ASSEMBLY, No. 705

STATE OF NEW JERSEY
218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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SYNOPSIS
Creates New Jersey Servicemembers’ Civil Relief Act.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 3/6/2018)
AN ACT creating the New Jersey Servicemembers’ Civil Relief Act, supplementing Title 38A of the New Jersey Statutes, and repealing P.L.1979, c.317.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known and may be referred to as the “New Jersey Servicemembers’ Civil Relief Act.”

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

3. As used in this act:
   “court” means any court or administrative agency of the State, or a subdivision thereof, whether or not a court or administrative agency of record.
   “insurer” means a corporation, partnership, or other form of association which secures or provides insurance under a policy.
   “legal representative of a servicemember” means an attorney acting on the behalf of a servicemember or an individual possessing power of attorney.
   “military service” means duty by any person in the active military service of the United States or active duty in the military service of the State pursuant to an order of the Governor issued pursuant to law. The term also means service by a United States citizen in the forces of a nation with which the United States is allied in the prosecution of a war or military action.
   “person” means individuals, partnerships, corporations, and any other forms of business association when used herein with reference to the holder of any right alleged to exist against a servicemember, or against a person secondarily liable under such right.
   “servicemember” means a person in military service. Whenever the term “servicemember” is used, it shall be treated as including a reference to a legal representative of a servicemember.

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

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

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

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

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

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

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

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

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

a denial or revocation of credit by a creditor, a change by a creditor in the terms of an existing credit arrangement, or a refusal by a creditor to grant credit to the servicemember in substantially the amount or on substantially the terms requested;
an adverse report relating to the creditworthiness of the
servicemember by or to a person engaged in the practice of
assembling or evaluating consumer credit information;
a refusal by an insurer to insure the servicemember;
an annotation in the record of a servicemember by a creditor or a
person engaged in the practice of assembling or evaluating
consumer credit information, identifying the servicemember as a
member of the National Guard or a reserve component; or
a change in the terms offered or conditions required for the
issuance of insurance.

7. a. When a servicemember is involved as a plaintiff or
defendant in an action or proceeding in a court commenced before
or during the period of active duty or within 60 days thereafter, the
court shall grant a stay of proceedings for a minimum period of 90
days upon application of counsel, or on the court’s own motion, if
the court determines that there may be a defense to the action and a
defense cannot be presented without the presence of the defendant
or counsel, after due diligence, has been unable to contact the
defendant or otherwise determine if a meritorious defense exists.
b. A servicemember may apply, during military service or
within 180 days thereafter, to a court for relief from an obligation or
liability incurred by the servicemember before such military service
or from a tax or assessment falling due before or during such
military service. If the ability of a servicemember to comply with
the terms of such obligation, liability, tax, or assessment has been
materially affected by reason of military service, the court may stay
the enforcement thereof.
c. This section shall apply unless the court determines that the
defendant's ability to conduct a defense or to comply with the
judgment or order entered or sought, or the plaintiff's ability to
prosecute the action, or the servicemember’s ability to comply with
the obligation is not materially affected by reason of the military
service of the servicemember.

8. a. If the defendant does not appear in a civil action or
proceeding commenced in any court, the plaintiff may file an
affidavit setting forth facts to show that the defendant is not serving
on active duty. The affidavit shall be filed within 20 days before
the entry of a judgment or final order. If the plaintiff is unable to
file such an affidavit, the plaintiff may file an affidavit to show
either that the defendant is on active duty or that the plaintiff is not
able to determine if the defendant is on active duty. If no affidavit
is filed to show that the defendant is not on active duty, a judgment
or final order shall not be entered without first securing an order of
court directing such entry. Such an order shall not be made if the
defendant is on active duty until after the court appoints an attorney
to represent the defendant and protect the defendant's interest.
b. In an action or proceeding in which a servicemember is a party, the court may appoint an attorney to represent the person if such person does not personally appear therein or is not represented by an authorized attorney. An attorney appointed under this act to protect a servicemember shall not have the power to waive a right of the person for whom the attorney is appointed or bind the person by the attorney's acts.

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

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

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

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

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

10. In any action or proceeding commenced in any court against a servicemember, before or during the period of such service, or
within 90 days thereafter, the court may on its own motion and shall
upon application to it by the servicemember, unless in the opinion
of the court the ability of the servicemember to comply with the
judgment or order entered or sought is not materially affected by
reason of his military service:

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

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

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

12. To the extent that it is allowable by federal law, 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 an action or proceeding in any court, board, bureau,
commission, department or other agency of government of this
State or any of its political subdivisions or against a
servicemember, or by or against his heirs, executors, administrators,
or assigns, whether such cause of action or the right or privilege to
institute such an 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 effective date of this act be included in
computing any period now or hereafter provided by any law for the
redemption of real property sold or forfeited to enforce an
obligation, tax or assessment.

