

**ACT 257**

S.B. NO. 2889

A Bill for an Act Relating to the State Military Forces.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. To provide for, strengthen, and expedite the state military forces and to enable the State of Hawaii to more successfully fulfill its duty to defend this nation and State, the purpose of this Act is to suspend enforcement of civil liabilities, in certain cases, of persons in the state military forces in order to enable those persons to devote their entire energy to the defense needs of this State in times of need. This Act makes provisions for the temporary suspension of legal proceedings and transactions that may prejudice the civil rights of persons in state military service.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## "CHAPTER CIVIL RELIEF FOR STATE MILITARY FORCES

### PART I. GENERAL PROVISIONS

§ -1 **Definitions.** As used in this chapter, unless the context indicates otherwise:

"Active service" or "active duty" includes but is not limited to the period during which the persons in military service are absent from duty on account of sickness, wounds, leave, or other lawful cause.

"Court" includes any court of competent jurisdiction of the State of Hawaii, whether or not a court of record.

"Military service" means service on state active duty in any of the state military forces.

"Period of military service" means the period beginning on the date on which the person enters state active duty and ending on the date of the person's release from state active duty or death while on state active duty.

"Person", when used with reference to the holder of any right alleged to exist against a person in military service or against a person secondarily liable under such right, includes individuals, partnerships, corporations, and any other forms of business association.

"Person in the military service" and "persons in the military service of the State" include all members of any of the state military forces, as defined in section 124A-1.

"State active duty" includes any period during which a person in the military service of the State is ordered to state active duty by the adjutant general or the governor.

§ -2 **Territorial application; jurisdiction of courts; form of procedure.** (a) This chapter shall apply to the United States, the states and territories, the District of Columbia, and all territories subject to the jurisdiction of the United States, and to proceedings commenced in any court therein, and shall be enforced through the usual forms of procedure in such courts or under their rules.

(b) When under this chapter any application is required to be made to a court in which no proceeding has already been commenced as to the matter, that application may be made to any court.

§ -3 **Protection of persons secondarily liable.** (a) Whenever:

- (1) The enforcement of any obligation or liability;
- (2) The prosecution of any suit or proceeding;
- (3) The entry or enforcement of any order, writ, judgment, or decree; or
- (4) The performance of any other act;

may be stayed, postponed, or suspended, the stay, postponement, or suspension may likewise be granted in the discretion of the court to sureties, guarantors, endorsers, accommodation makers, and others, whether primarily or secondarily subject to the obligation or liability that is stayed, postponed, or suspended.

(b) When a judgment or decree is vacated or set aside in whole or in part as provided in this chapter, the court in its discretion may likewise set aside and vacate it as to any surety, guarantor, endorser, accommodation maker, or other person, whether primarily or secondarily liable upon the contract or liability for the enforcement of which the judgment or decree was entered.

(c) Whenever by reason of the military service of a principal, the sureties

of a criminal bail bond are prevented from enforcing the attendance of their principal and performing their obligation, the court shall not enforce the provisions of the bond during the military service of that principal. The court, in accordance with principles of equity and justice, may discharge those sureties and exonerate the bail either during or after such service.

(d) Nothing in this chapter shall prevent a waiver in writing of the benefits afforded by subsections (a) and (b) by any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the obligation or liability, except that no such waiver shall be valid unless it is executed as an instrument separate from the obligation or liability in respect of which it applies. No such waiver shall be valid after the beginning of the period of military service if executed by:

- (1) An individual who subsequent to the execution of that waiver becomes a person in military service; or
- (2) A dependent of the individual.

§ **-4 Notice of benefits to persons in and persons entering military service.** The adjutant general shall ensure the giving of notice of the benefits accorded by this chapter to persons entering the state military forces.

§ **-5 Extension of benefits to persons ordered to report for state military service.** Any person who is ordered to report for state military service shall be entitled to the relief and benefits during:

- (1) The period of actual military service; and
- (2) The period beginning on the date of receipt of the order and ending on the date upon which the member reports for military service, or the date on which the order is revoked, whichever is earlier.

