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Recent Amendments to Soldiers' and Sailors' Civil Relief Act

BY WM. HEDGES ROBINSON, JR.*

The Soldiers' and Sailors' Civil Relief Act of 1940¹ was a hastily drawn measure, founded upon a similar act of 1918 and based upon the premise that we were not a nation at war. The events of last December destroyed the premise, and brought out more clearly the deficiencies of the 1940 act. It was readily apparent that if civil rights of our civilian soldiers were to be protected, considerable legislation was yet needed to accomplish that purpose.

Such legislation was enacted, in part, with the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, which was passed by Congress on September 28, 1942, and was approved by the President on October 6, 1942.

Section 103 (1) of the original 1940 act is amended to extend the protection of the act to "accommodation makers, and others, whether primarily or secondarily subject to the obligation or liability" of the maker. Thus if a suit is stayed prior to execution on the judgment because of military service of one of the parties to the action, the court in its discretion may stay the action as to all parties thereto. Similarly, Section 103 (2) is so amended that where any judgment is vacated or set aside, in whole or in part as to one primarily responsible because of the operation of the act, it may likewise be set aside so far as it affects the rights of a "surety, guarantor, endorser, accommodation maker, or other persons whether primarily or secondarily liable upon the contract or liability for the enforcement of which the judgment or decree" was originally entered.

Two new sub-sections are added to Section 103. The first of these applies to liability on bail bonds and is as follows:

"(3) Whenever, by reason of the military service of a principal upon a criminal bail bond the sureties upon such bond are prevented from enforcing the attendance of their principal and performing their obligation, the court shall not enforce the provisions of such bond during the military service of the principal thereon and may in accordance with principles of equity and justice either during or after such service discharge such sureties and exonerate the bail."

¹See 17 DICTA 245 and 273 (Oct. and Nov., 1940) for a discussion of the previous act.

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However, the more important addendum to Section 103 is subparagraph 4, which permits a waiver of all protection afforded by the act under Section 103. This waiver must be in writing, signed by the person affected, and must be a separate and distinct instrument if executed after September 28, 1942. But the waiver is not effective against the person executing the same if he subsequently begins military service or if he is a dependent of an individual subsequently inducted, unless the waiver is executed after the date of the order to report for induction, and prior to the time the person is actually inducted. Section 103 (4) of the act is as follows:

“Nothing contained in this Act shall prevent a waiver in writing of the benefits afforded by sub-sections (1) and (2) of this section by any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the obligation or liability, except that after the date of enactment of the Soldiers’ and Sailors’ Civil Relief Act Amendments of 1942 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, and no such waiver shall be valid after the beginning of the period of military service if executed by an individual who subsequent to the execution of such waiver becomes a person in military service, or if executed by a dependent of such individual, unless executed by such individual or dependent during the period specified in section 106.”

The protecting arm of the act is now thrown not only about the shoulders of our military men, but also about “persons who serve with the forces of any nation with which the United States may be allied in the prosecution of any war in which the United States engages while this act is in force and who immediately prior to such service were citizens of the United States,” provided that “such service is similar to military service as defined in this Act, unless they are dishonorably discharged therefrom or it appears that they do not intend to resume United States citizenship.”

Section 105 (newly added) directs the Secretaries of War and of the Navy to insure that notice of the benefits of this act is given to persons entering military service, and directs the Director of Selective Service to cooperate in this work.

One of the sorriest gaps in the 1940 act was that a selectee was not protected under the act during the time when he received his orders to report for induction and actual induction. This gap is filled by Section 106 (newly added) which provides as follows:

“Any person who has been ordered to report for induction under the Selective Training and Service Act of 1940, as amended, shall be entitled to the relief and benefits accorded persons in military service under Articles I, II and III of this Act during the period beginning on the date of receipt of such order and ending on the date upon which such person reports for induction; and any member of the Enlisted Reserve Corps who is ordered to report for military service shall be entitled to such relief and benefits during the period beginning on the date of receipt of such order and ending on the date upon which he reports for such service.”

Waiver provisions are also to be found in Section 107 (newly enacted) of the act which permits changes to be made in any obligation or in any foreclosure, repossession or forfeiture proceeding if the parties to the original agreement during or after the period of military service or the induction period enter into a written contract so modifying the original agreement. This section is as follows:

“Nothing contained in this Act shall prevent—(a) the modification, termination, or cancelation 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 (b) the repossession, retention, foreclosure, sale, forfeiture, or taking possession of property which 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 concerned, or the person to whom section 106 is applicable, whether or not such person is a party to the obligation), or their assignees, executed during or after the period of military service of the person concerned or during the period specified in section 106.”

