

Chapter 7

Utah Service Members' Civil Relief Act

39-7-101 Short title.

This chapter is known as the Utah Service Members' Civil Relief Act.

Enacted by Chapter 306, 1997 General Session

39-7-102 Definitions.

- (1) "Dependent" means the spouse and children of a service member or any other person dependent upon the service member for support.
- (2) "Interest" includes service charges, renewal charges, fees, or any other charges in respect to any obligation or liability.
- (3) "Military service" means active, full-time service with a recognized military unit called into service by the governor for at least 30 days.
- (4) "Service member" means any member of the National Guard serving on active military service in an organized military unit.

Enacted by Chapter 306, 1997 General Session

39-7-103 Application of this chapter.

- (1) This chapter shall apply to all service members on military orders who are unable to perform, continue, or complete civil obligations due to military service.
- (2) This chapter does not apply to military service performed under orders issued pursuant to Title 10 or Title 32, United States Code.
- (3) Proper application of this chapter shall suspend or postpone actions upon those obligations until 60 days after discharge from active, full-time, military service.

Enacted by Chapter 306, 1997 General Session

39-7-104 Reopening default judgments.

- (1) A default judgment rendered in any civil action against a service member during a period of military service or within 30 days after termination of the military service may be set aside if:
 - (a) it appears that the person was prejudiced by reason of his military service in making a defense to the action;
 - (b) application by the person or his legal representative is made to the court rendering the judgment not later than 60 days after the termination of the military service; and
 - (c) the application provides enough facts that it appears that the defendant has a meritorious or legal defense to the action or some part of the action.
- (2) Vacating, setting aside, or reversing any judgment because of any of the provisions of this chapter may not impair any right or title acquired by any bona fide purchaser for value under the judgment.

Enacted by Chapter 306, 1997 General Session

39-7-105 Stay of proceedings.

- (1) If at any point during an action or proceeding it appears that a plaintiff or defendant is a service member and in the conduct of the proceedings may be adversely affected by his military service, the court may, on its own motion, stay the proceedings.
- (2) The court may stay the proceedings if the service member or another person on his behalf makes a request in writing to the court, unless the court determines on the record that the ability of the plaintiff to pursue the action or the defendant to conduct his defense is not materially affected by reason of his military service.

Enacted by Chapter 306, 1997 General Session

39-7-106 Fines and penalties on contracts.

- (1) If compliance with the terms of a contract is stayed pursuant to this chapter, a fine or penalty may not accrue by reason of failure to comply during the period of the stay.
- (2) If a service member has not obtained a stay and a fine or penalty is imposed for nonperformance of an obligation, a court may relieve enforcement if the service member was in military service when the penalty was incurred and his ability to pay or perform was materially impaired.

Enacted by Chapter 306, 1997 General Session

39-7-107 Exercise of rights not to affect future financial transactions.

Application by a service member in military service for, or receipt of, a stay, postponement, or suspension under the provisions of this chapter in the payment of any fine, penalty, insurance premium, or other civil obligation or liability may not be used for any of the following:

- (1) a determination by any lender or other person that the service member is unable to pay any civil obligation or liability in accordance with its terms;
- (2) with respect to a credit transaction between a creditor and a service member:
 - (a) a denial or revocation of credit by the creditor;
 - (b) a change by the creditor in the terms of an existing credit arrangement; or
 - (c) a refusal by the creditor to grant credit to the service member in substantially the amount or on substantially the terms requested; or
- (3) an adverse report relating to the creditworthiness of the service member by or to any person or entity engaged in the practice of assembling or evaluating consumer credit information.

Enacted by Chapter 306, 1997 General Session

39-7-108 Stay of execution of judgment.

Unless the court determines on the record that the ability of the service member to comply with the judgment or order entered or sought is not materially affected by reason of his military service, the court may, on its own motion, or upon application to it by the service member or another person on his behalf:

- (1) stay the execution of any judgment or order entered against the service member, as provided in this chapter; and
- (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.

Enacted by Chapter 306, 1997 General Session

39-7-109 Duration of stays.

- (1) Any stay of any action, proceeding, attachment, or execution, ordered by any court under the provisions of this chapter may be ordered for the period of military service plus 60 days after its termination or any part of that time period.
- (2) Where the service member in military service is a codefendant with others, the plaintiff may, with leave of the court, proceed against the others.

Enacted by Chapter 306, 1997 General Session

39-7-110 Statutes of limitations affected by military service.

The period of military service is not included in computing any period limited by law, rule, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether the cause of action or the right or privilege to institute the action or proceeding has accrued prior to or during the period of military service.

Enacted by Chapter 306, 1997 General Session

39-7-111 Maximum rate of interest.