§ **-6 Effect on rights, remedies, etc., pursuant to written agreements entered after commencement of military service.** Nothing in this chapter shall prevent:

- (1) The modification, termination, or cancellation of any contract, lease, or bailment or any obligation secured by mortgage, trust deed, lien, or other security in the nature of a mortgage; or
- (2) The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that is security for any obligation or which has been purchased or received under a contract, lease, or bailment; pursuant to a written agreement of the parties thereto (including the person in military service, whether or not the person is a party to the obligation), or their assignees, executed during or after the period of military service of that person.

§ **-7 Exercise of rights not to affect lenders, credit, or insurers.** Application by a person in military service for, or receipt by a person in military service of, a stay, postponement, or suspension pursuant to this chapter in the payment of any tax, fine, penalty, insurance premium, or other civil obligation or liability of that person shall not by itself provide the basis for any of the following:

- (1) A determination by any lender or other person that the person in military service 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 person in military service:

- (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 such person in substantially the amount or on substantially the terms requested;
- (3) An adverse report on the creditworthiness of the person in military service by or to any person or entity engaged in the practice of assembling or evaluating consumer credit information; or
- (4) A refusal by an insurer to insure the person.

## PART II. GENERAL RELIEF

**§ -11 Default judgments; affidavits; bonds; attorneys for persons in service.** (a) In a default of any appearance by the defendant in any action or proceeding commenced in any court, no judgment shall be entered without first securing a court order directing that entry, and no order shall be made if the defendant is in the military service until after the court has appointed an attorney to represent the defendant. The court, on application, shall make such an appointment. If it appears that the defendant is in the military service, the court may require the plaintiff to file a bond approved by the court before judgment is entered. The bond shall be to indemnify the defendant in military service against any loss or damage that the defendant may suffer from any judgment should the judgment be thereafter set aside in whole or in part. The court may make other and further orders or enter a judgment that in its opinion may be necessary to protect the rights of the defendant under this chapter.

(b) Any person who makes or uses any affidavit, statement, declaration, verification, or certificate claiming that the defendant is not in military service, knowing it to be false, shall be punished as provided in chapter 710, part V.

(c) In any action or proceeding in which a person in military service is a party and does not personally appear therein or is not represented by an authorized attorney, the court may appoint an attorney to represent the person. In that case, a bond may be required and an order made to protect the rights of the person. But no attorney appointed under this chapter to protect a person in military service shall have power to waive any right of that person or bind that person.

(d) If any judgment shall be rendered in any action or proceeding governed by this section against any person in military service during the period of that service or within sixty days thereafter, and it appears that the person in military service was prejudiced by reason of the person's military service in making the person's defense thereto, then the judgment, upon application made by the person or the person's legal representative, not later than sixty days after the termination of the military service, may be opened by the court rendering the same and the defendant or the defendant's legal representative allowed to defend; provided it is made to appear that the defendant has a meritorious or legal defense to the action or some part thereof.

(e) Vacating, setting aside, or reversing any judgment because of any of the provisions of this chapter shall not impair any right or title acquired by any bona fide purchaser for value under the judgment.

**§ -12 Stay of proceedings where military service affects conduct thereof.** In any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of that service or within sixty days thereafter, the court in its discretion, on application to it

by the person or a person on such person's behalf, shall stay the action or proceeding at any stage as provided in this chapter. No stay shall issue if, in the opinion of the court, the ability of the plaintiff to prosecute the action or the defendant to conduct the defense is not materially affected by reason of the person's military service.

§ **-13 Fines and penalties on contracts.** When an action for compliance with the terms of any contract is stayed pursuant to this chapter, no fine or penalty shall accrue by reason of failure to comply with the terms of the contract during the period of the stay. In any case where a person fails to perform any obligation and a fine or penalty for the nonperformance is incurred, a court may relieve the enforcement of the fine or penalty on such terms as may be just if the person was in the military service when the penalty was incurred and that by reason of that service the ability of the person to pay or perform was thereby materially impaired.

§ **-14 Restrictions.**<sup>1</sup> In any action or proceeding commenced in any court, if an insurance policy was assigned prior to the person's period of military service to secure the payment of any obligation of that person, no assignee of the policy (except the insurer in connection with a policy loan), during the period of military service of the insured or within sixty days thereafter, except upon the consent in writing of the insured made during the period or when the premiums thereon are due and unpaid or upon the death of the insured, shall exercise any right or option by virtue of the assignment unless upon leave of court granted upon an application made by the assignee. The court may refuse to grant leave unless the court finds that the ability of the obligor to comply with the terms of the obligation is not materially affected by reason of the obligor's military service. For the purpose of this subsection, premiums which are guaranteed under part IV shall not be deemed to be due and unpaid.

(b) No person shall exercise any right to foreclose or enforce any lien for storage of household goods, furniture, or personal effects of a person in military service during the person's period of military service and for sixty days thereafter except upon an order previously granted by a court upon application and a return made and approved by the court. The court, after a hearing on an application by the person in military service or some person on behalf of the person in military service, unless in the opinion of the court the ability of the defendant to pay the storage charges due is not materially affected by reason of the person's military service, may find against a person in military service.

(c) Before or during the period of that service, or within sixty days thereafter, the court, on its own motion or on application to it by such person or a person on such person's behalf, unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of the defendant's service shall:

- (1) Stay the execution of any judgment or order entered against this person, as provided in this chapter; or
- (2) Vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this chapter.

§ **-15 Duration and term of stays; codefendants not in service.** A stay of any action, proceeding, attachment, or execution, ordered by any court under this chapter, shall be for the period of military service and sixty days thereafter or any part of that period, and may be subject to such terms as may be just,

including payment in installments of specified amounts and at such times as the court may fix. Where the person in military service is a codefendant with others, the plaintiff may proceed against the others by leave of the court.

§ -16 **Statutes of limitations as affected by period of service.** The period of military service shall not be included in computing any period for the bringing of any action or proceeding in any court, or before a state or county agency by or against any person in military service or by or against the person's heirs, personal representatives, administrators, or assigns, whether the cause of action or right or privilege to institute that action or proceeding accrued prior to or during the period of the military person's service. No part of the period of military service that occurs after the effective date of this chapter shall be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.

§ -17 **Maximum rate of interest.** No obligation or liability bearing interest at a rate in excess of six per cent a year incurred by a person in military service before that person's entry into that service, during any part of the period of military service, shall bear interest at a rate in excess of six per cent a year unless, in the opinion of the court, upon application thereto by the obligee, the ability of the person in military service to pay interest upon the obligation or liability at a rate in excess of six per cent per year is not materially affected by reason of that service, in which case the court may make such order as it deems just.

As used in this section the term "interest" includes service charges, renewal charges, fees, or other charges, except bona fide insurance, as to the obligation or liability.

§ -18 **Limitation prescribed by state tax laws as affected by period of service.** Section -16 shall not apply to any period of limitation in state tax laws set forth in title 14.

### **PART III. RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENTS, LEASES**

§ -21 **Eviction or distress during military service; stay; penalty for noncompliance; allotment of pay for payment.** (a) No eviction or distress shall be made during the period of military service for any premises occupied chiefly for dwelling purposes by the spouse or other dependents of a person in military service, except upon leave of court granted upon application or granted in an action or proceeding on the right of possession.

(b) On any such application or in any such action the court may, in its discretion and on its own motion, and shall, upon application, unless in the opinion of the court the ability of the tenant to pay the agreed rent is not materially affected by reason of such military service, stay the proceedings for not longer than three months, or it may make such other order as may be just. Where the stay is granted or other order is made by the court, the owner of the premises shall be entitled, upon application therefor, to relief in respect of the premises similar to that granted persons in military service in sections -22 and -23 to such extent and for such period as may appear to the court to be just.

(c) Any person who shall knowingly take part in any eviction or distress otherwise than as provided in subsection (a), or attempts so to do, shall be guilty of a misdemeanor.

(d) The adjutant general is empowered, subject to rules adopted under chapter 91, to order an allotment of the pay of a person in military service in reasonable proportion to discharge the rent of premises occupied for dwelling purposes by the spouse or other dependents of the person.

**§ -22 Installment contracts for purchase of property.** (a) No person who has received, or whose assignor has received, under a contract for the purchase of real or personal property, or of lease or bailment with a view to purchase of that property, a deposit or installment of the purchase price, or a deposit or installment under the contract, lease, or bailment, from a person or from the assignor of a person who, after the date of payment of such deposit or installment, has entered military service, shall exercise any right or option under the contract to rescind or terminate the contract or resume possession of the property for nonpayment of any installment due or for any other breach of the terms occurring prior to or during the period of such military service, except by action in a court of competent jurisdiction.

(b) Any person who knowingly resumes possession of property that is the subject of this section otherwise than as provided in subsection (a) or in section -6 or attempts so to do, shall be guilty of a misdemeanor.

(c) Upon the hearing of that action the court may order the repayment of prior installments or deposits or any part thereof, as a condition of terminating the contract and resuming possession of the property, or on its own motion or on application to it by the person in military service or a person on behalf of such person, shall order a stay of proceedings as provided in this chapter unless, in the opinion of the court, the ability of the defendant to comply with the terms of the contract is not materially affected by reason of that service; or it may make such other disposition of the case as may be equitable to preserve the interests of all parties.

**§ -23 Mortgages, trust deeds, and other securities.** (a) This section applies solely to obligations secured by mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service before or at the commencement of the period of the military service and still owned by the person.

(b) In any proceeding commenced in any court during the period of military service to enforce that obligation arising out of nonpayment of any sum due or out of any other breach of the terms occurring prior to or during the period of the person's military service, the court may, after hearing and on its own motion, or shall, on application to it by the person in military service or some person on behalf of the person in military service, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of the defendant's military service:

- (1) Stay the proceedings as provided in this chapter; or
- (2) Make such other disposition of the case as may be equitable to conserve the interests of all parties.

(c) No sale, foreclosure, or seizure of property for nonpayment of any sum due under any such obligation, or for any other breach of the terms thereof, whether under a power of sale, under a judgment entered upon warrant of attorney to confess judgment contained therein, shall be valid if made during the period of military service or within sixty days thereafter, except pursuant to an agreement as provided in section -6, unless upon an order previously granted by the court and a return thereto made and approved by the court.

Any person who knowingly makes, attempts, or causes to be made any such sale, foreclosure, or seizure of property, shall be guilty of a misdemeanor.

**§ -24 Settlement of cases involving stayed proceedings to foreclose mortgage on, resume possession of, or terminate contract for purchase of, personal property.** Where a proceeding to foreclose a mortgage upon or to resume possession of personal property, or to rescind or terminate a contract for its purchase, has been stayed as provided in this chapter, the court, unless in its opinion an undue hardship would result to the dependents of the person in the military service, may appoint three disinterested parties to appraise the property and, based upon the report of the appraisers, order that sum, if any, as may be just, paid to the person in military service or the person's dependent, as the case may be, as a condition of foreclosing the mortgage, resuming possession of the property, or rescinding or terminating the contract.

**§ -25 Termination of leases by lessees.** (a) This section applies to any lease of premises occupied for a dwelling, or for professional, business, agricultural, or similar purposes in any case in which:

- (1) The lease was executed by or on the behalf of a person who, after the execution of the lease, entered military service; and
- (2) The leased premises have been occupied for one or more of those purposes by the person or by the person and the person's dependents.