Old Section 205 which pertained to the tolling of the statute was vague as to its application against administrative boards and rights of redemption in real property. This section has been amended to make explicit the tolling of periods of limitation of any nature for the bringing of any legal, equitable or administrative action, and for extending the period of redemption allowable under foreclosure or forfeiture statutes pertaining to real estate. The new section reads:

“The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, 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 such

cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 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."

The most outstanding provision of the amendments is Section 206 (newly added). This section limits interest rates, service fees, renewal charges, and all other charges, except insurance chargeable against a person in military service, to six per cent per annum, irrespective of the terms of the contract, unless it be shown that ability of the person to pay a higher rate is "not materially affected by military service." This section is as follows:

"Section 206. No obligation or liability bearing interest at a rate in excess of six per centum per annum incurred by a person in military service prior to his entry into such service shall, during any part of the period of military service which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, bear interest at a rate in excess of six per centum per annum unless, in the opinion of the court, upon application thereto by the obligee, the ability of such person in military service to pay interest upon such obligation or liability at a rate in excess of six per centum per annum is not materially affected by reason of such service, in which case the court may make such order as in its opinion may be just. As used in this section the term 'interest' includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) in respect of such obligation or liability."

The rights of a person in military service under rent, installment contract or mortgages are broadened and all liens, assignments and leases are specifically included under Article III of the act (Sections 300-306).

Section 300 (1), unchanged by the amendments, provides that eviction for non-payment of rent of premises occupied by dependents of a person in military service is not permitted for premises renting under \$80.00 per month unless permitted by the court. Section 300 (2) is now amended to read as follows:

"On any such application (for eviction) or in any such action (affecting the right of possession) the court may, in its discretion, on its own motion, and shall, on 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, as provided in this Act or it may make such other order as may be just. Where such 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 such premises similar to that granted persons in military service in sections 301, 302, and 500 of this Act to such extent and for such period as may appear to the court to be just."

Section 300 (3) is amended to subject persons who attempt to violate the eviction provisions of the act to penalties as well as persons who actually violate these provisions.

The section (301) dealing with the repossession of real property for non-payment of installments provided for in the agreement relating to the purchase has been broadened to include contracts, leases, and bailments, and the section is made applicable to all such contracts whether they were entered into either prior or subsequent to the civil relief act. In addition the proviso for modification of the agreement by a subsequent written instrument has been eliminated from this section, since it has already been provided for in Section 107. The new Section 301 (1) now reads as follows:

"(1) 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 such 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 such contract to rescind or terminate the contract or resume possession of the property for non-payment of any installment thereunder due or for any other breach of the terms thereof occurring prior to or during the period of such military service, except by action in a court of competent jurisdiction."

The following Section 302 (1) is likewise amended so that all obligations pertaining to real estate which were incurred *at any time prior to period of military service* are subject to the terms of the act. This is accomplished by striking from this section the reference to liabilities "originating prior to the date of the approval of this Act," and adding to the end of the section the words "which obligations originated prior to such person's period of military service."

Likewise Section 301 (2) of the act is amended so that any person who "knowingly resumes possession of property" which is subject to

Article III of the act, otherwise than as provided in Section 301 (1), relating to eviction for non-payment of rent upon leave of court, or as provided in Section 107, relating to foreclosure or forfeiture under trust deeds, mortgages, contracts, leases and bailments by agreements entered into after the person is in military service, "or attempts so to do," is subject to imprisonment up to one year, a fine up to \$1,000, or both fine and imprisonment.

The amendments to Sections 301 and 302 were badly needed as the old act only applied to obligations originating prior to October 17, 1940, and made no provisions for penalties against persons who knowingly attempted to violate the act but were unsuccessful in their efforts. Consistently the provisions of Section 302 (3) are expanded to include foreclosures of chattel mortgages even if under power of sale or warrant of attorney to confess judgment, and sub-section (4) is added to provide penalties against anyone who knowingly violates this section or "attempts so to do." The provisions of the new Section 302 (3) and (4) are as follows:

"(3) No sale, foreclosure, or seizure of property for non-payment 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, or otherwise, shall be valid if made after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 and during the period of military service or within three months thereafter, except pursuant to an agreement as provided in Section 107, unless upon an order previously granted by the court and a return thereto made and approved by the court.

