

HOUSE BILL No. 2964

By Committee on Federal and State Affairs

3-11

9 AN ACT concerning service members; relating to civil relief; enacting
10 the Kansas military service relief act.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. This act shall be known and may be cited as the Kansas
14 military service relief act.

15 Sec. 2. For the purposes of sections 1 through 14, and amendments
16 thereto:

17 (a) “Dependent” means:

18 (1) The service member’s spouse;

19 (2) the service member’s minor child; or

20 (3) an individual for whom the service member provided more than
21 one-half of the individual’s support for 180 days immediately preceding
22 an application for relief under this act.

23 (b) “Judgment” does not include temporary orders issued by a court
24 in domestic relations cases under article 16 of chapter 60 of the Kansas
25 Statutes Annotated, and amendments thereto, including, but not limited
26 to, the establishment of any interlocutory orders pursuant to K.S.A. 60-
27 1607, and amendments thereto, or entry of an emergency or temporary
28 order under article 31 of chapter 60 of the Kansas Statutes Annotated,
29 and amendments thereto.

30 (c) “Military service” means a service member under a call to active
31 service authorized by the president of the United States or the secretary
32 of defense for a period of more than 30 consecutive days.

33 (d) “National guard” means that part of the military force of the state
34 that is organized, equipped and federally recognized under the provisions
35 of the national defense act of the United States.

36 (e) “Service member” means any resident of the state of Kansas that
37 is a member of the national guard or member of a military reserve
38 component.

39 (f) “Uniformed services” means the armed forces of the United States
40 as defined by 10 U.S.C. 101(a)(4), including reserved components of the
41 armed forces, the army national guard and the air national guard, the
42 commissioned corps of the public health service, and any other category
43 of persons designated by the president in time of war or emergency.

1 Sec. 3. (a) Any service member who is ordered to report for military
2 service and the service member's dependents are entitled to the rights
3 and protections of this act during the period beginning on the date on
4 which the service member receives the order and ending 180 days after
5 termination of or release from military service.

6 (b) This act applies to any judicial proceeding commenced in any
7 court or any administrative proceeding initiated by an agency in Kansas
8 in which a service member or the service member's dependent is a de-
9 fendant. This act shall not apply to criminal proceedings.

10 (c) This act shall be construed liberally so as to provide fairness and
11 do substantial justice to service members and their dependents.

12 Sec. 4. (a) Whenever, pursuant to this act, a court stays, postpones
13 or suspends: (1) The enforcement of an obligation or liability; (2) the
14 prosecution of a suit or proceeding; (3) the entry or enforcement of an
15 order, writ, judgment or decree; or (4) the performance of any other act,
16 the court may likewise grant such a stay, postponement or suspension to
17 a surety, guarantor, endorser, accommodation maker, comaker or other
18 person who is or may be primarily or secondarily subject to the obligation
19 or liability the performance or enforcement of which is stayed, postponed
20 or suspended.

21 (b) When a judgment or decree is vacated or set aside, in whole or
22 in part, pursuant to this act, the court may also set aside or vacate, as the
23 case may be, the judgment or decree as to a surety, guarantor, endorser,
24 accommodation maker, comaker or other person who is or may be pri-
25 marily or secondarily liable on the contract or liability for the enforcement
26 of the judgment decree.

27 Sec. 5. (a) A service member may waive any of the rights and pro-
28 tections provided by this act. In the case of a waiver that permits an action
29 described in subsection (b), the waiver is effective only if made pursuant
30 to a written agreement of the parties that is executed during or after the
31 service member's period of military service. The written agreement shall
32 specify the legal instrument to which the waiver applies and, if the service
33 member is not party to that instrument, the service member concerned.

34 (b) The requirement in subsection (a) for a written waiver applies to
35 the following: (1) The modification, termination or cancellation of a con-
36 tract, lease or bailment; or an obligation secured by a mortgage, trust,
37 deed, lien or other security in the nature of a mortgage; and (2) the
38 repossession, retention, foreclosure, sale, forfeiture or taking possession
39 of property that is security for any obligation or was purchased or received
40 under a contract, lease or bailment.

41 Sec. 6. (a) This section applies to any civil action or proceeding in
42 which a service member or the service member's dependent is a defend-
43 ant and does not make an appearance under applicable court rules or by

1 law.

2 (b) In any action or proceeding covered by this section, the court,
3 before entering judgment for the plaintiff, shall require the plaintiff to
4 file with the court an affidavit:

5 (1) Stating whether the defendant is in military service, or is a de-
6 pendent of a service member in military service, and showing necessary
7 facts to support the affidavit; or

8 (2) if the plaintiff is unable to determine whether the defendant is in
9 military service or is a dependent of a service member in military service,
10 stating that the plaintiff is unable to determine whether the defendant is
11 in military service or is a dependent of a service member in military
12 service.