(b) Any lease described in subsection (a) may be terminated by notice in writing delivered to the lessor or the lessor's grantee or to one of their agents by the lessee at any time following the date of the beginning of the lessor's or the lessor's grantee's period of military service. Delivery of the notice may be made by mailing it. Termination of any such lease providing for monthly payment of rent shall not be effective until thirty days after the date on which the next rental payment is due and payable following the date of delivery or mailing of the notice. In the case of all other leases, termination shall be effected on the last day of the month following the month in which the notice is delivered or mailed and in such case any unpaid rental for a period preceding termination shall be computed pro rata and any rental paid in advance for a period succeeding termination shall be refunded by the lessor or the lessor's assignee. Upon application by the lessor to the appropriate court prior to the termination period provided for in the notice, any relief granted in this subsection shall be subject to such modifications or restrictions the court may find in the interests of justice and equity.

(c) Any person who knowingly seizes, holds, or retains the personal effects, clothing, furniture, or other property of any person who has lawfully terminated a lease covered by this section, or in any manner interferes with the removal of such property from the premises covered by such lease, for the purpose of subjecting or attempting to subject any such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be guilty of a misdemeanor.

**§ -26 Life insurance policies; penalties.** (a) Where any life insurance policy on the life of a person in military service is the subject of an action or proceeding under this chapter, the court may:

- (1) Stay the proceedings as provided in this chapter; or
- (2) Make such other disposition of the case as may be equitable to preserve the interest of all parties.



This subsection shall not be construed in any way as affecting or as limiting the scope of section -23.

(b) Any person who knowingly acts in violation of this section, or attempts to do so, shall be guilty of a misdemeanor.

§ -27 **Extension of benefits to dependents.** Dependents of a person in military service shall be entitled to the benefits accorded to persons in military service under this part upon application to a court therefor, unless in the opinion of the court the ability of these dependents to comply with the terms of the obligation, contract, lease, or bailment has not been materially impaired by reason of the military service of the person upon whom the applicants are dependent.

#### PART IV. INSURANCE

§ -31 **Definitions.** As used in this part:

"Insured" includes any person in the state military forces, whose life is insured under and who is the owner and holder and has an interest in a policy.

"Insurer" includes any firm, corporation, partnership, or association chartered or authorized to engage in the insurance business to issue a policy as defined by the laws of a state or of the United States.

"Policy" includes any contract of life insurance or policy on a life, endowment, or term plan, including any benefit in the nature of life insurance arising out of membership in any fraternal or beneficial association, that does not provide for the payments of any sum less than the face value thereof or for the payment of an additional amount as premiums if the insured engages in the military service of the United States or which does not contain any limitations or restrictions upon coverage relating to engagement in or pursuit of certain types of activities which a person might be required to engage in by virtue of the person's being in that military service, and:

- (1) Which is in force on a premium-paying basis at the time of application for benefits hereunder; and
- (2) Which was made and a premium paid thereon not less than one hundred eighty days before the date insured entered into the military service.

This definition does not apply to policies or contracts of life insurance issued under the War Risk Insurance Act, as amended, the World War Veterans Act, as amended, or the National Service Life Insurance Act of 1940, as amended.

"Premium" includes the amount specified in the policy as the stipend to be paid by the insured at regular intervals during the period therein stated.

§ -32 **Persons entitled to benefits; applications; amount of insurance protected.** The benefits and privileges of this part shall apply to any insured when the insured, or a person designated by the insured, makes written application for protection under this part, unless the insurance commissioner in passing on the application finds that the policy is not entitled to protection under this part. The adjutant general shall give notice to the state military forces of the provisions of this part, and shall include in the notice an explanation of the provisions for the information of those desiring to make application for benefits. The original of the application shall be sent by the insured to the insurer, and a copy to the insurance commissioner. The total amount of insurance on the life of one insured under policies covered by this part shall not exceed \$10,000. If an insured applies for protection of policies on the insured's life totaling insurance in excess of \$10,000, the insurance commissioner may have the amount of insurance divided into two

or more policies so that the protection of this part may be extended to include policies for a total amount of insurance not to exceed \$10,000, and a policy which affords the best security to the government shall be given preference.

