

an action listed in subsection (b) of this section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies.”

Subsecs. (c), (d). Pub. L. 108-454, §702(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

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

Application by a servicemember for, or receipt by a servicemember of, a stay, postponement, or suspension pursuant to this Act [sections 501 to 515 and 516 to 597b of this Appendix] in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability of that servicemember shall not itself (without regard to other considerations) provide the basis for any of the following:

(1) A determination by a lender or other person that the servicemember is unable to pay the civil obligation or liability in accordance with its terms.

(2) With respect to a credit transaction between a creditor and the servicemember—

(A) a denial or revocation of credit by the creditor;

(B) a change by the creditor in the terms of an existing credit arrangement; or

(C) a refusal by the creditor to grant credit to the servicemember in substantially the amount or on substantially the terms requested.

(3) An adverse report relating to the creditworthiness of the servicemember by or to a person engaged in the practice of assembling or evaluating consumer credit information.

(4) A refusal by an insurer to insure the servicemember.

(5) An annotation in a servicemember's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information, identifying the servicemember as a member of the National Guard or a reserve component.

(6) A change in the terms offered or conditions required for the issuance of insurance.

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

PRIOR PROVISIONS

A prior section 518, act Oct. 17, 1940, ch. 888, art. I, §108, as added Pub. L. 102-12, §7, Mar. 18, 1991, 105 Stat. 38, related to the effect of certain future financial transactions on the exercise of rights, prior to the general amendment of this Act by Pub. L. 108-189.

§ 519. Legal representatives

(a) Representative

A legal representative of a servicemember for purposes of this Act [sections 501 to 515 and 516 to 597b of this Appendix] is either of the following:

(1) An attorney acting on the behalf of a servicemember.

(2) An individual possessing a power of attorney.

(b) Application

Whenever the term “servicemember” is used in this Act [sections 501 to 515 and 516 to 597b of this Appendix], such term shall be treated as in-

cluding a reference to a legal representative of the servicemember.

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

TITLE II—GENERAL RELIEF

PRIOR PROVISIONS

A prior section 520, acts Oct. 17, 1940, ch. 888, art. II, §200, 54 Stat. 1180; Pub. L. 86-721, §§1, 2, Sept. 8, 1960, 74 Stat. 820, related to default judgments, affidavits, bonds, and attorneys for persons in service, prior to the general amendment of this Act by Pub. L. 108-189. See section 521 of this Appendix.

§ 521. Protection of servicemembers against default judgments

(a) Applicability of section

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

(b) Affidavit requirement

(1) Plaintiff to file affidavit

In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

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

(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

(2) Appointment of attorney to represent defendant in military service

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

(3) Defendant's military status not ascertained by affidavit

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court

may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act [sections 501 to 515 and 516 to 597b of this Appendix].

(4) Satisfaction of requirement for affidavit

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

(c) Penalty for making or using false affidavit

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

(d) Stay of proceedings

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

(1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or

(2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(e) Inapplicability of section 202 procedures

A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 202 [section 522 of this Appendix].

(f) Section 202 protection

If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of proceeding under section 202 [section 522 of this Appendix].

(g) Vacation or setting aside of default judgments

(1) Authority for court to vacate or set aside judgment

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

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

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

(2) Time for filing application

An application under this subsection must be filed not later than 90 days after the date of

the termination of or release from military service.

(h) Protection of bona fide purchaser

If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of this Act [sections 501 to 515 and 516 to 597b of this Appendix], that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

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

PRIOR PROVISIONS

A prior section 521, act Oct. 17, 1940, ch. 888, art. II, §201, 54 Stat. 1181, related to stay of proceedings where military service affects conduct thereof, prior to the general amendment of this Act by Pub. L. 108-189. See section 522 of this Appendix.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-181 inserted “, including any child custody proceeding,” after “proceeding”.

§ 522. Stay of proceedings when servicemember has notice

(a) Applicability of section

This section applies to any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant at the time of filing an application under this section—

(1) is in military service or is within 90 days after termination of or release from military service; and

(2) has received notice of the action or proceeding.

(b) Stay of proceedings

(1) Authority for stay

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

(2) Conditions for stay

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

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

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

(c) Application not a waiver of defenses

An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver