

Editorial Notes

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (b), is act June 24, 1948, ch. 625, 62 Stat. 604. For complete classification of this Act to the Code, see References in Text note set out under section 3801 of this title and Tables.

CODIFICATION

Section was formerly classified to section 516 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

PRIOR PROVISIONS

A prior section 106 of act Oct. 17, 1940, ch. 888, art. I, as added Oct. 6, 1942, ch. 581, §4, 56 Stat. 770; amended Pub. L. 102-12, §9(5), Mar. 18, 1991, 105 Stat. 39, related to extension of benefits to persons ordered to report for induction or military service, prior to the general amendment of this Act by Pub. L. 108-189.

AMENDMENTS

2023—Subsec. (c). Pub. L. 118-31 added subsec. (c).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section applicable to any case not final before Dec. 19, 2003, see section 3 of Pub. L. 108-189, set out as a note under section 3901 of this title.

§ 3918. Waiver of rights pursuant to written agreement**(a) In general**

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

(b) Actions requiring waivers in writing

The requirement in subsection (a) for a written waiver applies to the following:

(1) The modification, termination, or cancellation of—

(A) a contract, lease, or bailment; or

(B) an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.

(2) The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that—

(A) is security for any obligation; or

(B) was purchased or received under a contract, lease, or bailment.

(c) Prominent display of certain contract rights waivers

Any waiver in writing of a right or protection provided by this chapter that applies to a contract, lease, or similar legal instrument must be in at least 12 point type.

(d) Coverage of periods after orders received

For the purposes of this section—

(1) a person to whom section 3917 of this title applies shall be considered to be a servicemember; and

(2) the period with respect to such a person specified in subsection (a) or (b), as the case may be, of section 3917 of this title shall be considered to be a period of military service.

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

Editorial Notes

CODIFICATION

Section was formerly classified to section 517 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

PRIOR PROVISIONS

A prior section 107 of act Oct. 17, 1940, ch. 888, art. I, as added Oct. 6, 1942, ch. 581, §4, 56 Stat. 770, related to effect on rights and remedies pursuant to written agreements entered after commencement of military service, prior to the general amendment of this Act by Pub. L. 108-189.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-454, §702(1), inserted after first sentence: “Any such waiver that applies to an action listed in subsection (b) of this section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies.”

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section applicable to any case not final before Dec. 19, 2003, see section 3 of Pub. L. 108-189, set out as a note under section 3901 of this title.

§ 3919. Exercise of rights under chapter 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 chapter 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 or as a member of the Space Force.

(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; amended Pub. L. 118-31, div. A, title XVII, §1742(c)(3), Dec. 22, 2023, 137 Stat. 681.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 518 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

PRIOR PROVISIONS

A prior section 108 of act Oct. 17, 1940, ch. 888, art. I, 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.

AMENDMENTS

2023—Par. (5). Pub. L. 118-31 inserted “or as a member of the Space Force” before period at end.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section applicable to any case not final before Dec. 19, 2003, see section 3 of Pub. L. 108-189, set out as a note under section 3901 of this title.

§ 3920. Legal representatives

(a) Representative

A legal representative of a servicemember for purposes of this chapter 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 chapter, such term shall be treated as including 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.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 519 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section applicable to any case not final before Dec. 19, 2003, see section 3 of Pub. L. 108-189, set out as a note under section 3901 of this title.

SUBCHAPTER II—GENERAL RELIEF

§ 3931. 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 chapter.

(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,