§ -33 **Form of application; reports to insurance commissioner by insurer; policy deemed modified upon application for protection.** Any writing signed by the insured and identifying the policy and the insurer, and agreeing that the insured's rights under the policy are subject to and modified by this part, shall be sufficient as an application for the benefits of this part, but the insurance commissioner may require the insured and insurer to execute other appropriate forms. Upon receipt of the application of the insured, the insurer shall furnish such report to the insurance commissioner concerning the policy as shall be prescribed by rules adopted under chapter 91. When an insured has applied for protection under this part, the policy is deemed to have been modified to conform to the provisions of this part.

§ -34 **Determination of policies entitled to protection; notice to parties; lapse of policies for nonpayment of premiums, etc.** The insurance commissioner shall determine whether the policy is entitled to protection under this part and shall notify the insured and the insurer of that determination. Any policy found by the insurance commissioner to be entitled to protection under this part, subsequent to date of application and during the period of state military service of the insured and for sixty days after the expiration of that service, shall not lapse or otherwise terminate or be forfeited for the nonpayment of a premium becoming due and payable, or the nonpayment of any indebtedness or interest.

§ -35 **Rights and privileges of insured during period of protection.** No dividend or other monetary benefit under a policy shall be paid to an insured or used to purchase dividend additions while a policy is covered by this part except with the approval of the insurance commissioner. Without this approval, those dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with the insurer. No cash value, loan value, withdrawal of dividend accumulation, unearned premium, or other value of similar character shall be available to the insured while the policy is covered under this part except upon approval by the insurance commissioner. The insured's right to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by this part.

§ -36 **Deduction of unpaid premiums upon settlement of policies maturing during protection.** In the event of maturity of a policy as a death claim or otherwise before the expiration of the period of protection under this part, the insurer in making settlement shall deduct from the amount of insurance the premiums guaranteed under this part, together with interest thereon at the rate fixed in the policy for policy loans. If no rate of interest is specifically fixed in the policy, the rate shall be the rate fixed for policy loans in other policies issued by the insurer at the time the policy brought under this chapter was issued. The amount deducted by reason of the protection afforded by this part shall be reported by the insurer to the insurance commissioner.

§ -37 **Guarantee of premiums and interest by State; settlement of amounts due upon expiration of protection; subrogation of state crediting debt repayments.** Payment of premiums and interest thereon at the rate specified

in section -36 becoming due on a policy while protected under this part is guaranteed by the State, and if the amount so guaranteed is not paid to the insurer prior to the expiration of the period of insurance protection under this part, the amount then due shall be treated by the insurer as a policy loan. If at the expiration of that period the cash surrender value is less than the amount then due, the policy shall then cease and the State shall pay the insurer the difference between the amount and the cash surrender value. The amount paid by the State to an insurer on account of applications approved under this part shall become a debt due to the State by the insured on whose account payment was made and, notwithstanding any other law, the amount may be collected either by deduction from any amount due the insured by the State or as otherwise authorized by law. Any moneys received as repayment of debt incurred under this part shall be credited to the appropriation for the payment of claims under this part.

§ -38 **Rules; finality of determinations.** The insurance commissioner shall adopt rules under chapter 91 to implement this part. The findings of fact and conclusions of law made by the insurance commissioner in administering this part shall be final, and shall not be subject to review by any other official or agency of the government.

## PART V. TAXES AND PUBLIC LANDS

§ -41 **Taxes respecting personalty, money, credits, or realty; sale of property to enforce collection; redemption of property sold; penalty for nonpayment; notice of rights to beneficiaries of section.** (a) This section applies to any general or special unpaid taxes or assessments, that fall due prior to or during the period of state military service, on personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes by persons in state military service or the person's dependents at the commencement of the period of military service and still so occupied by the person's dependents or employees. This section does not apply to taxes on income.