An obligation or liability bearing interest at a rate in excess of six percent per year incurred by a service member in military service before his entry into military service may not, during any part of the period of military service, bear interest at a rate in excess of six percent per year unless, in the opinion of the court and upon application to the court by the obligee, the ability of the service member to pay interest upon the obligation or liability at a rate in excess of six percent per year is not materially affected by reason of his service. The court may make any order in the action that, in its opinion, is just.

Enacted by Chapter 306, 1997 General Session

39-7-112 Dependent benefits.

Dependents of a service member in military service are entitled to the benefits accorded to service members in military service under the provisions of Sections 39-7-113 through 39-7-117 upon application to a court, unless, in the opinion of the court, the ability of the 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 service member upon whom the applicants are dependent.

Enacted by Chapter 306, 1997 General Session

39-7-113 Eviction or distress of dependents.

- (1) A landlord may not evict or take and hold property of a service member or the service member's dependents for nonpayment of rent during the period of military service if the rent on the premises occupied by the service member or the service member's dependents is less than \$2,400 per month unless a court allows it after application to the court and an order granted in an action or proceeding affecting the right of possession.
- (2) In any action affecting the right of possession, the court may, on its own motion, stay the proceedings for not longer than three months, or make any order the court determines to be

reasonable and just under the circumstances, unless the court finds that the ability of the tenant to pay the agreed rent is not materially affected by reason of the service member's military service.

- (3) When a stay is granted or other order is made by the court, the owner of the premises shall be entitled, upon application, to relief with respect to the premises similar to that granted service members in military service in Sections 39-7-114 through 39-7-116 to the extent and for any period as the court determines to be just and reasonable under the circumstances.
- (4) Any person who knowingly takes part in any eviction or distress otherwise than as provided in Subsection (1), or attempts to do so, is guilty of a class B misdemeanor.
- (5) The governor is empowered to order an allotment of the pay of a service member in military service in reasonable proportion to discharge the rent of premises occupied for dwelling purposes by any dependents of the service member.

Amended by Chapter 148, 2018 General Session

39-7-114 Installment contracts.

- (1) The creditor of a service member who, prior to entry into military service, has entered into an installment contract for the purchase of real or personal property may not terminate the contract or repossess the property for nonpayment or any breach occurring during military service without an order from a court of competent jurisdiction.
- (2) The court, upon application to it under this section, may, unless the court finds on the record that the ability of the service member to comply with the terms of the contract is not materially affected by reason of the service member's military service:
 - (a) order repayment of any prior installments or deposits as a condition of terminating the contract and resuming possession of the property;
 - (b) order a stay of the proceedings on its own motion, or on motion by the service member or another person on the service member's behalf; or
 - (c) make any other disposition of the case it considers to be equitable to conserve the interests of all parties.
- (3) Any person who knowingly repossesses property which is the subject of this section other than as provided in Subsection (1) is guilty of a class B misdemeanor.

Amended by Chapter 148, 2018 General Session

39-7-115 Mortgage foreclosures.

- (1) The creditor of a service member who, prior to entry into military service, has entered into a mortgage contract with the service member or the service member's dependent for the purchase of real or personal property may not foreclose on the mortgage or repossess the property for nonpayment or any breach occurring during military service without an order from a court of competent jurisdiction.
- (2) The court, upon application to it under this section, may, unless the court finds on the record that the ability of the service member to comply with the terms of the mortgage is not materially affected by reason of the service member's military service:
 - (a) order repayment of any prior installments or deposits as a condition of terminating the contract and resuming possession of the property;
 - (b) order a stay of the proceedings on its own motion, or on motion by the service member or another person on the service member's behalf; or

- (c) make any other disposition of the case as it considers to be equitable to conserve the interests of all parties.
- (3) In order to come within the provisions of this section, the service member or dependent shall establish the following:
 - (a) that relief is sought on an obligation secured by a mortgage, trust deed, or other security in the nature of a mortgage on either real or personal property;
 - (b) that the obligation originated prior to the service member's entry into military service;
 - (c) that the property was owned by the service member or the service member's dependent prior to the commencement of military service; and
 - (d) that the property is still owned by the service member or the service member's dependent at the time relief is sought.
- (4) Any person who knowingly forecloses on property which is the subject of this section other than as provided in Subsection (1) is guilty of a class B misdemeanor.

Amended by Chapter 148, 2018 General Session

39-7-116 Application for relief.

- (1) A person may, at any time during his period of military service or within 60 days after discharge or termination, apply to a court for relief in respect of any obligation or liability incurred by the person prior to his period of military service.
- (2) The court, after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of the obligation or liability has not been materially affected by reason of his military service, may grant the following relief:
 - (a) 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 instrument 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 the period of military service or from the date of application if made after termination of military 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 the 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, 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 any other terms as the court may consider just.
 - (b) In the case of any other obligation or liability, a stay of the enforcement during the applicant's period of military service and, from the date of termination of the period of military service or from the date of application if made after termination of the period of military service, for a period of time equal to the period of military service of the applicant or any part of that 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 the date of application, in equal periodic installments during the extended period at the rate of interest prescribed for the obligation or liability, if paid when due, and subject to other terms the court considers to be reasonable and just.
- (3) When any court has granted a stay as provided in this section, a fine or penalty may not be accrued for failure to comply with the terms or conditions of the obligation or liability for which the stay was granted during the period the terms and conditions of the stay are complied with.

