

SENATE, No. 167

STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Senator CHRISTOPHER J. CONNORS
District 9 (Atlantic, Burlington and Ocean)
Senator JAMES BEACH
District 6 (Burlington and Camden)

Co-Sponsored by:

Senators Cruz-Perez and Singleton

SYNOPSIS

Creates New Jersey Servicemembers' Civil Relief Act.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 1/19/2023)

1 AN ACT creating the New Jersey Servicemembers' Civil Relief Act,
2 supplementing Title 38A of the New Jersey Statutes, and
3 repealing P.L.1979, c.317.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. This act shall be known and may be referred to as the "New
9 Jersey Servicemembers' Civil Relief Act."
10

11 2. The Legislature finds and declares that the civil and property
12 rights of persons serving on active duty in the Armed Forces of the
13 United States and the New Jersey National Guard should be
14 maintained, secured, and protected as a matter of public policy of
15 this State. Such rights should be protected by this State, at least, to
16 the extent that those rights are protected by federal law. To
17 accomplish these purposes, the provisions of this act shall be
18 liberally construed.
19

20 3. As used in this act:

21 "court" means any court or administrative agency of the State, or
22 a subdivision thereof, whether or not a court or administrative
23 agency of record.

24 "insurer" means a corporation, partnership, or other form of
25 association which secures or provides insurance under a policy.

26 "legal representative of a servicemember" means an attorney
27 acting on the behalf of a servicemember or an individual possessing
28 power of attorney.

29 "military service" means duty by any person in the active
30 military service of the United States or active duty in the military
31 service of the State pursuant to an order of the Governor issued
32 pursuant to law. The term also means service by a United States
33 citizen in the forces of a nation with which the United States is
34 allied in the prosecution of a war or military action.

35 "person" means individuals, partnerships, corporations, and any
36 other forms of business association when used herein with reference
37 to the holder of any right alleged to exist against a servicemember,
38 or against a person secondarily liable under such right.

39 "servicemember" means a person in military service. Whenever
40 the term "servicemember" is used, it shall be treated as including a
41 reference to a legal representative of a servicemember.
42

43 4. a. When the enforcement of an obligation or liability, the
44 prosecution of a suit or proceeding, the entry or enforcement of an
45 order, writ, judgment, or decree, or the performance of an act may
46 be stayed, postponed, or suspended pursuant to a provision of this
47 act, such stay, postponement, or suspension may likewise be
48 granted to a surety, guarantor, endorser, and other subject to the

1 obligation, liability, performance, or enforcement, at the discretion
2 of the court.

3 b. When a judgment or decree is vacated or set aside, in whole
4 or in part, as provided in this act, the judgment or decree may
5 likewise be set aside and vacated as to a surety, guarantor, endorser,
6 accommodation maker, or other person whether primarily or
7 secondarily liable upon the obligation or enforcement, at the
8 discretion of the court.

9 c. Nothing contained in this act shall prevent a waiver in
10 writing of the benefits afforded by subsections a. and b. of this
11 section by a surety, guarantor, endorser, accommodation maker, or
12 other person whether primarily or secondarily liable upon the
13 obligation or liability. A waiver shall not be valid unless it is
14 executed as an instrument separate from the obligation or liability to
15 which it applies. A waiver shall not be valid after the beginning of
16 the period of active duty if executed by a servicemember who is
17 called to active duty subsequent to the execution of such waiver.

18

19 5. The rights and protections of this act shall extend to:

20 a. A member of a reserve component who is ordered to report
21 for military service during the period beginning on the date of the
22 member's receipt of the order and ending either on the date on
23 which the member reports for military service or the date on which
24 the order is revoked.

25 b. A person who has been ordered to report for induction under
26 the Military Selective Service Act, 50 U.S.C. App. s.451 et seq.,
27 during the period beginning on the date of receipt of the order for
28 induction and ending either on the date on which the person reports
29 for induction or the date on which the order is revoked.

30 c. A dependent of a servicemember who, upon application to a
31 court, demonstrates that the dependent's ability to comply with a
32 lease, contract, bailment, or other obligation is materially affected
33 by reason of the servicemember's military service.

34

35 6. Application by a servicemember for, or receipt by such a
36 person of, a stay, postponement, or suspension pursuant to this act
37 in the payment of a tax, fine, penalty, insurance premium, or other
38 civil obligation or liability shall not provide the sole basis for any of
39 the following:

40 a determination by a lender or other person that the
41 servicemember is unable to pay the civil obligation or liability in
42 accordance with its terms;

43 a denial or revocation of credit by a creditor, a change by a
44 creditor in the terms of an existing credit arrangement, or a refusal
45 by a creditor to grant credit to the servicemember in substantially
46 the amount or on substantially the terms requested;

1 an adverse report relating to the creditworthiness of the
2 servicemember by or to a person engaged in the practice of
3 assembling or evaluating consumer credit information;
4 a refusal by an insurer to insure the servicemember;
5 an annotation in the record of a servicemember by a creditor or a
6 person engaged in the practice of assembling or evaluating
7 consumer credit information, identifying the servicemember as a
8 member of the National Guard or a reserve component; or
9 a change in the terms offered or conditions required for the
10 issuance of insurance.