13 (c) (1) To determine whether or not a defendant is a dependent of
14 a service member in military service, the plaintiff may serve on or mail
15 via first-class mail to the defendant a written notice in substantially the
16 following form:

17 “NOTICE: State and federal laws provide protections to defendants
18 who are service members on active duty in the military *and to their*
19 *dependents*. Dependents of a service member include the service
20 member’s spouse, minor child, and individuals for whom the service
21 member provided more than one-half of the individual’s support for
22 180 days immediately preceding an application for relief.

23 One protection provided is the protection against the entry of a
24 default judgment in certain circumstances. This notice only pertains
25 to a defendant who is a dependent of a member of the national guard
26 or a military reserve component under a call to active service for a
27 period of more than 30 consecutive days. Other defendants in military
28 service also have protections against default judgments not covered by
29 this notice. If you are the dependent of a member of the national guard
30 or a military reserve component under a call to active service for a
31 period of more than 30 consecutive days, you should notify the plaintiff
32 or the plaintiff’s attorney(s) in writing of your status as such within 20
33 days of receipt of this notice. If you fail to do so, then a court or an
34 administrative tribunal may presume that you are not a dependent of
35 an active duty member of the national guard or reserves, and proceed
36 with the entry of an order of default and/or a default judgment without
37 further proof of your status. Your response to the plaintiff or plaintiff’s
38 attorney(s) about your status does not constitute an appearance for
39 jurisdictional purposes in any pending litigation nor a waiver of your
40 rights.”

41 (2) If the notice is either served on the defendant 20 or more days
42 prior to an application for an order of default or a default judgment or
43 mailed to the defendant more than 23 days prior to such application, and

1 the defendant fails to timely respond, then for purposes of entry of an
2 order of default or default judgment, the court or administrative officer
3 may presume that the defendant is not a dependent of a person in military
4 service under this act.

5 (3) Nothing prohibits the plaintiff from allowing a defendant more
6 than 20 days to respond to the notice, or from amending the notice to so
7 provide.

8 (d) If in an action covered by this section it appears that the defendant
9 is in military service or is a dependent of a service member in military
10 service, the court may not enter a judgment until after the court appoints
11 an attorney to represent the defendant. If an attorney appointed under
12 this section to represent a service member or a service member's de-
13 pendent cannot locate the service member or dependent, actions by the
14 attorney in the case do not waive any defense of the service member or
15 dependent or otherwise bind the service member or dependent.

16 (e) In an action covered by this section in which the defendant is in
17 military service or is a dependent of a service member in military service,
18 the court shall grant a stay of proceedings until 180 days after termination
19 of or release from military service, upon application of defense counsel
20 or on the court's own motion, if the court determines that:

21 (1) There may be a defense to the action and a defense cannot be
22 presented without presence of the defendant; or

23 (2) after due diligence, counsel has been unable to contact the de-
24 fendant or otherwise determine if a meritorious defense exists. The de-
25 fendant's failure to communicate or cooperate with counsel after having
26 been contacted is not grounds to find that counsel has been unable to
27 contact the defendant or that counsel has been unable to determine if a
28 meritorious defense exists.

29 (f) No bar to entry of judgment under subsection (d) or requirement
30 for grant of stay under subsection (e) precludes the entry of temporary
31 orders in domestic relations cases under article 16 of chapter 60 of the
32 Kansas Statutes Annotated, and amendments thereto. If a court or ad-
33 ministrative officer enters a temporary order as allowed under this sub-
34 section, it shall include a finding that failure to act, despite the absence
35 of the service member, would result in manifest injustice to the other
36 interested parties. Temporary orders issued without the service member's
37 participation shall not set any precedent for the final disposition of the
38 matters addressed therein.

39 (g) If a service member or dependent who is a defendant in an action
40 covered by this section receives actual notice of the action, the service
41 member or dependent may request a stay of proceedings under section
42 6 of this act, and amendments thereto.

43 (h) A person who makes or uses an affidavit permitted under this

- 1 section knowing it to be false, is guilty of a severity level 10, nonperson
2 felony.
- 3 (i) If a default judgment is entered in an action covered by this section
4 against a service member or the service member's dependent during the
5 service member's period of military service or within 180 days after the
6 termination of or release from military service, the court entering the
7 judgment, upon application by or on behalf of the service member or the
8 service member's dependent, shall reopen the judgment for the purpose
9 of allowing the service member or the service member's dependent to
10 defend the action if it appears that:
- 11 (1) The service member or dependent was materially affected by reason
12 of that military service in making a defense to the action; and
- 13 (2) the service member or dependent has a meritorious or legal de-
14 fense to the action or some part thereof.
- 15 (j) If a court vacates, sets aside or reverses a default judgment against
16 a service member or the service member's dependent and the vacating,
17 setting aside or reversing is because of a provision of this act, that action
18 does not impair a right or title acquired by a bona fide purchaser for
19 value.
- 20 Sec. 7. (a) This section applies to any civil action or proceeding in
21 which a defendant at the time of filing an application under this section:
- 22 (1) (A) Is in military service, or it is within 180 days after termination
23 of or release from military service; or
- 24 (B) is a dependent of a service member in military service; and
- 25 (2) has received actual notice of the action or proceeding.
- 26 (b) At any stage before final judgment in a civil action or proceeding
27 in which a service member or the service member's dependent described
28 in subsection (a) is a party, the court may on its own motion and, upon
29 application by the service member or the service member's dependent,
30 shall stay the action until 180 days after termination of or release from
31 military service, if the conditions in subsection (c) are met.
- 32 (c) An application for a stay under subsection (b) shall include the
33 following:
- 34 (1) A letter or other communication setting forth facts stating the
35 manner in which current military duty requirements materially affect the
36 service member's or dependent's ability to appear and stating a date when
37 the service member or dependent will be available to appear; and
- 38 (2) a letter or other communication from the service member's com-
39 manding officer stating that the service member's current military duty
40 prevents either the service member's or dependent's appearance and that
41 military leave is not authorized for the service member at the time of the
42 letter.
- 43 (d) An application for a stay under this section does not constitute an

