force shall be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including the mining and mineral leasing laws, as those over twenty-one now possess under such laws. Any requirements as to establishment of residence within a limited time shall be suspended as to entry by such person until six months after his discharge from military service. Applications for entry may be verified before any officer in the United States or any foreign country authorized to administer oaths by the laws of the State or Territory in which the land may be situated.

SEC. 512 (*50 Appendix U.S.C. 572*). Citizens of the United States who serve with the forces of any nation with which the United States may be allied in the prosecution of any war in which the United States engages while this Act remains in force shall be entitled to the relief and benefits afforded by sections 501 to 511, inclusive, if such service is similar to military service as defined in this Act, and if they are honorably discharged and resume United States citizenship or die in the service of the allied forces or as a result of such service.

SEC. 513 (*50 Appendix U.S.C. 573*). The collection from any person in the military service of any tax on the income of such person, whether falling due prior to or during his period of military service, shall be deferred for a period extending not more than six months after the termination of his period of military service if such person's ability to pay such tax is materially impaired by reason of such service. No interest on any amount of tax, collection of which is deferred for any period under this section, and no penalty for nonpayment of such amount during such period, shall accrue for such period of deferment by reason of such nonpayment. The running of any statute of limitations against the collection of such tax by distraint or otherwise shall be suspended for the period of military service of any individual the collection of whose tax is deferred under this section, and for an additional period of nine months beginning with the day following the

period of military service. The provisions of this section shall not apply to the income tax on employees imposed by section 1400 of the Federal Insurance Contributions Act.

SEC. 514 (50 *Appendix U.S.C.* 574).¹ (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district. Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

(2) When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided*, That the license, fee, or excise required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

ARTICLE VI.—ADMINISTRATIVE REMEDIES

SEC. 600 (50 *Appendix U.S.C.* 580). Where in any proceeding to enforce a civil right in any court it is made to appear to the satisfaction of the court that any interest, property, or contract has since the date of the approval of this Act been transferred or acquired with

¹ Section amended by Public Law 87-771.

intent to delay the just enforcement of such right by taking advantage of this Act, the court shall enter such judgment or make such order as might lawfully be entered or made, the provisions of this Act to the contrary notwithstanding.

SEC. 601 (*50 Appendix U.S.C. 581*). (1) In any proceeding under this Act a certificate signed by The Adjutant General of the Army as to persons in the Army or in any branch of the United States service while serving pursuant to law with the Army of the United States, signed by the Chief of Naval Personnel as to persons in the United States Navy or in any branch of the United States service while serving pursuant to law with the United States Navy, and signed by the Commandant, United States Marine Corps, as to persons in the Marine Corps, or in any other branch of the United States service while serving pursuant to law with the Marine Corps, or signed by an officer designated by any of them, respectively, for the purpose, shall when produced be prima facie evidence as to any of the following facts stated in such certificate:

That a person named has not been, or is, or has been in military service; the time when and the place where such person entered military service, his residence at that time, and the rank, branch, and unit of such service that he entered, the dates within which he was in military service, the monthly pay received by such person at the date of issuing the certificate, the time when and the the place where such person died in or was discharged from such service.

(2) It shall be the duty of the foregoing officers to furnish such certificate on application, and any such certificate when purporting to be signed by any one of such officers or by any person purporting upon the face of the certificates to have been so authorized shall be prima facie evidence of its contents and of the authority of the signer to issue the same.

(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 the Army 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.

SEC. 602 (*50 Appendix U.S.C. 582*). Any interlocutory order made by any court under the provisions of this Act may, upon the court's own motion or otherwise, be revoked, modified, or extended by it upon such notice to the parties affected as it may require.

SEC. 603 (*50 Appendix U.S.C. 583*). If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 604 (*50 Appendix U.S.C. 584*). This Act shall remain in force until May 15, 1945: *Provided*, That should the United States be then engaged in a war, this Act shall remain in force until such war is terminated by a treaty of peace proclaimed by the President and for six months thereafter: *Provided further*, That wherever under any section or provision of this Act a proceeding, remedy, privilege,

stay, limitation, accounting, or other transaction has been authorized or provided with respect to military service performed prior to the date herein fixed for the termination of this Act, such section or provision shall be deemed to continue in full force and effect so long as may be necessary to the exercise or enjoyment of such proceeding, remedy privilege, stay, limitation, accounting, or other transaction.

SEC. 605 (*50 Appendix U.S.C. 585*). The provisions of section 4 of the joint resolution approved August 27, 1940 (Public Resolution Numbered 96, Seventy-sixth Congress), and the provisions of section 13 of the Selective Training and Service Act of 1940, shall not be applicable with respect to any military service performed after the date of enactment of this Act.

ARTICLE VII.—FURTHER RELIEF

SEC. 700 (*50 Appendix U.S.C. 590*). (1) A person may, at any time during his period of military service or within six months thereafter, apply to a court for relief in respect of any obligation or liability incurred by such person prior to his period of military service or in respect of any tax or assessment whether falling due prior to or during his period of military service. The court, after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of such obligation or liability or to pay such tax or assessment has not been materially affected by reason of his military service, may grant the following relief:

(a) In the case of an obligation payable under its terms 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, a stay of the enforcement of such obligation during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period equal to the period of the remaining life of the installment contract or other instrument plus a period of time equal to the period of military service of the applicant, or any part of such combined period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, as the case may be, in equal installments during such combined period at such rate of interest on the unpaid balance as is prescribed in such contract, or other instrument evidencing the obligation, for installments paid when due, and subject to such other terms as may be just.

(b) In the case of any other obligation, liability, tax, or assessment, a stay of the enforcement thereof during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period of time equal to the period of military service of the applicant or any part of such period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of such period of military service or the date of application, as the case may be, in equal periodic installments during such extended period at such rate of interest as may be prescribed for

such obligation, liability, tax, or assessment, if paid when due, and subject to such other terms as may be just.

(2) When any court has granted a stay as provided in this section no fine or penalty shall accrue during the period the terms and conditions of such stay are complied with by reason of failure to comply with the terms or conditions of the obligation, liability, tax, or assessment in respect of which such stay was granted.

The following explanation of the Soldiers' and Sailors' Civil Relief Act, prepared by the Department of Defense, is designed to provide a general description of the benefits available under the act. It should be realized that any attempt at generalization with respect to the provisions of this act can lead to dangerous misconceptions unless the reader understands fully that each particular case must be studied in the light of the act itself and all authoritative interpretations.

The technical nature of the act and judicial decisions interpreting the act make it essential that any person affected by the act consult his civilian attorney or his legal assistance officer in connection with the facts of the particular case.

INTRODUCTION

You may have been ordered to report for active duty with the Armed Forces. You may owe money on your car, your home, and perhaps even on a personal loan. At the time you made these debts you may have been earning considerably more than you will earn as a serviceman. Once in the service, your military pay may not be enough to provide for all these debts.

Congress realized that many servicemen would, from time to time, be confronted with this problem. Therefore, it decided to give you some protection in the interest of national defense. This protection is found in the Soldiers and Sailors' Civil Relief Act, which, as the name suggests, affords relief with respect to various civil and personal obligations but does not cover criminal offenses. The act is one of a series of Federal laws concerning military service that may be found in the appendix to volume 50 of the United States Code (50 U.S.C. app. secs. 501-590). The act is still in effect and, though entitled "Soldiers' and Sailors' Civil Relief Act," protects others including members of the Air Force, Marine Corps, and Coast Guard (50 U.S.C. app. secs. 464 and 466(c)).

The act does not, repeat does not, wipe out any of your obligations. Rather, it temporarily suspends the right of your creditors to use a court to compel you to pay if, but only if, the court finds that your inability to pay is due to your military service. Your obligation to honor your debts still exists, and after your release from active duty you will then have to pay them. In short, the idea behind the Civil Relief Act is to suspend, in certain cases, court proceedings during your tour of duty in the military service so that upon your return to civilian life you might have an opportunity to be heard and to take measures to protect your interests.