11

12 7. a. When a servicemember is involved as a plaintiff or
13 defendant in an action or proceeding in a court commenced before
14 or during the period of active duty or within 60 days thereafter, the
15 court shall grant a stay of proceedings for a minimum period of 90
16 days upon application of counsel, or on the court's own motion, if
17 the court determines that there may be a defense to the action and a
18 defense cannot be presented without the presence of the defendant
19 or counsel, after due diligence, has been unable to contact the
20 defendant or otherwise determine if a meritorious defense exists.

21 b. A servicemember may apply, during military service or
22 within 180 days thereafter, to a court for relief from an obligation or
23 liability incurred by the servicemember before such military service
24 or from a tax or assessment falling due before or during such
25 military service. If the ability of a servicemember to comply with
26 the terms of such obligation, liability, tax, or assessment has been
27 materially affected by reason of military service, the court may stay
28 the enforcement thereof.

29 c. This section shall apply unless the court determines that the
30 defendant's ability to conduct a defense or to comply with the
31 judgment or order entered or sought, or the plaintiff's ability to
32 prosecute the action, or the servicemember's ability to comply with
33 the obligation is not materially affected by reason of the military
34 service of the servicemember.

35

36 8. a. If the defendant does not appear in a civil action or
37 proceeding commenced in any court, the plaintiff may file an
38 affidavit setting forth facts to show that the defendant is not serving
39 on active duty. The affidavit shall be filed within 20 days before
40 the entry of a judgment or final order. If the plaintiff is unable to
41 file such an affidavit, the plaintiff may file an affidavit to show
42 either that the defendant is on active duty or that the plaintiff is not
43 able to determine if the defendant is on active duty. If no affidavit
44 is filed to show that the defendant is not on active duty, a judgment
45 or final order shall not be entered without first securing an order of
46 court directing such entry. Such an order shall not be made if the
47 defendant is on active duty until after the court appoints an attorney
48 to represent the defendant and protect the defendant's interest.

1 b. In an action or proceeding in which a servicemember is a
2 party, the court may appoint an attorney to represent the person if
3 such person does not personally appear therein or is not represented
4 by an authorized attorney. An attorney appointed under this act to
5 protect a servicemember shall not have the power to waive a right
6 of the person for whom the attorney is appointed or bind the person
7 by the attorney's acts.

8 c. Unless it appears that the defendant is not on active duty, the
9 court may require that the plaintiff file a bond, approved by the
10 court and conditioned to indemnify the defendant, as a condition
11 before judgment or final order is entered against loss or damage that
12 the defendant, if on active duty, may suffer by reason of a judgment
13 or final order should the judgment or final order be thereafter set
14 aside in whole or in part. The court may make such other and
15 further order or enter such judgment as in its opinion may be
16 necessary to protect the rights of a defendant under this act.

17 d. If a default judgment is entered in an action covered by this
18 section against a servicemember during the servicemember's period
19 of military service or within 60 days thereafter, the court entering
20 the judgment shall, upon application by or on behalf of the
21 servicemember, reopen the judgment for the purpose of allowing
22 the servicemember to defend the action if it appears that the
23 servicemember was materially affected by reason of that military
24 service in making a defense of the action and has a meritorious or
25 legal defense to the action or some part of the action. Application
26 to reopen the order may be made by a servicemember not later than
27 90 days after the termination of active duty.

28 e. Vacating, setting aside, or reversing a judgment or final
29 order because of a provision of this act shall not impair a right or
30 title acquired by a bona fide purchaser for value under such
31 judgment or order.

32 f. A person who knowingly makes or uses a false affidavit for
33 the purposes of this section shall be guilty of perjury.
34

35 9. When an action for compliance with the terms of a contract
36 is stayed pursuant to this act, no fine or penalty shall accrue by
37 reason of failure to comply with the terms of such contract during
38 the period of such stay, and in any case where a person fails to
39 perform an obligation and a fine or penalty for such
40 nonperformance is incurred, a court may, on such terms as may be
41 just, relieve against the enforcement of such fine or penalty if it
42 shall appear that the person who would suffer by such fine or
43 penalty was in the military service when the penalty was incurred,
44 and that by reason of such service the ability of such person to pay
45 or perform was thereby materially impaired.
46

47 10. In any action or proceeding commenced in any court against
48 a servicemember, before or during the period of such service, or

1 within 90 days thereafter, the court may on its own motion and shall
2 upon application to it by the servicemember, unless in the opinion
3 of the court the ability of the servicemember to comply with the
4 judgment or order entered or sought is not materially affected by
5 reason of his military service:

6 stay the execution of any judgment or order entered against such
7 person; and

8 vacate or stay any attachment or garnishment of property,
9 money, or debts in the hands of another, whether before or after
10 judgment.