(b) No sale of any property in subsection (a) shall be made to enforce the collection of any state or county tax or assessment, and no proceeding or action for that purpose shall commence, except upon leave of court granted upon application made by the state department of taxation or appropriate county agency. The court, unless in its opinion the ability of the person in military service to pay the taxes or assessments is not materially affected by reason of state military service, may stay the proceedings or the sale for a period of not more than sixty days after the termination of the period of military service of the person.

(c) When by law the property may be sold or forfeited to or enforce the collection of the tax or assessment, the person in state military service shall have the right to redeem or commence an action to redeem the property, at any time not later than sixty days after the termination of state military service, but in no case later than sixty days after the date if this chapter is repealed; provided this shall not shorten any period provided by any other state or county law providing for that redemption.

(d) Whenever under this chapter any tax or assessment is not required to be paid when due, the tax or assessment due and unpaid shall bear interest until paid at the rate of six per cent a year, and no other penalty or interest shall be incurred by reason of the nonpayment. Any lien for the unpaid taxes or assessment shall also include the interest thereon.

§ **-42 Rights to public lands not forfeited; grazing lands.** (a) No right to any lands owned or controlled by the State, initiated or acquired under any laws of the State, including the mining and mineral leasing laws, by a person prior to entering state military service shall during the period of that service be forfeited or prejudiced by reason of the person's absence from the land or the person's failure to perform any work or make any improvements thereon or the person's failure to do any other act required by or under those laws.

(b) This section does not control specific requirements contained in this part.

§ **-43 Income taxes; collection deferred; interest; statute of limitations.** The collection from any person in the state military forces of any tax on the income of such person pursuant to chapter 235, whether falling due prior to or during the person's period of military service, shall be deferred for a period of not more than sixty days after the termination of the person's period of military service if such person's ability to pay such tax is materially impaired by reason of the service. No interest on any amount of tax, collection of which is deferred for any period under this section, and no penalty for nonpayment of such amount during such period, shall accrue for such period of deferment by reason of nonpayment. The running of any statute of limitations against the collection of such tax by distraint or otherwise shall be suspended for the period of military service of any person whose tax collection is deferred under this section, and for an additional period of sixty days beginning with the day following the period of military service.

The provisions of this section shall not apply to the retention or recovery of debt under sections 231-51 to 231-59.

## PART VI. ADMINISTRATIVE REMEDIES

§ **-51 Transfers to take advantage of chapter.** Notwithstanding the provisions of this chapter to the contrary, the court shall enter such lawful judgment or order, in any proceeding to enforce a civil right, where the court is satisfied that any interest, property, or contract, since the effective date of this chapter, has been transferred or acquired with intent to delay the just enforcement of such right by taking advantage of this chapter.

§ **-52 Certificates of service; persons reported missing.** (a) In any proceeding under this chapter, a certificate signed by the adjutant general shall be prima facie evidence as to any of the following facts stated in the certificate:

- (1) That a person named has not served, is serving, or has served in the state military forces;
- (2) The time when and the place where the person entered military service, the person's residence at that time, and the rank, branch, and unit of such service that the person entered;
- (3) The dates the person served in the state military forces;
- (4) The monthly pay received by the person at the date of issuing the certificate; and
- (5) If applicable, the time when and the place where the person died in or was discharged from such service.

(b) It is the duty of the adjutant general to furnish a certificate on application; and any certificate signed by any one of the officers of the adjutant general

or by any person purporting upon the face of the certificates to have been so authorized shall be prima facie evidence of its contents and of the authority of the officer to issue it.

(c) Where a person in military service has been reported missing, the person shall be presumed to continue in the service until accounted for, and no period under this chapter which begins or ends with the death of such person shall begin or end until the death of such person is in fact reported to or found by the department of defense, or any court or board thereof, or until death is determined by a court of competent jurisdiction. No period limited by this chapter that begins or ends with the death of such person shall be extended beyond a period of six months after the time when this chapter ceases to be in force.