13. a. An obligation or liability incurred by a servicemember, or
the servicemember and the servicemember’s spouse jointly, before
the servicemember enters military service shall not bear interest at a
rate in excess of six percent during the period of military service or,
in the case of an obligation or liability consisting of a mortgage,
trust deed, or other security in the nature of a mortgage, during the
period of military service and one year thereafter. The interest on
an obligation or liability that would be incurred in excess of six
percent, if not for this subsection, is forgiven. The amount of a
periodic payment due under the terms of an obligation or liability
covered by this subsection shall be reduced by the amount of the
interest forgiven that is allocable to the period for which such payment is made.

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

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

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

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

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

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

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

15. a. A lease that covers premises occupied by a servicemember or the servicemember and the servicemember’s dependent for dwelling, professional, business, agricultural, or
similar purposes, and was executed by or on behalf of a 
servicemember who began service on active duty after the 
execution of the lease, may be terminated by notice in writing 
delivered to the lessor, or the lessor's grantee or the lessor's or 
grantee's agent, by the lessee at any time following the beginning of 
the period of active duty. Termination of a lease providing for 
monthly payment of rent shall not be effective until 30 days after 
the date on which the next rental payment is due, and rent shall be 
payable until the date when the notice is delivered or mailed. 

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

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

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

16. a. (1) A person who has received, or whose assignor has 
received, a deposit or installment under a contract for the purchase 
of real or personal property, or for a lease or bailment with a view 
to purchase of such property, from a person or from the assignor of 
a person who has begun service on active duty after the date of 
payment of such deposit or installment shall not exercise a right or 
option under such contract to rescind or terminate the contract or 
resume possession of the property for nonpayment of an installment 
thereunder due or for another breach of the terms thereof occurring 
prior to or during the period of active duty, except by action in a 
court of competent jurisdiction. Nothing contained in this section 
shall prevent the modification, termination or cancellation of such a 
contract, or prevent the repossession, retention, foreclosure, sale or 
taking possession of property which is purchased or received, or 
which is security for an obligation under such contract, pursuant to 
a mutual agreement of the parties thereto or their assignees if such 
agreement is executed in writing subsequent to the making of such
(2) A person who prior to serving on active duty for a period of more than 90 consecutive days leased a non-commercial motor vehicle for personal use, with or without a view to purchase, may cancel the lease by giving written notice of cancellation to the lessor or the lessor's assignor at any time following the date of receipt of the order to enter active duty. Cancellation of a lease providing for monthly lease payments shall not be effective until the last day of the month following the month in which notice of cancellation is made, or when the leased motor vehicle is returned to the lessor or the lessor's assignor, whichever is later. Upon cancellation of the lease, the former lessee and a co-signer shall have no further liability to the lessor or the lessor's assignor, except that the lessee and a co-signer shall be obligated to the lessor or assignor for damages to the motor vehicle and excess mileage over the pro rata amount permitted as of the date of cancellation of the lease. The lessor or lessor's assignor shall not impose a penalty or charge upon the lessee or a co-signer on the lease for early cancellation of the lease. This subsection shall apply whether or not the person is the sole signatory of the lease.

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

c. Upon the hearing of such action, the court may order the repayment of prior installments or deposits or any part thereof as a condition of terminating the contract and resuming possession of the property. The court also may order a stay of proceedings as provided in this act at its discretion and on its own motion, or shall order such stay on application to it by a servicemember or another person on his behalf. A stay under this section may be ordered for the period of active duty and six months thereafter or any part of such period unless the ability of the defendant to comply with the terms of the contract is not materially affected, in the opinion of the court, by reason of service on active duty. The court may make such other disposition of the case as may be equitable to conserve the interests of all parties.

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

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

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

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

b. A sale, foreclosure, or seizure of property for nonpayment of a sum due under such an obligation, or for another 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 not be valid if made during the period of active duty or within three months thereafter except upon an order of sale previously granted by the court and a return thereto is made and approved by the court.

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

18. When a proceeding to foreclose a mortgage 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 appoint three disinterested parties to appraise
the property, unless in its opinion an undue hardship would result to
the dependents of the servicemember. Based upon the report of the
appraisers, the court may order such sum, if any, as may be just to
be paid to the servicemember or his dependent as a condition of
foreclosing the mortgage, resuming possession of the property, or
rescinding or terminating the contract.

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

This section shall not apply to taxes on income.

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

c. If a tax or assessment is not paid when due, it shall bear
interest until paid at the rate of six percent per annum from the date
when the tax first became a lien. Another penalty or interest shall
not be incurred by reason of such nonpayment, whether the penalty
or interest accrued prior or accrues subsequent to the
commencement of the period of active duty. A lien for unpaid taxes
or assessment shall also include such interest.

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

For the purposes of this section,
"policy" means any individual contract for whole, endowment,
universal, or term life insurance, other than group term life
ingurance coverage, including any benefit in the nature of such
insurance arising out of membership in a fraternal or beneficial
association but shall not mean insurance exceeding a total face
value of $400,000, or an amount equal to the Servicemembers’
Group Life Insurance maximum limit, whichever is greater, whether
in one or more companies.