11

12 11. Any stay of an action, proceeding, attachment, or execution
13 ordered by any court under the provisions of this act may, except as
14 otherwise provided, be ordered for the period of military service
15 and three months thereafter or any part of such period, and subject
16 to such terms as may be just, whether as to payment in installments
17 of such amounts and at such times as the court may fix or
18 otherwise. When the servicemember is a codefendant with others,
19 the plaintiff may nevertheless, by leave of court, proceed against the
20 others.

21

22 12. To the extent that it is allowable by federal law, the period
23 of military service shall not be included in computing any period
24 now or hereafter to be limited by any law, regulation or order for
25 the bringing of an action or proceeding in any court, board, bureau,
26 commission, department or other agency of government of this
27 State or any of its political subdivisions by or against a
28 servicemember, or by or against his heirs, executors, administrators,
29 or assigns, whether such cause of action or the right or privilege to
30 institute such an action or proceeding shall have accrued prior to or
31 during the period of such service, nor shall any part of such period
32 which occurs after the effective date of this act be included in
33 computing any period now or hereafter provided by any law for the
34 redemption of real property sold or forfeited to enforce an
35 obligation, tax or assessment.

36

37 13. a. An obligation or liability incurred by a servicemember, or
38 the servicemember and the servicemember's spouse jointly, before
39 the servicemember enters military service shall not bear interest at a
40 rate in excess of six percent during the period of military service or,
41 in the case of an obligation or liability consisting of a mortgage,
42 trust deed, or other security in the nature of a mortgage, during the
43 period of military service and one year thereafter. The interest on
44 an obligation or liability that would be incurred in excess of six
45 percent, if not for this subsection, is forgiven. The amount of a
46 periodic payment due under the terms of an obligation or liability
47 covered by this subsection shall be reduced by the amount of the

1 interest forgiven that is allocable to the period for which such
2 payment is made.

3 b. In order for the provisions of subsection a. of this section to
4 apply, the servicemember shall provide to the creditor written
5 notice, a copy of the military orders calling the servicemember to
6 military service, and, if applicable, a copy of any orders further
7 extending such military service, not later than 180 days after the
8 date of the servicemember's termination or release from military
9 service. Upon receipt, the creditor shall treat the debt in accordance
10 with subsection a. of this section effective as of the date on which
11 the servicemember is called to military service.

12 c. If, in the opinion of the court, the ability of a servicemember
13 to pay interest upon an obligation or liability at a rate in excess of
14 six percent is not materially affected by reason of the
15 servicemember's military service, the court may grant a creditor
16 relief from the limitations of subsection a. of this section.

17 d. As used in this section, the term "interest" includes service
18 charges, renewal charges, fees, or any other charges, except bona
19 fide insurance, with respect to an obligation or liability.

20 e. Whoever knowingly violates subsection a. of this section
21 shall be adjudged a disorderly person, and shall be subject to a fine
22 not to exceed \$1,000, or imprisonment not to exceed six months, or
23 both.

24
25 14. a. No eviction or distress shall be made during the period of
26 military service in respect to any premises, occupied chiefly for
27 dwelling purposes by the spouse, children, or other dependents of a
28 servicemember, for which the agreed rent does not exceed the
29 amount published pursuant to paragraph (3) of subsection (a) of
30 section 531 of the federal "Servicemembers' Civil Relief Act," (50
31 U.S.C. App. s.501 et seq.), except upon leave of court granted upon
32 application therefore or granted in any action or proceeding
33 affecting the right of possession.

34 b. On any such application or in any such action, the court
35 may, on its own motion, and shall, upon application, stay the
36 proceedings for three months, unless in the opinion of the court the
37 ability of the tenant to pay the agreed rent is not materially affected
38 by reason of military service, or it may make such other order as
39 may be just.

40 c. A person who knowingly takes part in an eviction or distress
41 in violation of paragraph a. of this section, or attempts to do so,
42 shall be adjudged a disorderly person, and shall be subject to a fine
43 not to exceed \$1,000, or imprisonment not to exceed six months, or
44 both.

45
46 15. a. A lease that covers personal property or premises
47 occupied by a servicemember or the servicemember and the
48 servicemember's dependent for dwelling, professional, business,

1 agricultural, or similar purposes, and was executed by or on behalf
2 of a servicemember who began service on active duty after the
3 execution of the lease, may be terminated by notice in writing
4 delivered to the lessor, or the lessor's grantee or the lessor's or
5 grantee's agent, by the lessee at any time following the beginning of
6 the period of active duty , or in the case of a lease covering personal
7 property at any time after the 90th consecutive day of service.
8 Termination of a lease providing for monthly payment of rent shall
9 not be effective until 30 days after the date on which the next rental
10 payment is due, and rent shall be payable until the date when the
11 notice is delivered or mailed.

12 b. For all other leases, termination shall be effected on the last
13 day of the month following the month in which the notice is
14 delivered or mailed, and an unpaid rental for the period preceding
15 termination shall be prorated. A rental paid in advance for a period
16 succeeding termination shall be refunded by the lessor or the
17 lessor's assignee.