CAUTION: *This act is highly technical. Remember, your benefits under it are limited. Do not assume that you know all the details of the act after reading this pamphlet. It is intended only to give you a simplified summary so that you will have some idea of the protections the act affords. If, after reading this pamphlet, you believe some provisions of the act may be of immediate benefit to you, you should discuss their application to your problem with your civilian attorney or with a legal assistance officer of the Armed Forces. If you desire the services of a legal assistance officer, go to the nearest military installation and ask for his help.*

HOW A LAWSUIT IS PROCESSED

Before discussing the actual provisions of the act, it might be helpful for you to understand how lawsuits are generally conducted.

The person who brings the suit is known as the plaintiff. The person against whom the suit is brought is known as the defendant. The typical lawsuit is begun when the plaintiff, either himself or through an attorney, files a written document called a complaint with the proper court. In the complaint he states why he has started the suit. After the complaint is filed, the plaintiff must give the defendant notice that the suit has been started. This is accomplished by means of a summons. A summons is a formal written notice to the defendant to the effect that a suit has been filed against him and that unless he contests the suit, judgment may be entered against him.

If the defendant desires to contest the suit, he will normally file a written document called an answer stating why the plaintiff should not win. After a trial at which both sides may be heard, the court enters a judgment in favor of one of the parties. For example, in a lawsuit involving money the judgment may either order the defendant to pay or may state that he owes nothing. If the defendant is ordered to pay, he should remember that, although he does not have any property or money at that time, the judgment may be collected years later.

If the defendant does not file an answer within the time specified in the summons, he is said to have "defaulted." When the defendant had defaulted, the court may enter a "judgment by default" in favor of the plaintiff.

PART I.—GENERAL PROVISIONS

SECTION A. WHO IS PROTECTED

The Civil Relief Act normally applies only to "persons in the military service." Persons in the military service include—

(1) All persons on extended active duty, whether inductees, Regulars, members of the National Guard, Reserves, or volunteers, serving with the Army, Navy, Air Force, Marine Corps, or Coast Guard;

(2) All officers of the Public Health Service detailed for duty with the military services;

(3) All persons who are training or studying under the supervision of the United States preliminary to induction into military service; and

(4) All former citizens of the United States who serve with the Armed Forces of our allies during wartime.

In some instances, however, certain benefits are provided for dependents of persons in the military service and for those persons who have guaranteed obligations of servicemen.

SECTION B. WHEN ARE YOU PROTECTED

You are protected during the period of your active military duty and, in most instances, for short periods after separation. Active duty begins on the date you enter the service and ends on the date you are separated. Enlisted reservists and draftees have an additional benefit under the act in that they may ask for relief as soon as they receive orders to report for active duty.

SECTION C. WHERE DO YOU GET THE PROTECTION

The protection of the Civil Relief Act applies to all lawsuits in any court in the United States, from a justice of the peace court to the U.S. Supreme Court.

PART II.—GENERAL RELIEF PROVISIONS APPLICABLE TO ALL LAWSUITS

SECTION A. PROTECTION AGAINST DEFAULT JUDGMENT

1. *General*.—As has been previously mentioned, a lawsuit begins when the plaintiff files his complaint. If you, the defendant, do not file an answer to the plaintiff's complaint within a certain time after you have received notice of the complaint, the court may then enter its judgment against you. This judgment is known as a default judgment. However, one of the major benefits that you as a serviceman on active duty derive from the Civil Relief Act is that a court may not enter a default judgment against you unless a certain definite procedure is followed. How this is done is explained below.

2. *Requiring military affidavit*.—Under the act, before a court can enter a default judgment against you, the plaintiff must make and file a statement under oath that you are not in the military service. If he is unable to make such a statement, then he must file a sworn statement (1) that you are in the military service, or (2) that he is unable to find out whether or not you are in the military service.

3. *Rights of the defendant in the service*.—If the plaintiff files a sworn statement stating you are not in the military service, a default judgment may then be entered against you. If the plaintiff's statement fails to state you are not in the military service, a default judgment may be entered by the court only after it has appointed an attorney to represent you and the attorney is heard in your behalf. An attorney so appointed to represent you has no power to waive any of your rights or bind you by his acts.