"(4) Any person who shall knowingly cause to be made any sale, foreclosure, or seizure of property, defined as invalid by sub-section (3) hereof, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed \$1,000 or both."

To round out the provisions which extend protection to the debtor who is in military service, Congress has repealed in its entirety former Section 303, which authorized under certain conditions the repossession of automobiles of persons in military service. A new Section 303 provides that if foreclosure or repossession proceedings are permitted by court, the court may order the property appraised and cause such sum "as may be just, paid to the person in military service or his dependent," before the foreclosure can be consummated. New Section 303 now reads as follows;

“Where a proceeding to foreclose a mortgage upon, or to resume possession of personal property, or to rescind or terminate a contract for the purchase thereof, has been stayed as provided in this Act, the court may, unless in its opinion an undue hardship would result to the dependents of the person in military service, appoint three disinterested parties to appraise the property and, based upon the report of the appraisers, order such sum, if any, as may be just, paid to the person in military service or his dependent, as the case may be, as a condition of foreclosing the mortgage, resuming possession of the property, or rescinding or terminating the contract.”

Liability for rent under leases which have been entered into by persons subsequently inducted into the military service is terminated by giving written notice at any date following the beginning of military service of the lessee. Any landlord who attempts to enforce a landlord’s or hotel lien as a result of non-payment of rent under a lease lawfully terminated is subject to heavy fines and penalties. The newly added Section 304 (1), (2), and (3) is as follows:

“(1) The provisions of this section shall apply to any lease covering premises occupied for dwelling, professional, business, agricultural, or similar purposes in any case in which (a) such lease was executed by or on the behalf of a person who, after the execution of such lease, entered military service, and (b) the premises so leased have been occupied for such purposes, or for a combination of such purposes, by such person or by him and his dependents.

“(2) Any such lease may be terminated by notice in writing delivered to the lessor (or his grantee) or to the lessor’s (or his grantee’s) agent by the lessee at any time following the date of the beginning of his period of military service. Delivery of such notice may be accomplished by placing it in an envelope properly stamped and duly addressed to the lessor (or his grantee) or to the lessor’s (or his grantee’s) agent and depositing the notice in the United States mails. Termination of any such lease providing for monthly payment of rent shall not be effective until thirty days after the first date on which the next rental payment is due and payable subsequent to the date when such notice is delivered or mailed. In the case of all other leases, termination shall be effected on the last day of the month following the month in which such notice is delivered or mailed and in such case any unpaid rental for a period preceding termination shall be proratably computed and any rental paid in advance for a period succeeding termination shall be refunded by the lessor (or his assignee). Upon application by the lessor to the appropriate court prior to the termination period pro-

vided for in the notice, any relief granted in this subsection shall be subject to such modifications or restrictions as in the opinion of the court justice and equity may in the circumstances require.

“(3) Any person who shall knowingly seize, hold, or detain 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 interfere with the removal of such property from the premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts so to do, shall be guilty of a misdemeanor, and shall be punished by imprisonment not to exceed one year or by fine not to exceed \$1,000 or both.”

Likewise the protection of the act is extended to life insurance policies which have been assigned to secure a loan and to enforcement of warehouse liens by the addition of Section 305 (1), (2) and (3), which also provides stiff penalties for violation. This new section is as follows:

“(1) Where any life insurance policy on the life of a person in military service has been assigned prior to such person's period of military service to secure the payment of any obligation of such person, no assignee of such policy (except the insurer in connection with a policy loan) shall, during the period of military service of the insured or within one year thereafter, except upon the consent in writing of the insured made during such period of when the premiums thereon are due and unpaid or upon the death of the insured, exercise any right or option by virtue of such assignment unless upon leave of court granted upon an application made therefor by such assignee. The court may thereupon refuse to grant such leave unless in the opinion of the court the ability of the obligor to comply with the terms of the obligation is not materially affected by reason of his military service. For the purpose of this subsection premiums which are guaranteed upon the provisions of Article IV of this Act shall not be deemed to be due and unpaid.

“(2) No person shall exercise any right to foreclosure or enforce any lien for storage of household goods, furniture, or personal effects of a person in military service during such person's period of military service and for three months thereafter except upon an order previously granted by a court upon application therefor and a return thereto made and approved by the court. In such proceeding the court may, after hearing, in its discretion, on its own motion, and shall, on application to it by such person in

military service or some person in his behalf, 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 his military service— (a) stay the proceedings as provided in this Act; or (b) make such other disposition of the case as may be equitable to conserve the interest of all parties. The enactment of the provisions of this subsection shall not be construed in any way as affecting or as limiting the scope of section 302 of this Act.

