



SPONSOR: Sen. Townsend & Rep. Jaques
Sens. Bushweller, Ennis, Henry, Poore, Sokola; Reps.
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DELAWARE STATE SENATE
147th GENERAL ASSEMBLY

SENATE BILL NO. 206

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:

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

3 Chapter 25D. Delaware Servicemembers Civil Relief Act.

4 § 2501D. Purpose; short title.

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

9 § 2502D. Definitions.

10 For purposes of this chapter:

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

15 (2) “Military service” means:

16 a. in the case of a servicemember who is a member of the Army, Navy, Air Force,
17 Marine Corps, or Coast Guard, active duty, as defined in section 101(d)(1) of title
18 10, United States Code;

19 b. in the case of a member of the National Guard, includes service under a call to
20 active service authorized by the President or the Secretary of Defense for a period
21 of more than 30 consecutive days under section 502(f) of title 32, United States

22 Code, for purposes of responding to a national emergency declared by the
23 President and supported by Federal funds;

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

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

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

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

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

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

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

40 § 2503D. Protection of servicemembers against default judgments.

41 (a) Applicability of section. This section applies to any civil action or proceeding, including any child
42 custody proceeding, in which the defendant does not make an appearance.

43 (b) Affidavit requirement.

44 (1) Plaintiff to file affidavit. In any action or proceeding covered by this section, the court,
45 before entering judgment for the plaintiff, shall require the plaintiff to file with the court an
46 affidavit—

47 a. stating whether or not the defendant is in military service and showing necessary
48 facts to support the affidavit; or

49 b. if the plaintiff is unable to determine whether or not the defendant is in military
50 service, stating that the plaintiff is unable to determine whether or not the
51 defendant is in military service.

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

58 (3) Defendant's military status not ascertained by affidavit. If based upon the affidavits filed in
59 such an action, the court is unable to determine whether the defendant is in military service,
60 the court, before entering judgment, may require the plaintiff to file a bond in an amount
61 approved by the court. If the defendant is later found to be in military service, the bond
62 shall be available to indemnify the defendant against any loss or damage the defendant may
63 suffer by reason of any judgment for the plaintiff against the defendant, should the judgment
64 be set aside in whole or in part. The bond shall remain in effect until expiration of the time
65 for appeal and setting aside of a judgment under applicable Federal or State law or
66 regulation or under any applicable ordinance of a political subdivision of a State. The court
67 may issue such orders or enter such judgments as the court determines necessary to protect
68 the rights of the defendant under this Act.

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

72 (c) Penalty for making or using false affidavit. A person who makes or uses an affidavit permitted under
73 subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection
74 (b)(4)) knowing it to be false, is guilty of perjury, under 11 Del. C. § 1222, a class F felony and may
75 be punished as provided by law.

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

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

81 (2) after due diligence, counsel has been unable to contact the defendant or otherwise determine

82 if a meritorious defense exists.

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

85 (f) Section 2504D protection. If a servicemember who is a defendant in an action covered by this
86 section receives actual notice of the action, the servicemember may request a stay of proceeding
87 under section 2504D.

88 (g) Vacation or setting aside of default judgments.

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

95 a. the servicemember was materially affected by reason of that military service in
96 making a defense to the action; and

97 b. the servicemember has a meritorious or legal defense to the action or some part of
98 it.

99 (2) Time for filing application. An application under this subsection must be filed not later than
100 90 days after the date of the termination of or release from military service.

101 (h) Protection of bona fide purchaser. If a court vacates, sets aside, or reverses a default judgment
102 against a servicemember and the vacating, setting aside, or reversing is because of a provision of this
103 Act, that action shall not impair a right or title acquired by a bona fide purchaser for value under the
104 default judgment.

105 § 2504D. Stay of proceedings when servicemember has notice.

106 (a) Applicability of section. This section applies to any civil action or proceeding, including any child
107 custody proceeding, in which the plaintiff or defendant at the time of filing an application under this
108 section—

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

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

- 112 (b) Stay of proceedings.
- 113 (1) Authority for stay. At any stage before final judgment in a civil action or proceeding in
- 114 which a servicemember described in subsection (a) is a party, the court may on its own
- 115 motion and shall, upon application by the servicemember, stay the action for a period of not
- 116 less than 90 days, if the conditions in paragraph (2) are met.
- 117 (2) Conditions for stay. An application for a stay under paragraph (1) shall include the
- 118 following:
- 119 a. A letter or other communication setting forth facts stating the manner in which
- 120 current military duty requirements materially affect the servicemember's ability to
- 121 appear and stating a date when the servicemember will be available to appear.
- 122 b. A letter or other communication from the servicemember's commanding officer
- 123 stating that the servicemember's current military duty prevents appearance and that
- 124 military leave is not authorized for the servicemember at the time of the letter.
- 125 (c) Application not a waiver of defenses. An application for a stay under this section does not constitute
- 126 an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or
- 127 procedural defense (including a defense relating to lack of personal jurisdiction).
- 128 (d) Additional stay.
- 129 (1) Application. A servicemember who is granted a stay of a civil action or proceeding under
- 130 subsection (b) may apply for an additional stay based on continuing material affect of
- 131 military duty on the servicemember's ability to appear. Such an application may be made
- 132 by the servicemember at the time of the initial application under subsection (b) or when it
- 133 appears that the servicemember is unavailable to prosecute or defend the action. The same
- 134 information required under subsection (b)(2) shall be included in an application under this
- 135 subsection.
- 136 (2) Appointment of counsel when additional stay refused. If the court refuses to grant an
- 137 additional stay of proceedings under paragraph (1), the court shall appoint counsel to
- 138 represent the servicemember in the action or proceeding.
- 139 (e) Coordination with section 2503D. A servicemember who applies for a stay under this section and is
- 140 unsuccessful may not seek the protections afforded by section 2503D.
- 141 § 2505D. Fines and penalties under contracts.

