

CHAPTER 359
FORMERLY
SENATE BILL NO. 206
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO PROTECTING MILITARY SERVICEMEMBERS FROM ABUSIVE PRACTICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 25D. Delaware Servicemembers Civil Relief Act.

§ 2501D. Purpose; short title.

The provisions of this chapter are intended to be supplemental to any rights that persons called to military service have under any applicable federal statutes, including the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 et seq., and under any other applicable laws of this State. This chapter may be cited as the “Delaware Servicemembers Civil Relief Act.”

§ 2502D. Definitions.

For purposes of this chapter:

(1) “Servicemember” means a resident of the State or a natural person stationed in the State who is a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, or the Delaware National Guard.

(2) “Military service” means:

a. in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, active duty, as defined in section 101(d)(1) of title 10, United States Code;

b. in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds;

c. in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service;

d. in the case of a servicemember who is a member of the Delaware National Guard, called out to serve in a state duty status pursuant to section 171 of title 20, Delaware Code, for a period of more than 30 consecutive days; or

e. any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(3) “Period of military service” means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

(4) Whenever the term “servicemember” is used, it shall be treated as including a reference to a legal representative of a servicemember, which shall include an attorney acting on behalf of the servicemember or an individual possessing power of attorney.

(5) “Court” means any court or administrative agency of the State, or a subdivision thereof, whether or not a court or administrative agency of record.

(6) “Judgment” means any judgment, decree, order, or ruling, final or temporary.

§ 2503D. 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.

(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, is guilty of perjury, under 11 *Del. C.* § 1222, a class F felony and may be punished as provided by law.

(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 2504D procedures. A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 2504D.

(f) Section 2504D 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 2504D.

(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, that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

§ 2504D. 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 of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).

(d) Additional stay.

(1) Application. A servicemember who is granted a stay of a civil action or proceeding under subsection (b) may apply for an additional stay based on continuing material affect of military duty on the servicemember's ability to appear. Such an application may be made by the servicemember at the time of the initial application under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.

(2) Appointment of counsel when additional stay refused. If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

(e) Coordination with section 2503D. A servicemember who applies for a stay under this section and is unsuccessful may not seek the protections afforded by section 2503D.

§ 2505D. Fines and penalties under contracts.

(a) Prohibition of penalties. When an action for compliance with the terms of a contract is stayed pursuant to this Act, a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

(b) Reduction or waiver of fines or penalties. If a servicemember fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if—

- (1) the servicemember was in military service at the time the fine or penalty was incurred; and
- (2) the ability of the servicemember to perform the obligation was materially affected by such military service.

§ 2506D. Stay or vacation of execution of judgments, attachments, and garnishments

(a) Court action upon material affect determination. If a servicemember, in the opinion of the court, is materially affected by reason of military service in complying with a court judgment or order, the court may on its own motion and shall on application by the servicemember—

(1) stay the execution of any judgment or order entered against the servicemember; and

(2) vacate or stay an attachment or garnishment of property, money, or debts in the possession of the servicemember or a third party, whether before or after judgment.

(b) Applicability. This section applies to an action or proceeding commenced in a court against a servicemember before or during the period of the servicemember's military service or within 90 days after such service terminates.

§ 2507D. Duration and term of stays; codefendants not in service

(a) Period of stay. A stay of an action, proceeding, attachment, or execution made pursuant to the provisions of this Act by a court may be ordered for the period of military service and 90 days thereafter, or for any part of that period. The court may set the terms and amounts for such installment payments as is considered reasonable by the court.

(b) Codefendants. If the servicemember is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under this Act, the plaintiff may proceed against those other defendants with the approval of the court.

(c) Inapplicability of section. This section does not apply to sections 2504D and 2510D.

§ 2508D. Statute of limitations.

To the extent that it is allowable by federal law, the period of a servicemember's military service shall not be included in computing any period limited by law, regulation, or order for the bringing of an action or proceeding in any court, or in any board, bureau, commission, department or other agency of government of this State or any of its political subdivisions by or against a servicemember or the servicemember's heirs, executors, administrators, or assigns, nor shall a period of military service be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

§ 2509D. Maximum rate of interest on debts incurred before military service.

(a) Interest rate limitation.

(1) Limitation to 6 percent. An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent –

a. during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage; or

b. during the period of military service, in the case of any other obligation or liability.

(2) Forgiveness of interest in excess of 6 percent. Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.

(3) Prevention of acceleration of principal. The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made.

(b) Implementation of limitation.

(1) Written notice to creditor. In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.

(2) Limitation effective as of date of order to active duty. Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with subsection (a), effective as of the date on which the servicemember is called to military service.

(c) Creditor protection. A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per years is not materially affected by reason of the servicemember's military service.

(d) Definitions. For purposes of this section, the term "interest" includes service charges, renewal charges,

fees, or any other charges (except bona fide insurance) with respect to an obligation or liability, and the term “obligation or liability” includes an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage.

§ 2510D. Anticipatory relief.