“(3) Any person who shall knowingly take any action contrary to the provisions of this section, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed \$1,000 or both.”

The provisions relating to tax payments have been extended to cover taxes upon personal property, but income tax payments are excluded. Domicile of the taxpayer is declared by a new section (514) not to be changed or affected by reason of residence or domicile acquired while in military service. The requirement of filing an affidavit with the tax collector to prevent a sale for a delinquency has been eliminated by repealing Section 500 (5) of the old act. And finally Section 509 is amended by relieving the Secretary of the Interior from explaining Sections 500, 513 or 514 of Article V relating to public lands, and Section 512 is amended to include specifically the words “Sections 501 to 511 inclusive” rather than the words “this article” and thereby conform with new Section 104 of the act. These new sections (500 (1), (2) and 514) are as follows:

“(1) The provisions of this section shall apply when any taxes or assessments, whether general or special (other than taxes on income) whether falling due prior to or during the period of military service, in respect of personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents, at the commencement of his period of military service and still so occupied by his dependents or employees, are not paid.

“(2) No sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon application made therefor by the collector of taxes or other officer whose duty it is to enforce the collection of taxes or assessments. The court thereupon, unless in its opinion the ability of the person in military service to pay such taxes or assessments is not materially affected by reason of such service, may stay such proceeding or such

sale, as provided in this Act, for a period extending not more than six months after the termination of the period of military service of such person.

"514. For the purposes of taxation in respect of any person, or of his property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the income or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which it is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or district. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to the date of the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942."

Finally Congress has added two entirely new features to the act. These are sections 306 and 700. Section 306 specifically extends to "dependents of a person in military service" all of the protection afforded to the person in military service if the ability of such dependents to comply with their obligations is materially affected by reason of the military service of the person who formerly furnished them with support. This Section 306 reads as follows:

"Dependents of a person in military service shall be entitled to the benefits accorded to persons in military service under the provisions of this article upon application to a court therefor, unless in the opinion of the court the ability of such 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."

Thus it will be seen that the amendments of 1942 have made the civil relief act for the first time a real protection to the person in military

service.² It does not pretend to answer fully what will occur when the protection afforded by the act expires. Most of the problems which will be engendered by a post war economy, Congress has preferred to leave for a future solution. However, a new Section 700 is added which indicates the possible trend which future legislation may take in this field. This section permits the person applying for relief within six months after termination of his military service to have the time to pay all installments, taxes and assessments which have accrued during military service extend for a time in the future equal to the period of the military service. No fines or penalties can be assessed against a default for which relief is granted under this section. Section 700 is as follows:

“A person may, at any time during his period of military service or within six months thereafter, apply to a court for relief in respect of any obligation or liability incurred by such person prior to his period of military service or in respect of any tax or assessment whether falling due prior to or during his 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 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 such 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 such combined period at such rate of interest on the unpaid balance as is prescribed in such contract, or other instrument evidencing the obligation, for installments paid when due, and subject to such other terms as may be just.

“(b) In the case of any other obligation, liability, tax, or assessment, a stay of the enforcement thereof during the applicant's

²No reference is made in this article to the amendments which relate to insurance. Article IV of the act is entirely revised to broaden its application and liberalize the benefits granted. The new Article IV is not reprinted here.

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 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.

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

American Bar Association Conducts 1943 Essay Contest

Announcement is made by the American Bar Association of a 1943 essay contest conducted by the association pursuant to the terms of a bequest by the late Judge Erskine M. Ross. The subject to be discussed is, “What Should Be the Function of the States in Our System of Government?” Three thousand dollars is the amount of the prize and all essays must be submitted on or before March 16th, 1943.

The contest is open to all members of the American Bar Association in good standing except previous winners, members of the Board of Governors, officers and employees of the association. Essays must be prepared especially for this contest and be not previously published, and each author will be required to assign all his rights in the essay to the association. All essays are restricted to six thousand words, including quoted matter and citations in the text, but not including footnotes or notes following the essay, although excessive documentation in the notes may be penalized by the judges. According to the announcement by the association, “Clearness and brevity of expression and the absence of iteration or undue prolixity will be taken into favorable consideration.”

Anyone wishing to enter the contest should communicate with* the executive secretary of the American Bar Association who will furnish further information and instructions.