Further, in the event the court enters a default judgment, it can require the plaintiff to put up a security deposit. This security will protect you in the event the judgment is later set aside; that is, the security will be used, if necessary, to pay you for any damages you may have suffered as result of a judgment that was incorrectly entered against you.

4. *False affidavit*.—As noted above, the plaintiff must file a sworn statement concerning your military status. Suppose he swears in that statement that you are not in the military service, knowing that you are—then what? The act makes such false swearing a crime and the guilty party can be sent to prison for as long as a year, fined not more than \$1,000, or both.

5. *Setting aside a default judgment*.—If a default judgment is entered against you during your military service, or even 30 days thereafter, you may still have some protection. You may ask the court to reopen the case and to set aside the default judgment. The court will probably do so if you can show—

(1) That your application to open the case is being made within 90 days after your discharge from the service;

(2) That you were harmed or prejudiced by reason of your military service in presenting your side of the case to the court; and

(3) You have a valid, legal defense to the suit.

Even though the plaintiff has been found guilty of false swearing as discussed in previous paragraphs, you must still satisfy all three of these requirements before your case may be reopened.

CAUTION: If you hear, either indirectly through a friend or directly through receipt of a summons, that a lawsuit has been filed against you, don't panic. Instead, see your civilian attorney or legal assistance officer. Let him advise you before you take any action. By acting without such advice you may waive the protection the act gives you.

It should be noted that your protection against default judgments, as discussed above, applies only when you fail to make "any appearance" in the lawsuit. What acts on your part constitute "any appearance" are too numerous to mention. Furthermore, an act that may not be considered "any appearance" in one court may be in another.

Therefore, you should always get the advice of an attorney. It may be to your advantage for the lawsuit to be tried immediately. But this decision should be made only after an attorney has reviewed the facts of your individual case.

SECTION B. STAYS

1. *General.*—As you have seen, the act provides some relief from default judgments. This relief is available regardless of what the plaintiff has asked the court to do—be it to allow the plaintiff to adopt your child, to grant a divorce, to award damages for injuries, etc. Because such relief applies generally to all lawsuits, those sections of the act are referred to as the general relief provisions. There are still other important general relief provisions in the act. One of the more important is that which provides for stays of the judicial process. A *stay* is an order of the court stopping or delaying proceedings in the lawsuit until a later date.

2. *How military service affects stays.*—At any stage of a lawsuit you, a serviceman, may ask the court to stay the proceedings. This is true whether you are the plaintiff or the defendant. In addition, the court itself may order the proceedings delayed without being asked. If the court is not asked for a postponement by the person in the military service, then it is not required by the act to grant one. On the other hand, when a stay is requested by a serviceman, the act requires the court to grant it unless, in the opinion of the court, the serviceman's ability to prosecute or defend the lawsuit is "not materially affected by reason of his military service."

When you ask for a stay initially, you need only show the court that you are in the service. If the other party to the lawsuit does not want it delayed, he must prove to the court that your military service does not materially affect your ability to prosecute or defend. You have no automatic right to a stay; the judge of the court will decide whether you should have one. If he does grant one, he may order it for the duration of your military service plus 3 months.

However, it should be added that a request for a stay may be "any appearance" for the purposes of a default judgment mentioned above.

SECTION C. STATUTES OF LIMITATIONS

In most instances a person who has a right to bring a lawsuit in a court or a proceeding before an administrative board or agency must do so within a certain time limit. The laws and regulations setting this

time limit are known as statutes of limitations. These statutes start "running" from the instant the suit or proceeding could first have been filed. A statute of limitations is said to have "run" when the time limit for filing has passed.

Under the "general relief provisions" of the Civil Relief Act, these statutes stop "running" while you are in the military service. In order to determine whether a particular statute of limitations has "run," exclude the period of time that you were in the military service.

For example, someone damaged your car in Maryland on January 2, 1961. You entered the service on February 1, 1961, and remain in the service until January 31, 1963. Suppose Maryland's statute of limitation requires suit for damages to be filed with the proper court within 3 years from the date of the accident. Under the act the 2 years you are in the military service will not be counted in the 3 years you have to file suit. Thus, you will have until January 1966 to file suit.