18 c. Upon application by the lessor to the appropriate court prior
19 to the termination period provided for in the notice, relief granted in
20 this section shall be subject to such modifications or restrictions as,
21 in the opinion of the court, justice and equity may in the
22 circumstances require.

23 Upon termination of the lease, the former lessee and any co-
24 signer shall have no further liability to the lessor or the lessor's
25 assignee, except that the lessee and any co-signer shall be obligated
26 to the lessor or assignee for any damages to the leased property.
27 The lessor or lessor's assignee shall not impose any penalty or
28 charge upon the lessee or any co-signer on the lease for early
29 termination of the lease. This paragraph shall apply whether or not
30 the person is the sole signatory of the lease.

31 The provisions of this section which apply to any lease covering
32 personal property become effective after military service of more
33 than 90 consecutive days.

34 d. A person who knowingly seizes, holds, or detains the
35 personal effects, clothing, furniture, or other property of a person
36 who has lawfully terminated a lease covered by this section, or in
37 any manner interferes with the removal of property from the
38 premises covered by such lease, for the purpose of subjecting or
39 attempting to subject such property to a claim for rent accruing
40 subsequent to the date of termination of such lease, or who attempts
41 to do so, shall be adjudged a disorderly person and shall be subject
42 to a fine not to exceed \$1,000, or imprisonment not to exceed six
43 months, or both.

44
45 16. a. (1) A person who has received, or whose assignor has
46 received, a deposit or installment under a contract for the purchase
47 of real or personal property, or for a lease or bailment with a view
48 to purchase of such property, from a person or from the assignor of

1 a person who has begun service on active duty after the date of
2 payment of such deposit or installment shall not exercise a right or
3 option under such contract to rescind or terminate the contract or
4 resume possession of the property for nonpayment of an installment
5 thereunder due or for another breach of the terms thereof occurring
6 prior to or during the period of active duty, except by action in a
7 court of competent jurisdiction. Nothing contained in this section
8 shall prevent the modification, termination or cancellation of such a
9 contract, or prevent the repossession, retention, foreclosure, sale or
10 taking possession of property which is purchased or received, or
11 which is security for an obligation under such contract, pursuant to
12 a mutual agreement of the parties thereto or their assignees if such
13 agreement is executed in writing subsequent to the making of such
14 contract and during or after the period of active duty of the person
15 concerned.

16 (2) A person who prior to serving on active duty for a period of
17 more than 90 consecutive days leased a non-commercial motor
18 vehicle for personal use, with or without a view to purchase, may
19 cancel the lease by giving written notice of cancellation to the
20 lessor or the lessor's assignor at any time following the date of
21 receipt of the order to enter active duty. Cancellation of a lease
22 providing for monthly lease payments shall not be effective until
23 the last day of the month following the month in which notice of
24 cancellation is made, or when the leased motor vehicle is returned
25 to the lessor or the lessor's assignor, whichever is later. Upon
26 cancellation of the lease, the former lessee and a co-signer shall
27 have no further liability to the lessor or the lessor's assignor, except
28 that the lessee and a co-signer shall be obligated to the lessor or
29 assignor for damages to the motor vehicle and excess mileage over
30 the pro rata amount permitted as of the date of cancellation of the
31 lease. The lessor or lessor's assignor shall not impose a penalty or
32 charge upon the lessee or a co-signer on the lease for early
33 cancellation of the lease. This subsection shall apply whether or not
34 the person is the sole signatory of the lease.

35 b. A person who knowingly resumes possession of property
36 described in this section other than as provided in subsection a. of
37 this section, or who attempts to do so, shall be adjudged a
38 disorderly person, and shall be subject to a fine not to exceed
39 \$1,000, or imprisonment not to exceed six months, or both.

40 c. Upon the hearing of such action, the court may order the
41 repayment of prior installments or deposits or any part thereof as a
42 condition of terminating the contract and resuming possession of
43 the property. The court also may order a stay of proceedings as
44 provided in this act at its discretion and on its own motion, or shall
45 order such stay on application to it by a servicemember or another
46 person on his behalf. A stay under this section may be ordered for
47 the period of active duty and six months thereafter or any part of
48 such period unless the ability of the defendant to comply with the

1 terms of the contract is not materially affected, in the opinion of the
2 court, by reason of service on active duty. The court may make
3 such other disposition of the case as may be equitable to conserve
4 the interests of all parties.

5 d. (1) A person who entered into a contract for cellular
6 telephone service or telephone exchange service may terminate that
7 contract provided that the person subsequently receives military
8 orders that require relocation for a period of not less than 90 days to
9 a location that does not support that contract. Termination of the
10 contract shall be made by delivery of a written or electronic notice
11 of such termination and a copy of the servicemember's military
12 orders to the service provider, delivered in accordance with industry
13 standards for notification of terminations, together with the date on
14 which the service is to be terminated.

15 (2) In the case of a contract terminated under paragraph (1) of
16 this subsection, the service provider under the contract shall allow
17 the servicemember to keep the telephone number under the contract
18 unless the period of relocation is greater than three years or the
19 servicemember does not apply for reinstatement of the telephone
20 number within 90 days after the period of relocation has ended.

21 (3) A service provider shall not impose an early termination
22 charge or reinstatement charge for services terminated or reinstated
23 under the provisions of this subsection. Notwithstanding any
24 remainder of the monthly or periodic payment for the billing period
25 in which termination occurs, the service provider shall refund the
26 servicemember any fee or other amount paid for services after the
27 effective date of termination of the contract.

28
29 17. a. When an obligation is secured by mortgage, trust deed, or
30 other security in the nature of a mortgage upon real or personal
31 property owned by a servicemember originating prior to the
32 commencement of the period of military service, a court may stay a
33 proceeding as provided in this act commenced during the period of
34 active duty to enforce such obligation arising out of nonpayment of
35 a sum due or out of another breach of terms occurring prior to or
36 during the period of active duty, or make such other disposition of
37 the case as may be equitable to conserve the interest of all parties.
38 The court may do so at its discretion and on its own motion or upon
39 application to it by the servicemember or another person on his or
40 her behalf. This subsection shall apply unless the ability of the
41 defendant to comply with the terms of the obligation, in the opinion
42 of the court, is not materially affected by reason of service on active
43 duty.

44 b. A sale, foreclosure, or seizure of property for nonpayment of
45 a sum due under such an obligation, or for another breach of the
46 terms thereof, whether under a power of sale, under a judgment
47 entered upon warrant of attorney to confess judgment contained
48 therein or otherwise, shall not be valid if made during the period of

1 active duty or within three months thereafter except upon an order
2 of sale previously granted by the court and a return thereto is made
3 and approved by the court.

4 c. A person who knowingly causes to be made a sale,
5 foreclosure, or seizure of property defined as invalid by subsection
6 b. of this section, or attempts to do so, shall be adjudged a
7 disorderly person, and shall be subject to a fine not to exceed
8 \$1,000, or imprisonment not to exceed six months, or both.

9
10 18. When a proceeding to foreclose a mortgage or to resume
11 possession of personal property, or to rescind or terminate a
12 contract for the purchase thereof, has been stayed as provided in
13 this act the court may appoint three disinterested parties to appraise
14 the property, unless in its opinion an undue hardship would result to
15 the dependents of the servicemember. Based upon the report of the
16 appraisers, the court may order such sum, if any, as may be just to
17 be paid to the servicemember or his dependent as a condition of
18 foreclosing the mortgage, resuming possession of the property, or
19 rescinding or terminating the contract.

20
21 19. a. A sale of property shall not be made to enforce the
22 collection of a general or special tax or an assessment for failure to
23 pay prior to or during the period of active duty with respect to
24 personal property, money or credits or real property owned and
25 occupied for dwelling, agricultural, or business purposes by a
26 servicemember or his dependents at the commencement of the
27 period of active duty and still occupied by the person's dependents
28 or employees in a proceeding or action commenced for such
29 purpose except upon leave of court granted upon application made
30 by the collector of taxes or other officer whose duty it is to enforce
31 the collection of taxes or assessments. The court may stay such
32 proceedings or sale as provided in this act for a period extending
33 not more than six months after the termination of the period of
34 active duty, unless in the opinion of the court the ability of the
35 defendant to comply with the terms of the obligation is not
36 materially affected by reason of service on active duty.

37 This section shall not apply to taxes on income.

38 b. When by law property may be sold or forfeited to enforce
39 the collection of a tax or assessment described in subsection a. of
40 this section, a servicemember shall have the right to redeem, or
41 commence an action to redeem, such property at any time not later
42 than six months after the termination of service on active duty. The
43 provisions of this subsection shall not be construed to shorten a
44 period provided by the laws of the State, or a political subdivision
45 thereof, for such redemption.

46 c. If a tax or assessment is not paid when due, it shall bear
47 interest until paid at the rate of six percent per annum from the date
48 when the tax first became a lien. Another penalty or interest shall

1 not be incurred by reason of such nonpayment, whether the penalty
2 or interest accrued prior or accrues subsequent to the
3 commencement of the period of active duty. A lien for unpaid taxes
4 or assessment shall also include such interest.

5
6 20. A policy that has not lapsed for the nonpayment of premium
7 before the commencement of the period of active duty of the
8 insured, and which has been brought within the protection of the
9 federal "Servicemembers' Civil Relief Act," 50 U.S.C. App. s.501
10 et seq., shall not lapse or be forfeited for the nonpayment of
11 premium during the period of active duty or two years thereafter.

12 For the purposes of this section,

13 "policy" means any individual contract for whole, endowment,
14 universal, or term life insurance, other than group term life
15 insurance coverage, including any benefit in the nature of such
16 insurance arising out of membership in a fraternal or beneficial
17 association but shall not mean insurance exceeding a total face
18 value of \$400,000, or an amount equal to the Servicemembers'
19 Group Life Insurance maximum limit, whichever is greater, whether
20 in one or more companies.

21 "insured" means a person whose life is insured under a policy.

22 "premium" shall include the membership dues or assessments in
23 a fraternal or beneficial association with the date of issuance of a
24 policy as herein limited referring to the date of admission to
25 membership in such association.