“insured” means a person whose life is insured under a policy.

“premium” shall include the membership dues or assessments in
a fraternal or beneficial association with the date of issuance of a
policy as herein limited referring to the date of admission to
membership in such association.

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

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

22. a. At any time during the period of active duty or within six
months thereafter, a person may apply to a court for relief with
respect to an obligation or liability incurred by such person prior to
the period of active duty or with respect to a tax or assessment
which becomes due prior to or during the period of active duty.
Unless in the court’s 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 service on
active duty, the court may grant the following relief after
appropriate notice and hearing:

(1) In the case of an obligation payable under its terms in
installments under a contract for the purchase of real estate, or
secured by a mortgage or other instrument in the nature of a
mortgage upon real estate, a court may stay the enforcement of such
obligation during the applicant's period of active duty and, from the
date of termination of such period of active duty or from the date of
application if made after active duty, 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 active duty
of the applicant, or any part of such combined period. The stay
shall be subject to payment of the balance of principal and
accumulated interest due and unpaid at the date of termination of
the period of active duty or from the date of application 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. The court may impose such other terms as may be just.

(2) In the case of another obligation, liability, tax, or
assessment, a court may stay the enforcement thereof during the
applicant's period of active duty and from the date of termination of
the period of active duty or from the date of application if made
after active duty, for a period of time equal to the period of active
duty of the applicant or any part of such period. The stay shall be
subject to payment of the balance of principal and accumulated
interest due and unpaid at the date of the termination of such period
of active duty or the date of application 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. The court may impose such other terms as may be
just.

b. When any court has granted a stay as provided in this
section, a fine or penalty shall not 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 with respect to which such stay was
granted.

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

b. When a person serving on active duty is reported missing,
the person shall be presumed to continue on active duty until
accounted for. A period herein limited that begins or ends with the
death of such person shall not begin or end until the death of such
person is in fact reported to or proved by the applicable force of the
Armed Forces of the United States or of the National Guard, or
proved by a court of competent jurisdiction.

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

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

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

c. The insurer shall be liable for a claim for damages for professional negligence or other professional liability during the period of suspension, to the same extent the insurer would be liable during a period of coverage, in the case where a servicemember dies during the period of suspension.

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

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

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

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

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

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

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

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

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

e. If a private employer fails or refuses to comply with the provisions of this section, a person entitled to the benefits of such provisions may file a complaint in the Superior Court and the court shall have the power to specifically require the employer to comply with such provisions. The court may also compensate the person for loss of wages or benefits suffered by reason of the employer's unlawful action. The court shall order an expedited hearing in such a case. A person claiming to be entitled to the benefits of the provisions of this section may appear and be represented by counsel. A person may request in writing that the Attorney General of the State appear and act on the person's behalf. If the Attorney General is reasonably satisfied that the person so applying is entitled to such benefits, the Attorney General shall appear and act as attorney for such person in the amicable adjustment of the claim, or in the filing of a complaint and the prosecution thereof. In the hearing and determination of a complaint or application under this section, fees or court costs shall not be assessed against a person applying for such benefits.

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

30. A servicemember may waive any of the rights or protections provided by this act only if such waiver is in writing, in at least 12-point font, executed as an instrument separate from the obligation or liability to which it applies, and includes an acknowledgment of the desirability of seeking advice from an attorney in connection with the waiver, and the servicemember is given a reasonable opportunity to seek such advice.
31. In any proceeding to enforce a civil right, if a court determines that any interest, property, or contract has been transferred or acquired with the intent to improperly delay the just enforcement of such right, the court may enter such judgment or make such order as justice and equity may require.

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

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

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

b. Any person aggrieved by a violation of this act may, in a civil action, obtain any appropriate equitable or declaratory relief with respect to the violation and recover all other appropriate relief, including monetary damages. The court may award a person aggrieved by a violation of this act who prevails in an action brought under this subsection the costs of the action, including a reasonable attorney fee.

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

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

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

35. This act shall take effect immediately.

STATEMENT

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

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

- Mandatory stays of civil proceedings and executions of judgments in circumstances when the servicemember’s ability to represent himself is materially affected by his military service;
- Allowance of application for anticipatory relief by the servicemember;
- Protections against default judgments which cannot be properly defended by reason of military service;
- Relief from contracts that cannot be performed due to military service;
- Tolling of the statute of limitations during the period of military service;
- A maximum six-percent rate of interest on debts incurred before military service;
- Relief related to evictions, foreclosures, and certain taxes;
- Termination of leases executed before an individual was called into military service;
- Protections against liens for storage, repair, and cleaning of property and effects;
- Automatic extension of the power of attorney for servicemembers who have entered missing status;
- Protections regarding life insurance, professional liability insurance, and health insurance;
- Employment protections for those returning from military service;
- Reservation of land rights provided under federal law;
- Procedures to effect waiver of any rights provided under the act; and
- Creation of a civil action which may be brought by the Attorney General or a person aggrieved by a violation of the act.