(a) Application for relief. A servicemember may, during military service or within 180 days of termination of or release from military service, apply to a court for relief—

(1) from any obligation or liability incurred by the servicemember before the servicemember’s military service; or

(2) from a tax or assessment falling due before or during the servicemember’s military service.

(b) Tax liability or assessment. In a case covered by subsection (a), the court may, if the ability of the servicemember to comply with the terms of such obligation or liability or pay such tax or assessment has been materially affected by reason of military service, after appropriate notice and hearing, grant the following relief:

(1) Stay of enforcement of real estate contracts.

a. In the case of an obligation payable 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, the court may grant a stay of the enforcement of the obligation—

1. during the servicemember’s period of military service; and

2. from the date of termination of or release from military service, or from the date of application if made after termination of or release from military service.

b. Any stay under this paragraph shall be—

1. for a period equal to the remaining life of the installment contract or other instrument, plus a period of time equal to the period of military service of the servicemember, or any part of such combined period; and

2. subject to payment of the balance of the principal and accumulated interest due and unpaid at the date of termination or release from the applicant’s military service or from the date of application in equal installments during the combined period at the rate of interest on the unpaid balance prescribed in the contract or other instrument evidencing the obligation, and subject to other terms as may be equitable.

(2) Stay of enforcement of other contracts

a. In the case of any other obligation, liability, tax, or assessment, the court may grant a stay of enforcement—

1. during the servicemember’s military service; and

2. from the date of termination of or release from military service, or from the date of application if made after termination or release from military service.

b. Any stay under this paragraph shall be—

1. for a period of time equal to the period of the servicemember’s military service or any part of such period; and

2. subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination or release from military service, or the date of application, in equal periodic installments during this extended period at the rate of interest as may be prescribed for this obligation, liability, tax, or assessment, if paid when due, and subject to other terms as may be equitable.

(c) Effect of stay on fine or penalty. When a court grants a stay under this section, a fine or penalty shall not accrue on the obligation, liability, tax, or assessment for the period of compliance with the terms and conditions of the stay.

§2511D. Certificates; Reliance on Certificates; Persons Reported Missing.

(a) Prima facie evidence

In any proceeding under this Act [sections 2501D to 2513D], a certificate obtained pursuant to 50 U.S.C. Appx. § 582 is prima facie evidence as to any of the following facts stated in the certificate:

(1) That a person named is, is not, has been, or has not been in military service.

(2) The time and the place the person entered military service.

(3) The person's residence at the time the person entered military service.

(4) The rank, branch, and unit of military service of the person upon entry.

(5) The inclusive dates of the person's military service.

(6) The monthly pay received by the person at the date of the certificate's issuance.

(7) The time and place of the person's termination of or release from military service, or the person's death during military service.

(b) DMDC Certificate

For purposes of this section, "certificate" includes the certificate provided by the Defense Manpower Data Center website in response to a single record request or a multiple record request.

(c) Reliance on Certificate

If a creditor—

(1) receives a certificate that indicates a servicemember is or was not in military service or is otherwise ineligible for a benefit or protection under this Act [sections 2501D to 2513D];

(2) denies a request for or otherwise does not provide any benefit or protection to a servicemember under this Act [sections 2501D to 2513D]; and

(3) did not receive from the servicemember or servicemember's representative written notice of the servicemember's military service at the time the creditor denied or otherwise did not provide the benefit or protection;

the creditor shall be required only to provide the benefit or protection retroactively or to provide the financial equivalent of the benefit or protection to the servicemember. The creditor shall not be liable for any further penalties, costs or damages, including any damages under this Act.

(d) Treatment of servicemembers in missing status

A servicemember who has been reported missing is presumed to continue in service until accounted for. A requirement under this Act [sections 2501D to 2513D] that begins or ends with the death of a servicemember does not begin or end until the servicemember's death is reported to, or determined by, appropriate authorities concerned or by a court of competent jurisdiction.

§ 2512D. Implementing Regulations.

The Governor, or the Governor's designee, shall implement regulations establishing a process of notification that Delaware National Guard members are called to state duty status pursuant to section 171 of title 20 and accordingly covered under this Act. Such process shall provide identification of such personnel to all persons responsible for compliance with this Act. Until such regulations are implemented, Section 2502D(2)d of this Act shall be of no force and effect.

§ 2513D. Enforcement.

(a) The Attorney General shall have the same authority to enforce and carry out this Chapter 25D as is granted by Chapter 25 of Title 29 and by §§ 2511-2527 and 2531-2536 of this title.

(b) If a court or tribunal of competent jurisdiction finds that any person has violated this Chapter 25D, the Attorney General, upon petition to the court or tribunal, shall recover from the person, on behalf of the State, in addition to all costs, a civil penalty of not more than \$10,000 per violation pursuant to § 2533 of this title. Where such violation is wilful, each day that a wilful violation continues shall be considered a separate violation.

(c) For the purpose of this chapter, a "wilful violation" occurs when the party committing the violation knew that the party's conduct was of the nature prohibited by this chapter.

Approved July 23, 2014