Enacted by Chapter 306, 1997 General Session

39-7-117 Storage liens.

- (1) A person may not exercise any right to foreclose or enforce any lien for storage of household goods, furniture, or personal effects of a service member in military service during the service member's period of military service and for 60 days after termination or discharge, except upon an order previously granted by a court upon application and a return to the court made and approved by the court. In the proceeding the court may, after hearing the matter, on its own motion, and shall, on application to it by the service member in military service or another person on the service member's behalf, unless in the opinion of the court the ability of the service member to pay the storage charges due is not materially affected by reason of the service member's military service:
 - (a) stay the proceedings as provided in this chapter; or
 - (b) make any other disposition the court considers to be equitable to conserve the interest of all the parties.
- (2) The enactment of the provisions of this section may not be construed in any way as affecting or limiting the scope of Section 39-7-115.
- (3) Any person who knowingly takes any action contrary to the provisions of this section, or attempts to do so, is guilty of a class B misdemeanor.

Amended by Chapter 148, 2018 General Session

39-7-118 Professional liability protection for certain persons ordered to active duty in the armed forces.

- (1) This section applies to a person who:
 - (a) is ordered to military service, other than training; and
 - (b) immediately before receiving the order to military service:
 - (i) was engaged in the furnishing of health-care services or other services determined by rule to be professional services; and
 - (ii) had in effect a professional liability insurance policy that does not continue to cover claims filed with respect to the service member during the period of the service member's active duty unless the premiums are paid for coverage for that period.
- (2) Coverage of a person referred to in Subsection (1) by a professional liability insurance policy shall be suspended by the insurance carrier in accordance with Subsection (3) upon receipt of a written request by the service member.
- (3) A professional liability insurance carrier:
 - (a) may not require that premiums be paid by or on behalf of a service member for any professional liability insurance coverage suspended pursuant to Subsection (2); and
 - (b) shall refund any amount paid for coverage for the period of the suspension or, upon the election of the service member, apply the amount for the payment of any premium becoming due upon the reinstatement of the coverage.
- (4) A professional liability insurance carrier is not liable with respect to any claim that is based on professional conduct, including any failure to take any action in a professional capacity of a person that occurs during a period of suspension of that person's professional liability insurance under this section. For the purposes of the preceding sentence, a claim based upon the failure of a professional to make adequate provision for patients to be cared for during the period of the professional's military service is considered an action or failure to take action before the beginning of the period of suspension of professional liability insurance under this section,

except in a case in which professional services were provided after the date of the beginning of the period.

- (5)
 - (a) Professional liability insurance coverage suspended in the case of any service member pursuant to Subsection (2) shall be reinstated by the insurance carrier on the date on which the service member transmits to the insurance carrier a written request for reinstatement.
 - (b) The request of a service member for reinstatement shall be effective only if the service member transmits the request to the insurance carrier within 30 days after the date on which the service member's military service is terminated. The insurance carrier shall notify the person of the due date for payment of the insurance premium. The premium shall be paid by the person within 30 days after receipt of the notice.
- (6) The period for which professional liability insurance coverage shall be reinstated for a service member under this section may not be less than the balance of the period for which coverage would have continued under the policy if the coverage had not been suspended.
- (7) An insurance carrier may not increase the amount of the premium charged for professional liability insurance coverage of any service member for the minimum period of the reinstatement of coverage required under Subsection (5) to an amount greater than the amount chargeable for the coverage for the period before the suspension, except to the extent of any general increase in the premium amounts charged by that carrier for the same professional liability coverage for other persons similarly covered by the same insurance during the period of the suspension.
- (8) This section does not:
 - (a) require a suspension of professional liability insurance coverage for any person who is not a person referred to in Subsection (1) and who is covered by the same professional liability insurance as a person referred to in Subsection (1); or
 - (b) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.
- (9) A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a person whose professional liability insurance coverage has been suspended under Subsection (2) shall be stayed until the end of the period of the suspension if:
 - (a) the action was commenced during the period or suspension;
 - (b) the action is based on an act or omission that occurred before the date on which the suspension became effective; and
 - (c) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional liability negligence or other professional liability of the person.

Enacted by Chapter 306, 1997 General Session

39-7-119 Rulemaking authority.

The Adjutant General may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this chapter.

Amended by Chapter 382, 2008 General Session