26
27 21. A person holding a lien for the storage, repair, or cleaning of
28 the property or effects of a servicemember shall not foreclose or
29 enforce any such lien, during any period of military service of the
30 servicemember and for 90 days thereafter, without a court order
31 granted before foreclosure or enforcement. A court may, on its own
32 motion, and shall, upon application by a servicemember whose
33 ability to comply with the obligation is materially affected by his
34 military service, stay the proceeding for a period of time as justice
35 and equity may require and adjust the obligation to preserve the
36 interests of all parties.

37 A person who shall knowingly take an action contrary to this
38 section, or attempts to do so, shall be adjudged a disorderly person,
39 and shall be subject to a fine not to exceed \$1,000, or imprisonment
40 not to exceed six months, or both.

41
42 22. a. At any time during the period of active duty or within six
43 months thereafter, a person may apply to a court for relief with
44 respect to an obligation or liability incurred by such person prior to
45 the period of active duty or with respect to a tax or assessment
46 which becomes due prior to or during the period of active duty.
47 Unless in the court's opinion the ability of the applicant to comply
48 with the terms of such obligation or liability or to pay such tax or

1 assessment has not been materially affected by reason of service on
2 active duty, the court may grant the following relief after
3 appropriate notice and hearing:

4 (1) In the case of an obligation payable under its terms in
5 installments under a contract for the purchase of real estate, or
6 secured by a mortgage or other instrument in the nature of a
7 mortgage upon real estate, a court may stay the enforcement of such
8 obligation during the applicant's period of active duty and, from the
9 date of termination of such period of active duty or from the date of
10 application if made after active duty, for a period equal to the
11 period of the remaining life of the installment contract or other
12 instrument plus a period of time equal to the period of active duty
13 of the applicant, or any part of such combined period. The stay
14 shall be subject to payment of the balance of principal and
15 accumulated interest due and unpaid at the date of termination of
16 the period of active duty or from the date of application in equal
17 installments during such combined period at such rate of interest on
18 the unpaid balance as is prescribed in such contract, or other
19 instrument evidencing the obligation, for installments paid when
20 due. The court may impose such other terms as may be just.

21 (2) In the case of another obligation, liability, tax, or
22 assessment, a court may stay the enforcement thereof during the
23 applicant's period of active duty and from the date of termination of
24 the period of active duty or from the date of application if made
25 after active duty, for a period of time equal to the period of active
26 duty of the applicant or any part of such period. The stay shall be
27 subject to payment of the balance of principal and accumulated
28 interest due and unpaid at the date of the termination of such period
29 of active duty or the date of application in equal periodic
30 installments during such extended period at such rate of interest as
31 may be prescribed for such obligation, liability, tax, or assessment,
32 if paid when due. The court may impose such other terms as may be
33 just.

34 b. When any court has granted a stay as provided in this
35 section, a fine or penalty shall not accrue during the period the
36 terms and conditions of such stay are complied with by reason of
37 failure to comply with the terms or conditions of the obligation,
38 liability, tax or, assessment with respect to which such stay was
39 granted.

40

41 23. a. In a proceeding under this act, a certificate executed by
42 an officer of the applicable force of the Armed Forces of the United
43 States or by an officer of the applicable force of the National Guard
44 shall be prima facie evidence of the facts therein certified and of the
45 authority of the signer to issue the same.

46 b. When a person serving on active duty is reported missing,
47 the person shall be presumed to continue on active duty until
48 accounted for. A period herein limited that begins or ends with the

1 death of such person shall not begin or end until the death of such
2 person is in fact reported to or proved by the applicable force of the
3 Armed Forces of the United States or of the National Guard, or
4 proved by a court of competent jurisdiction.

5
6 24. A power of attorney of a servicemember that expires by its
7 terms after the servicemember enters missing status shall be
8 automatically extended for the period that the servicemember is in a
9 missing status, provided that the power of attorney: was duly
10 executed by the servicemember while in military service or before
11 entry into military service but after the servicemember received a
12 call or order to report for military service or notice that such call or
13 order may occur; and designates the servicemember's spouse,
14 parent, or other named relative as the servicemember's attorney in
15 fact. This section shall not apply to a document that, by its terms,
16 clearly indicates that the power granted expires on a specific date.

17
18 25. a. Coverage under a professional liability insurance policy
19 of a servicemember who was engaged in furnishing professional
20 services immediately before receiving an order to active duty shall
21 be suspended by the insurer upon receipt of a written request from
22 the servicemember. The insurer shall not require that premiums be
23 paid on behalf of such a servicemember during the period that
24 coverage is suspended and shall refund any amount paid for
25 coverage of the period of such suspension unless the servicemember
26 elects to apply such amount to any premium due upon the
27 reinstatement of coverage. The insurer shall not be liable for a
28 claim that is based on professional conduct of a servicemember that
29 occurs during the period of suspension, except that the failure of a
30 servicemember to make adequate provision for a patient, client, or
31 other person to receive professional services or assistance during
32 the period of the servicemember's military service shall be
33 considered to arise prior to the period of suspension.

34 b. Coverage under a professional liability insurance policy that
35 has been suspended pursuant to subsection a. of this section shall be
36 reinstated by the insurer on the date on which that servicemember
37 transmits a written request for reinstatement to the insurer, provided
38 that the written request is transmitted to the insurer within 30 days
39 after the date on which the servicemember is released from active
40 duty. Such reinstatement shall be for a period of at least the
41 balance of the period for which coverage would have continued
42 under the insurance policy if coverage had not been suspended. The
43 insurer shall not increase the amount of the premium during such
44 required period except to the extent that the insurer has increased
45 premiums with general applicability.

46 c. The insurer shall be liable for a claim for damages for
47 professional negligence or other professional liability during the
48 period of suspension, to the same extent the insurer would be liable

1 during a period of coverage, in the case where a servicemember dies
2 during the period of suspension.

3
4 26. Upon application within 120 days after the date of
5 termination of or release from military service, a servicemember
6 shall be entitled to reinstatement of health insurance that was in
7 effect on the day before entrance into military service and was
8 terminated during the period of such service. Such reinstatement
9 shall not be subject to an exclusion or waiting period if the
10 condition arose before or during the period of military service, an
11 exclusion or waiting period would not have been imposed for the
12 condition during the period of coverage, and the condition has not
13 been determined by the Secretary of Veterans Affairs to be a
14 disability incurred or aggravated in the line of duty. The insurer
15 shall not increase the amount of the premium during the balance of
16 the period for which coverage would have been continued had the
17 coverage not been terminated except to the extent that the insurer
18 has increased premiums with general applicability.

19
20 27. If the trade or business of a servicemember has an obligation
21 or liability for which the servicemember is personally liable, the
22 assets of the servicemember not held in connection with that trade
23 or business shall not be available for satisfaction of the obligation
24 or liability during the period of the servicemember's military
25 service, except where a court determines, upon application by an
26 obligor affected by this section, that justice and equity require
27 otherwise.

28
29 28. a. When a person leaves a position other than a temporary
30 one in the employ of an employer in order to serve on active duty,
31 the employer shall restore such person to the position, or to a
32 position of like seniority, status, and pay, unless the employer's
33 circumstances have so changed as to make it impossible or
34 unreasonable to do so, if the person:

35 receives a certificate of completion of active duty duly executed
36 by an officer of the applicable force of the Armed Forces of the
37 United States or by an officer of the applicable force of the National
38 Guard;

39 is still qualified to perform the duties of such position; and

40 in the case of a private employer, makes application for
41 reemployment within 90 days after the person has completed
42 service on active duty.

43 If the circumstances of an employer have so changed because of
44 reasons of economy or efficiency or other related reason as to make
45 it impossible or unreasonable to restore a person who left to enter
46 active military service in the Armed Forces of the United States in
47 time of war or emergency, such employer shall restore such person

1 to any available position, if requested by such person, for which the
2 person is able or qualified to perform the duties.

3 b. The benefits, rights, and privileges granted to a
4 servicemember by this section shall be applicable to a person who
5 temporarily leaves a position other than a temporary one in the
6 employ of an employer in order to participate in assemblies or
7 annual training or in order to attend service schools conducted by
8 the Armed Forces of the United States for a period up to and
9 including three months, if the person is still qualified to perform the
10 duties of such position and makes application for reemployment
11 within 10 days after completion of such temporary period of
12 service. A person shall not be entitled to the benefits, rights, and
13 privileges for such attendance at a service school exceeding a total
14 of three months during any four-year period.

15 c. The benefits, rights, and privileges granted to a
16 servicemember by this section shall be applicable to a person who is
17 or becomes a member of the National Guard or of a reserve
18 component of the Armed Forces of the United States and who is
19 discharged or suspended by his employer because of such
20 membership, if the person is still qualified to perform the duties of
21 such position and makes application for reemployment or
22 termination of suspension within 10 days after such discharge or
23 suspension.

24 d. A person who is restored to a position in accordance with the
25 provisions of this section shall be considered as having been on
26 furlough or leave of absence during the period of active duty,
27 temporary service, discharge, or suspension. The person shall be so
28 restored without loss of seniority and entitled to participate in
29 insurance or other benefits offered by the employer pursuant to
30 established rules and practices relating to employees on furlough or
31 leave of absence in effect with the employer at the time such person
32 began serving on active duty or commenced such temporary service
33 or was so discharged or suspended. The person shall not be
34 discharged from the position without cause, within one year after
35 such restoration.

36 e. If a private employer fails or refuses to comply with the
37 provisions of this section, a person entitled to the benefits of such
38 provisions may file a complaint in the Superior Court and the court
39 shall have the power to specifically require the employer to comply
40 with such provisions. The court may also compensate the person
41 for loss of wages or benefits suffered by reason of the employer's
42 unlawful action. The court shall order an expedited hearing in such
43 a case. A person claiming to be entitled to the benefits of the
44 provisions of this section may appear and be represented by
45 counsel. A person may request in writing that the Attorney General
46 of the State appear and act on the person's behalf. If the Attorney
47 General is reasonably satisfied that the person so applying is
48 entitled to such benefits, the Attorney General shall appear and act

1 as attorney for such person in the amicable adjustment of the claim,
2 or in the filing of a complaint and the prosecution thereof. In the
3 hearing and determination of a complaint or application under this
4 section, fees or court costs shall not be assessed against a person
5 applying for such benefits.

6
7 29. Nothing in this act shall be construed to limit, restrict, or
8 forfeit the rights and privileges of a servicemember in regard to
9 public lands, desert-land entries, mining claims, mineral permits
10 and leases, and any other land rights that may be provided for by
11 federal law.

12
13 30. A servicemember may waive any of the rights or protections
14 provided by this act only if such waiver is in writing, in at least 12-
15 point font, executed as an instrument separate from the obligation
16 or liability to which it applies, and includes an acknowledgment of
17 the desirability of seeking advice from an attorney in connection
18 with the waiver, and the servicemember is given a reasonable
19 opportunity to seek such advice.

20
21 31. In any proceeding to enforce a civil right, if a court
22 determines that any interest, property, or contract has been
23 transferred or acquired with the intent to improperly delay the just
24 enforcement of such right, the court may enter such judgment or
25 make such order as justice and equity may require.

26
27 32. a. The Attorney General may commence a civil action
28 against any person who engages in a pattern or practice of violating
29 this act or engages in a violation of this act that raises an issue of
30 significant public importance.

31 In a civil action commenced under this subsection, a court may
32 grant any appropriate equitable or declaratory relief with respect to
33 the violation of this act, award all other appropriate relief, including
34 monetary damages, to any person aggrieved by the violation, and
35 assess a civil penalty, to vindicate the public interest, in an amount
36 not to exceed \$55,000 for a first violation or \$110,000 for any
37 subsequent violation.

38 Upon timely application, a person aggrieved by a violation of
39 this act with respect to which a civil action is commenced may
40 intervene in such action, and may obtain such appropriate relief as
41 the person could obtain in a civil action under subsection b. of this
42 section with respect to that violation, along with costs and a
43 reasonable attorney fee.

44 b. Any person aggrieved by a violation of this act may, in a
45 civil action, obtain any appropriate equitable or declaratory relief
46 with respect to the violation and recover all other appropriate relief,
47 including monetary damages. The court may award a person
48 aggrieved by a violation of this act who prevails in an action

1 brought under this subsection the costs of the action, including a
2 reasonable attorney fee.

3 c. Nothing in subsection a. or b. of this section shall be
4 construed to preclude or limit any remedy otherwise available under
5 other law, including consequential and punitive damages.

6
7 33. The Department of Military and Veterans Affairs shall
8 ensure that notice of the benefits and protections afforded by this
9 act is provided to servicemembers and their dependents.

10
11 34. The “New Jersey Soldiers’ and Sailors’ Civil Relief Act of
12 1979,” P.L.1979, c.317 (C.38:23C-1 et seq.) is repealed.

13
14 35. This act shall take effect immediately.

15
16

17 STATEMENT

18

19 This bill creates the New Jersey Servicemembers’ Civil Relief Act
20 and repeals the “New Jersey Soldiers’ and Sailors’ Civil Relief Act of
21 1979,” (C.38:23C-1 et seq.). The purpose of the bill is to update and
22 modernize the benefits and protections afforded to military
23 servicemembers and their dependents and to bring such benefits and
24 protections in line with those provided for by federal law. No benefits
25 or protections are reduced in this bill.

26 This bill, expands the definition of those who are protected under
27 New Jersey law, reconciles any differences between State and federal
28 law, and affords greater protections to servicemembers in the State.
29 These protections include:

- 30 • Mandatory stays of civil proceedings and executions of
31 judgments in circumstances when the servicemember’s
32 ability to represent himself is materially affected by his
33 military service;
- 34 • Allowance of application for anticipatory relief by the
35 servicemember;
- 36 • Protections against default judgments which cannot be
37 properly defended by reason of military service;
- 38 • Relief from contracts that cannot be performed due to
39 military service;
- 40 • Tolling of the statute of limitations during the period of
41 military service;
- 42 • A maximum six-percent rate of interest on debts incurred
43 before military service;
- 44 • Relief related to evictions, foreclosures, and certain taxes;
- 45 • Termination of leases executed before an individual was
46 called into military service;
- 47 • Protections against liens for storage, repair, and cleaning of
48 property and effects;
- 49 • Automatic extension of the power of attorney for

S167 CONNORS, BEACH

19

- 1 servicemembers who have entered missing status;
- 2 • Protections regarding life insurance, professional liability
- 3 insurance, and health insurance;
- 4 • Employment protections for those returning from military
- 5 service;
- 6 • Reservation of land rights provided under federal law;
- 7 • Procedures to effect waiver of any rights provided under
- 8 the act; and
- 9 • Creation of a civil action which may be brought by the
- 10 Attorney General or a person aggrieved by a violation of the
- 11 act.