



**UNITED STATES BANKRUPTCY COURT  
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February 16, 2004

On December 19, 2003, the President signed into law H.R. 100, the Servicemembers Civil Relief Act of 2003, Pub. L. No. 108-189, 117 Stat. 2835 (the act), which revises the Soldiers' and Sailors' Civil Relief Act of 1940. The purpose of the act is to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect servicemembers during their military service, thereby enabling them to devote their energy to the defense needs of the United States.

The act protects servicemembers, defined as members of the uniformed services on active duty or under a call to active service in the National Guard, and commissioned officers of the Public Health Service or the National Oceanic and Atmospheric Administration in active service. The act's provisions are also extended to a Servicemembers's dependants (spouse, children, and others). It applies to any civil judicial or administrative proceeding commenced in any court or administrative agency of the United States or of any state or subdivision, including any commonwealth, territory, or possession of the United States and the District of Columbia. Therefore, the act applies to matters before the United States Bankruptcy Courts. The act is effective as of December 19, 2003, and applies to any civil case that is not final before that date.

Although the act does not directly amend the Bankruptcy Code, it may have an effect upon issues arising within a bankruptcy case. Additionally, the act creates a new, uncodified priority unsecured debt. Therefore, you are strongly encouraged to read the full text of the act, available from the Library of Congress at <http://thomas.loc.gov>.

The act provides, in part, as follows:

- \* **Default Judgments.** Before entry of a default judgment, the plaintiff must file with the court an affidavit indicating whether the defendant is or is not in military service or that the plaintiff is unable to determine the defendant's military status. If the court cannot determine the defendant's military status based upon the affidavit(s), it may require the plaintiff to post a bond before entry of default judgment. If it is later discovered that the defendant is in the military service, the bond would be available to indemnify the defendant servicemember against any loss or damage suffered due to entry of a default judgment, should that default judgment be set aside.
  
- \* **Stay of Proceedings When Servicemember Has Notice.** The act provides that at any stage before final judgment is entered in a civil action in which a servicemember is a party, the court may on its own motion or shall upon application of the servicemember (including supporting documentation) stay the action for a period of not less than 90 days.

- \* **Stay of Execution or Vacation of Judgment, Attachment, or Garnishment.** A court may on its own motion or shall upon application stay the execution of any judgment or order entered against the servicemember and vacate or stay an attachment, garnishment of property or money, to debts in the possession of the servicemember or a third party, if it determines that the servicemember's ability to comply with a court judgment or order is materially affected by military service.
- \* **Statue of Limitations.** The act tolls the statute of limitations for bringing any civil action or proceeding in a court by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns during the servicemember's period of military service (excluding any statute of limitations under the Internal Revenue Code).
- \* **Interest Cap.** Interest on an obligation or liability, entered into by the servicemember or the servicemember and spouse jointly prior to the servicemember's entry into military service, can not bear interest in excess of six percent per year during the period of military service.
- \* **Evictions and Distress.** The act provides that, absent court order, a landlord may not evict a servicemember or dependants from a primary residence for which normal monthly rent does not exceed \$2400 (subject to an annual price inflation adjustment) or subject the premises to a distress action.
- \* **Protection Under Installment Contracts for Purchase or Lease.** The act provides that a contract for the purchase of real or personal property (including a motor vehicle) or the lease or bailment of such property, for which the servicemember made a deposit or installment payment before entering military service, may not be rescinded or terminated for a breach of terms occurring before or during military service without court order.
- \* **Mortgages and Trustee Deeds.** In the case of a secured debt on real or personal property owned by a servicemember, which originated before the period of military service, the court may or shall upon application, after hearing, stay a proceeding to enforce the mortgage obligation brought during or within 90 days after the military service.
- \* **Assignment of Insurance Policies.** If, prior to entry into military service, a servicemember assigned a life insurance policy to secure a payment of an obligation, the assignee may not, absent court order, exercise any right or option obtained under the assignment during the period of military service plus one year.
- \* **Enforcement of Storage Liens.** A party that holds a lien on the property or effects of a servicemember may not, absent court order, foreclose or otherwise enforce any liens on such property during the servicemember's military service plus 90 days.
- \* **Protection of Life Insurance.** The act provides protection to the servicemember for life insurance policies up to \$250,000 in coverage and in force not less than 180 days before the date of the insured's entry into military service and at the time of application under the act.
- \* **Taxes and Assessments.** The act addresses taxes or assessments (other than income tax) due and unpaid before or during the servicemember's period of military service. This includes income taxes, taxes on personal property and real property taxes.

- \* **Anticipatory Relief.** The act provides that a servicemember may, during military service or within 180 days following release from the military, apply to a court for relief from any obligation or liability incurred by the servicemember before the servicemember's military service or from a tax or assessment falling due before or during the servicemember's military service.
- \* **Business or Trade Obligation.** The act provides that if a servicemember's business has an obligation or liability for which the servicemember is personally liable, the servicemember's assets not held in connection with the business may not be available for satisfaction of the business' obligation or liability during the servicemember's military service.
- \* **Protection of Persons Secondarily Liable on Servicemember's Obligations.** The act permits a court to extend the protections granted to Servicemembers to any persons secondarily liable on the servicemember's obligations.
- \* **Waiver of Rights by a Servicemember.** A servicemember may waive the rights and protections provided by the act.
- \* Other topics are addressed in the actual act available from the Library of Congress at <http://thomas.loc.gov>.

Thanks