§ -53 **Revocation of interlocutory orders.** Any interlocutory order under this chapter, made upon the court's own motion, may be revoked, modified, or extended by it upon appropriate notice to the parties.

## PART VII. FURTHER RELIEF

§ -61 **Stay of enforcement of obligations, liabilities, taxes.** (a) A person, at any time during the person's period of military service or within sixty days thereafter, may apply to a court for relief from any obligation or liability incurred by that person prior to the person's period of military service or for relief of any tax or assessment whether falling due prior to or during the person's period of military service. The court, after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of such obligation or liability or to pay such tax or assessment has not been materially affected by reason of the applicant's military service, may grant the following relief:

- (1) In the case of an obligation payable under its terms in installments under a contract for the purchase of real estate, or secured by a mortgage or other installment in the nature of a mortgage upon real estate, a stay of the enforcement of the obligation during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period equal to the period of the remaining life of the installment contract or other instrument plus a period of time equal to the period of military service of the applicant, or any part of such combined period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, as the case may be, in equal installments during the combined period at the rate of interest on the unpaid balance as is prescribed in the contract, or other instrument evidencing the obligation, for installments paid when due, and subject to other terms as may be just; and
- (2) In the case of any other obligation, liability, tax, or assessment, a stay of the enforcement thereof during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period of time equal to the period of military service of the applicant or any part of such period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of such period of military service or from the

date of application, as the case may be, in equal periodic installments during such extended period at such rate of interest as may be prescribed for such obligation, liability, tax, or assessment, if paid when due, and subject to such other terms as may be just.

(b) When any court has granted a stay as provided in this section, no fine or penalty by reason of failure to comply with the terms or conditions of the obligation, liability, tax, or assessment as to which the stay was granted, shall accrue during the period in which the terms and conditions of the stay are complied with.

§ -62 **Power of attorney.** (a) Notwithstanding any other provision of law, a power of attorney that:

- (1) Was duly executed by a person in the military service who is in a missing status (as defined in section 551(2) of title 37, United States Code);
- (2) Designates that person's spouse, parent, or other named or relative as the person's attorney in fact for certain specified, or all, purposes; and
- (3) Expires by its terms after that person entered a missing status, and before or after the effective date of this section;

shall be automatically extended for the period that the person is in a missing status.

(b) No power of attorney executed after the effective date of this section by a person in the military service may be extended under subsection (a) if the document by its terms clearly indicates that the power granted expires on the date specified even though that person, after the date of execution of the document, enters a missing status.

§ -63 **Reinstatement of health insurance coverage upon release from service.** A person who, by reason of service in the state military forces is entitled to the rights and benefits of this chapter, shall be entitled upon release from such military service to reinstatement of any health insurance which was:

- (1) In effect on the day before service commenced; and
- (2) Terminated effective on a date during the period of service.

(b) An exclusion or a waiting period may not be imposed in connection with reinstatement of health insurance coverage for a health or physical condition of a person under subsection (a), or a health or physical condition for any other person who is covered by the insurance by reason of the coverage of such person, if:

- (1) The condition arose before or during that person's period of training or service in the state military forces;
- (2) An exclusion or waiting period would not have been imposed for the condition during a period of coverage of participation by such person in the insurance; and
- (3) The condition of such person has not been determined by the adjutant general to be a disability incurred or aggravated in the line of duty, within the meaning of section 38 U.S.C. sec. 105.

(c) Subsection (a) does not apply in the case of employer-offered insurance benefits in which a person referred to in such subsection is entitled to participate pursuant to 38 U.S.C. sec. 2021 et seq."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun, before its effective date.

**SECTION 4.** This Act shall take effect on July 1, 1994.

(Approved June 30, 1994.)

**Note**

1. No subsection (a) designation.