Suppose in the above example that you had damaged someone else's car. In this instance the other party would also have until January 1966 to bring suit against you.

In both of the above examples the accident occurred *before* you entered the service. Nevertheless, the same results would be reached if it had occurred *after* you had entered the service.

PART III.—SPECIFIC RELIEF PROVISIONS APPLICABLE TO PARTICULAR LAWSUITS AND SITUATIONS

SECTION A. INTEREST IN EXCESS OF 6 PERCENT PER YEAR

Let us assume that you entered into an obligation which requires you to pay more than 6 percent per year. Afterward you enter the military service. Under the Civil Relief Act you may start paying, if you like, only 6 percent. However, you are advised to tell your creditors what you are going to do and cite the act as our authority. If the person whom you owe objects, he must ask the proper court to require you to pay more than 6 percent per year. However, before the court can do so, your creditor must show that your ability to pay interest in excess of 6 percent is "not materially affected by reason of your military service."

As used in the act, "interest" includes "service charges, renewal charges, fees, or any charges (except bona fide insurance) in respect of such obligations * * *."

CAUTION: This relief applies only to obligations made *before* you entered military service, not to those made while in the service.

SECTION B. INSTALLMENT CONTRACTS, MORTGAGES, TRUST DEEDS, ETC

While a civilian you entered into contracts to buy a home, a refrigerator, wristwatch, automobile, or perhaps even a horse. You paid so much down and agreed to pay the remainder in monthly installments. Under each contract you agreed, for all practical purposes, that if you failed to make the payments on the dates specified in the contracts, the seller could repossess the property and sell it to the highest bidder. Furthermore, you may have agreed, for example, that if at the time of the sale you still owed \$1,500 and if the seller were to get only \$1,000, you would still be liable to the seller for the \$500

difference. While these contracts are in force you enter military service, and because of your reduced income you fail to make payments when due. Does the act provide you with any protection?

Yes; but not to the extent of being unfair to the seller. Remember, we are talking about contracts you made and paid on *before* you entered the service. Under these circumstances the seller cannot repossess or foreclose on the property involved without first getting the permission of a court. If the seller were to take the property and sell it without a court's permission, he could be made to pay a fine and even be sent to jail. Before a court will give its permission, it looks into the reason behind your failure to make payments when due. If satisfied that such failure is attributable to your military service, the court will then do what it thinks is fair to you and to the seller. It may, for example, order you to return the property to the seller, and the seller to return to you the amount you have already paid. Or, it may decide to let you keep the property and make smaller payments than called for in your contract.

CAUTION.—*This protection does not apply to obligations incurred after you entered into military service.*

SECTION C. LEASES AND EVICTIONS

1. *Leases*.—When you entered military service, you and your dependents were living in a rented house or apartment. You pay rent by the month. The lease still has a few months or even several years to run. You cannot, and your dependents do not wish to, remain in the house or apartment. Can you cancel the lease?

Yes, by giving your landlord 30 days' written notice and citing the act as your authority. The "30 days" does not necessarily start running from the day notice is given. Rather, it starts running on the day the next monthly rent payment is due. For example, you pay rent on the first of each month. You give notice on the 20th of October. In this case, you owe rent for November. Your lease terminates on the last day of November.

The act has a special "notice" provision for leases requiring rent to be paid other than by the month.

The right to terminate leases under the act includes not only property leased and occupied for dwelling purposes but also property leased and occupied for "professional, business, agricultural, or similar purposes."

CAUTION: A common misconception about the act is that it authorizes a serviceman to terminate a lease made *after* he has entered the service—it *does not*. This means that a lease made *while* you are in service should contain a clause providing for termination on 30 days' written notice if you receive transfer orders.

2. *Evictions*.—Your dependents (wife, children, parents, etc.) are living in a house or apartment for which the rent is \$150 or less per month. The rent is not paid. Can they be evicted?

Yes; but only after a court has given permission. This is so whether your dependents began living there *before* or *after* you entered military service. If the landlord evicts them without first securing a court's permission, he could be fined, placed in jail, or suffer both penalties.

Once the landlord asks a court's permission to evict your dependents, the court first decides whether or not nonpayment of rent is attributable to the fact that you are on active military duty. If the court decides

that your delinquency is not caused by this fact, then it may order your dependents evicted.

On the other hand, if failure to pay is attributed to your military service, the court will make the landlord wait for not longer than 3 months before authorizing eviction. The idea is to provide a reasonable time during which another place for your dependents to live can be found. However, the payment of all rents due is not thereby excused.

The landlord is also prohibited by the act from holding your household goods as security for unpaid rent, unless permitted by the court.

PART IV.—MISCELLANEOUS PROVISIONS

SECTION A. INSURANCE

You are the owner of a commercial insurance policy insuring your life. On entering military service you may not be able to continue to pay the premiums because of your reduced income.

Under such circumstances, if you wish to keep the policy current and it has been in force for at least 180 days, you may, under the Civil Relief Act, request the Veterans' Administration to guarantee payment of the premiums. The maximum amount of life insurance on which payment of premiums will be guaranteed is \$10,000. That amount may be in one or more policies.

Upon separation from military service, you have 2 years in which to arrange with the insurer to pick up regular premium payments and pay any back premiums and interest. At the end of the 2 years, any remaining indebtedness is treated as a policy loan, unless the indebtedness exceeds the cash value. In the latter event, the policy is terminated and the VA pays the insurance company the difference between the indebtedness and the cash value. The amount paid by the VA then becomes the veteran's debt to the United States.

SECTION B. STORAGE LIENS

Suppose either before or during your military service, you place your "household goods, furniture, or personal effects" in storage. You fail to pay the storage charges when due.

Under these circumstances, the storage company cannot sell your property to cover its charges without a court order. If your failure to pay is due to your being on active military duty, the court may stay the proceedings or enter a judgment that the court thinks is fair to both parties.

SECTION C. PUBLIC LANDS, MINING CLAIMS, AND HOMESTEAD ENTRIES

Special provisions of the act relate to mining, homestead, and other claims on public lands. These claims will not be lost through absence resulting from your military service if you follow the applicable provisions of the act.

PART V.—TAXES (AND MOTOR VEHICLE REGISTRATION)

SECTION A. GENERAL

The Civil Relief Act exempts your service pay and personal property from taxation by States in which you may be stationed other than your home or domiciliary State and also provides that the payment of

income tax may be deferred for up to 6 months after discharge if your ability to pay the tax is materially impaired by reason of your service.

SECTION B. RESIDENCE VERSUS DOMICILE

1. *General.*—Before you can determine what taxes are properly assessable to you and your dependents, you must understand the distinction between the terms “residence” and “domicile” and the protection afforded by the act.

Under the act the sole right to tax *your* military pay and *your* personal property remains with your State of domicile when you are absent therefrom in compliance with military or naval orders.

2. *Residence.*—Residence may generally be defined as “a factual place of abode” at a particular time. However, a great deal of confusion exists in defining this term because various State laws define the words “residence” or “resident” differently. The definition of “resident” also differs in application of the tax laws of the various States. Whenever a word is specifically defined in a particular law, that definition is, of course, controlling.

3. *Domicile.*—Domicile may be defined in legal terms as “that place where a man has his true, fixed, and permanent home and principal establishment and to which, whenever he is absent therefrom, he has the intention of returning.”

To understand the problem of domicile, you must first realize that a domicile may be determined by any one of the following criteria; namely (1) domicile of origin or birth, (2) domicile by operation of law, and (3) domicile of choice. As a matter of law everyone has a domicile somewhere, and an old domicile is not lost until a new one is acquired.

Domicile of origin is the domicile automatically acquired by every child at birth and is identical with that of his parents. The actual place of birth may not determine domicile of origin. For example, a child born to citizens of the United States who are stationed in Virginia pursuant to military orders does not necessarily become a domiciliary of Virginia. If at that time the father was domiciled in Colorado, the child also becomes a domiciliary of Colorado.

Like domicile of origin, domicile by operation of law exists independent of the subject's intention and actual residence. For example, a woman upon marriage generally loses her own domicile and, by operation of law, acquires that of her husband regardless of her actual residence or intention.