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

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

148 (1) the servicemember was in military service at the time the fine or penalty was incurred; and

149 (2) the ability of the servicemember to perform the obligation was materially affected by such
150 military service.

151 § 2506D. Stay or vacation of execution of judgments, attachments, and garnishments

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

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

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

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

161 § 2507D. Duration and term of stays; codefendants not in service

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

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

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

170 § 2508D. Statute of limitations.

171 To the extent that it is allowable by federal law, the period of a servicemember's military service shall not be

172 included in computing any period limited by law, regulation, or order for the bringing of an action or proceeding in
173 any court, or in any board, bureau, commission, department or other agency of government of this State or any of
174 its political subdivisions by or against a servicemember or the servicemember's heirs, executors, administrators, or
175 assigns, nor shall a period of military service be included in computing any period provided by law for the
176 redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

177 § 2509D. Maximum rate of interest on debts incurred before military service.

178 (a) Interest rate limitation.

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

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

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

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

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

193 (b) Implementation of limitation.

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

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

202 called to military service.

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

207 (d) Definitions. For purposes of this section, the term "interest" includes service charges, renewal
208 charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or
209 liability, and the term "obligation or liability" includes an obligation or liability consisting of a
210 mortgage, trust deed, or other security in the nature of a mortgage.

211 § 2510D. Anticipatory relief.

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

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

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

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

221 (1) Stay of enforcement of real estate contracts.

222 a. In the case of an obligation payable in installments under a contract for the
223 purchase of real estate, or secured by a mortgage or other instrument in the nature
224 of a mortgage upon real estate, the court may grant a stay of the enforcement of the
225 obligation—

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

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

230 b. Any stay under this paragraph shall be—

231 1. for a period equal to the remaining life of the installment contract or other

232 instrument, plus a period of time equal to the period of military service of
233 the servicemember, or any part of such combined period; and
234 2. subject to payment of the balance of the principal and accumulated
235 interest due and unpaid at the date of termination or release from the
236 applicant's military service or from the date of application in equal
237 installments during the combined period at the rate of interest on the
238 unpaid balance prescribed in the contract or other instrument evidencing
239 the obligation, and subject to other terms as may be equitable.

240 (2) Stay of enforcement of other contracts

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

243 1. during the servicemember's military service; and
244 2. from the date of termination of or release from military service, or from
245 the date of application if made after termination or release from military
246 service.

247 b. Any stay under this paragraph shall be—

248 1. for a period of time equal to the period of the servicemember's military
249 service or any part of such period; and
250 2. subject to payment of the balance of principal and accumulated interest
251 due and unpaid at the date of termination or release from military service,
252 or the date of application, in equal periodic installments during this
253 extended period at the rate of interest as may be prescribed for this
254 obligation, liability, tax, or assessment, if paid when due, and subject to
255 other terms as may be equitable.

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

259 § 2511D. Enforcement.

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

262 (b) If a court or tribunal of competent jurisdiction finds that any person has wilfully violated this Chapter
263 25D, the Attorney General, upon petition to the court or tribunal, shall recover from the person, on
264 behalf of the State, in addition to all costs, a civil penalty of not more than \$10,000 per violation
265 pursuant to § 2533 of this title. Each day that a wilful violation continues shall be considered a
266 separate violation.
267 (c) For the purpose of this chapter, a “wilful violation” occurs when the party committing the violation
268 knew or should have known that the party’s conduct was of the nature prohibited by this chapter.

SYNOPSIS

Servicemembers have been afforded civil relief at the federal level under the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501 *et seq.* (the “SCRA”), or one of its predecessor statutes, since the Civil War. Similar to the purpose of the SCRA, this bill would provide for, strengthen, and expedite the national defense through protection extended to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation. However, this bill would significantly enhance the protections extended to those servicemembers who are residents of this State or stationed in this State by enacting certain SCRA protections as Delaware law and providing the Attorney General with enforcement authority over such protections. Nothing in this bill would change the requirements that already exist under the federal SCRA with respect to procedures required to be followed in civil actions in Delaware state courts involving those servicemembers. In addition, this bill would provide civil relief to members of the Delaware National Guard who are called into active military service for the State of Delaware for a period of more than 30 consecutive days, which constitutes a group of servicemembers not currently covered under the federal SCRA. Thus, this bill would keep Delaware current with the many other states that have extended SCRA protections to members of their National Guard called to state active duty.

Author: Senator Townsend