

Effective 5/4/2022

Chapter 6 Utah Service Members' Civil Relief Act

39A-6-101 Utah Service Members' Civil Relief Act -- Definitions.

As used in this chapter:

- (1) "Dependent" means the spouse and children of a service member or any other individual 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) "Service member" means any member of the Utah National Guard or Utah State Defense Force serving on active military service in an organized military unit.
- (4) "State military service" means active, full-time service with a recognized military unit called into service by the governor for at least 30 days.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-102 Application of this chapter.

- (1) Military members of the National Guard or the Defense Force, when ordered to state military service by the governor have the same rights and protections as provided by federal law for activation to federal military service.
- (2) Proper application of this chapter shall suspend or postpone actions upon certain obligations until 60 days after discharge from active, full-time state military service.

Enacted by Chapter 373, 2022 General Session

39A-6-103 Rulemaking authority.

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

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-104 Reopening default judgments.

- (1) A default judgment rendered in any civil action against a service member during a period of state military service or within 30 days after termination of the state military service may be set aside if:
 - (a) it appears that the service member was prejudiced by reason of the service member's state military service in making a defense to the action;
 - (b) application by the service member or the service member's legal representative is made to the court rendering the judgment not later than 60 days after the termination of the service member's state 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-105 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 the service member's state 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 individual on the service member's 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 a defense is not materially affected by reason of the service member's state military service.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-106 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 state military service when the penalty was incurred and the service member's ability to pay or perform was materially impaired.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-107 Exercise of rights not to affect future financial transactions.

Application by a service member in state 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-108 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 the service member's state military service, the court may, on its own motion, or upon application by the service member or another individual on the service member's 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-109 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 state military service plus 60 days after its termination or any part of that time period.
- (2) If the service member in state military service is a codefendant with others, the plaintiff may, with leave of the court, proceed against the others.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-110 Statutes of limitations affected by state military service.

The period of state 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 individual in state military service or by or against the service member's 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 state military service.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-111 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 state military service before the service member's entry into state military service may not, during any part of the period of state 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 the service member's service. The court may make any order in the action that, in the court's opinion, is just.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-112 Dependent benefits.

Dependents of a service member in state military service are entitled to the benefits accorded to service members in state military service under the provisions of Sections 39A-6-113 through 39A-6-117 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 state military service of the service member upon whom the applicants are dependent.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-113 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 state 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 state 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 39A-6-114 through 39A-6-116 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 state military service in reasonable proportion to discharge the rent of premises occupied for dwelling purposes by any dependents of the service member.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-114 Installment contracts.

- (1) The creditor of a service member who, prior to entry into state 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 state 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 the court's own motion, or on motion by the service member or another individual on the service member's behalf; or
 - (c) make any other disposition of the case the court 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-115 Mortgage foreclosures.

- (1) The creditor of a service member who entered into a mortgage contract with the service member or the service member's dependent for the purchase of real or personal property prior to the service member's entry into state military service may not foreclose on the mortgage or repossess the property for nonpayment or any breach occurring during the service member's state military service without an order from a court of competent jurisdiction.
- (2) The court, upon an application 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 state 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 the court's own motion, or on motion by the service member or another individual on the service member's behalf; or
 - (c) make any other disposition of the case as the court 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 state military service;
 - (c) that the property was owned by the service member or the service member's dependent prior to the commencement of state 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-116 Application for relief.

- (1) A service member may, at any time during the service member's period of state 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 service member prior to the service member's period of military service.
- (2) The court, after appropriate notice and hearing, unless in the court's opinion the ability of the applicant to comply with the terms of the obligation or liability has not been materially affected by reason of the service member's state 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 state military service and, from the date of termination of the period of state military service or from the date of application if made after termination of state 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 state 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 state 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 state military service and, from the date of termination of the period of state military service or from the date of application if made after termination of the period of state military service, for a period of time equal to the period of state 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 state 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-117 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 state military service during the service member's period of state 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 by the service member in state military service or another individual 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 state 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 39A-6-115.
- (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.

Renumbered and Amended by Chapter 373, 2022 General Session