Domicile of choice is the place which a person has voluntarily elected and chosen for himself to replace his previous domicile. To change domicile there must be a *simultaneous* concurrence of the following elements:

- (1) Actual residence (bodily presence) in the new locality;
- (2) An intention to remain there permanently or indefinitely;
- and
- (3) An intention to abandon the old domicile.

Once the above elements have occurred *simultaneously* you have changed your domicile. However, proving the requisite intent, particularly if the change of domicile gives you a tax advantage, may be difficult. In this event your word, though considered, will not necessarily satisfy taxing authorities. They may demand, and properly

so, evidence of some overt acts on your part indicative of the requisite intent. In short, your actions speak louder than your words. Some of the clearest indications that you consider a State to be your domicile are registering to vote and actually voting there, licensing your motor vehicle, and paying income or personal property taxes, if any.

Service personnel are tempted from time to time to change their domiciles in order to avoid the income tax of a particular State. Before doing so, you should remember that domicile not only exerts its influence in determining your liability for income and personal property taxes but in other very important areas as well. The following enumeration is illustrative of these areas:

- (1) Liability for State inheritance taxes;
- (2) The place where your will would be probated, who may act as executor thereof, and as testamentary guardian of your minor children;
- (3) The right to vote;
- (4) Bonuses for wartime service;
- (5) The right to hold public office;
- (6) The right to homestead, veterans' claims, or tax exemptions;
- (7) Whether you or your children may attend a State college without paying higher fees required of nondomiciliary residents;
- (8) Where you may obtain a divorce.

In short, before attempting to change your domicile, take a good long look at the overall picture.

SECTION C. INCOME TAXES

As previously stated, the Civil Relief Act, a Federal law, *exempts* your military pay from all State income taxes except those imposed by the State of your domicile while absent therefrom in compliance with military orders. Therefore, unless your present duty station is located in the State of your domicile, your military pay cannot be taxed by the State where stationed even though their laws provide otherwise.

The act does *not* except nonmilitary income derived from sources within a State where you may be serving. States can and do, for example, require you to pay an income tax on salaries from civilian employment therein, rents from real property located therein, and profits from the sale of such property, even though your domicile is elsewhere. Ordinarily you will file a "resident" income tax return in your home (domiciliary) State on *all* of your income and a "non-resident" return in the State where stationed on nonmilitary income earned in that State. This could mean that you may pay taxes on your nonmilitary income to both your home State and the State where stationed. However, credits may reduce the overall tax burden.

Furthermore, the act does not exempt any civilian member of your household from taxes by the State in which he or she is temporarily residing. For example, if you are domiciled in Florida, ordered to duty in Virginia, and accompanied by your wife (civilian) who obtains employment there, your wife is liable to Virginia for income tax on her salary from Virginia employment. See your legal assistance officer or income tax adviser for rules governing apportionment.

Any tax on income (Federal, State, or local) may be deferred for a period extending not more than 6 months after separation from

active service, without interest or penalty, if your ability to pay the income tax is materially impaired by reason of such service. You should make written request upon the taxing authorities for such deferment. Note that this does not excuse you from filing a return unless your home State law specifically exempts you from filing.

SECTION D. PERSONAL PROPERTY TAXES

As the "tax day" varies from State to State, your personal property could be present for tax purposes in several taxing jurisdictions the same year. To protect you, the act prohibits any State except that of your domicile from taxing *your* personal property, except personal property used in a trade or business.

It is emphasized that the act does not relieve your wife from paying the tax to the State where residing on her personal property.

SECTION E. REAL PROPERTY TAXES

Real property (such as a house) is subject to local taxes. The act gives you *no* exemption from this tax.

SECTION F. MOTOR VEHICLE REGISTRATION

The act allows you to retain your home State registration on your motor vehicle as long as you have paid the license fee or excise required by your home State. The vehicle title should be in your name alone as the act exempts only you.

PART VI.—CONCLUSION

The specific nature of all the relief available to you under the act is a matter about which you should consult an attorney. The act is designed to deal fairly with you and your creditors. While relief is very often available to you, you are expected and required to show good faith by doing what you can to discharge your obligations.

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