1 appearance for jurisdictional purposes and does not constitute a waiver
2 of any substantive or procedural defense, including a defense relating to
3 lack of personal jurisdiction.

4 (e) A service member or dependent who is granted a stay of a civil
5 action or proceeding under subsection (b) may apply for an additional
6 stay based on the continuing material affect of military duty on the service
7 member's or dependent's ability to appear. Such application may be made
8 by the service member or the service member's dependent at the time
9 of the initial application under subsection (b) or when it appears that the
10 service member or the service member's dependent is unable to prose-
11 cute or defend the action. The same information required under subsec-
12 tion (c) shall be included in an application under this subsection.

13 (f) If the court refuses to grant an additional stay of proceedings un-
14 der subsection (b), the court shall appoint counsel to represent the service
15 member or the service member's dependent in the action or proceeding.

16 (g) A service member or dependent who applies for a stay under this
17 section and is unsuccessful may not seek the protections afforded by sec-
18 tion 5, and amendments thereto.

19 Sec. 8. (a) If an action for compliance with the terms of a contract is
20 stayed pursuant to this act, a penalty shall not accrue for failure to comply
21 with the terms of the contract during the period of the stay.

22 (b) If a service member or the service member's dependent fails to
23 perform an obligation arising under a contract and a penalty is incurred
24 arising from that nonperformance, a court may reduce or waive the fine
25 or penalty if:

26 (1) (A) The service member was in military service at the time the
27 fine or penalty was incurred; or

28 (B) the action is against a dependent of the service member and the
29 service member was in military service at the time the fine or penalty was
30 incurred; and

31 (2) the ability of the service member or dependent to perform the
32 obligation was materially affected by the military service.

33 Sec. 9. If the service member or the service member's dependent is
34 a codefendant with others who are not in military service and who are
35 not entitled to the relief and protections provided under this act, the
36 plaintiff may proceed against those other defendants with the approval of
37 the court.

38 Sec. 10. (a) The period of a service member's military service may
39 not be included in computing any period limited by law, rule or order,
40 for the bringing of any action or proceeding in a court, or in any agency
41 of a state or political subdivision thereof, or the United States by or against
42 the service member or the service member's dependents, heirs, execu-
43 tors, administrators or assigns.

1 (b) A period of military service may not be included in computing
2 any period provided by law for the redemption of real property sold or
3 forfeited to enforce an obligation, tax or assessment.

4 (c) This section does not apply to any period of limitation prescribed
5 by or under the internal revenue laws of the United States.

6 Sec. 11. If a court determines, in any proceeding to enforce a civil
7 right, that any interest, property or contract has been transferred or ac-
8 quired with the intent to delay the just enforcement of such right by
9 taking advantage of this act, the court shall enter such judgment or make
10 such order as might lawfully be entered or made concerning such transfer
11 or acquisition.

12 Sec. 12. The provisions of the servicemembers civil relief act, 50
13 U.S.C. 501 et seq., are adopted and made a part of this act, and all of the
14 benefits, protections and rights provided in the servicemembers civil re-
15 lief act shall be applicable to all service members in military service and
16 shall be enforceable pursuant to the provisions of this act.

17 Sec. 13. The department of labor shall make available the following
18 notice that every employer shall post in a conspicuous place in each em-
19 ployment establishment:

20 "If you are in the national guard, military reserves, or active duty in
21 the military, you have certain protected employment and reemploy-
22 ment rights, freedom from discrimination rights, and civil relief rights
23 under federal law 38 U.S.C. 4301 et seq. (USERRA) and 50 U.S.C.
24 501 et seq. (SCRA) and the Kansas military service relief act (sections
25 1 through 14, and amendments thereto). If you feel that you have been
26 discriminated against or denied such rights on account of your service
27 in the uniformed services, contact the Employer Support Guard and
28 Reserve Committee at 1-800-336-4590."

29 Sec. 14. (a) The district courts of this state shall have jurisdiction over
30 proceedings involving the servicemembers civil relief act which shall be
31 governed by the court rules applicable to ordinary proceedings.

32 (b) The district and appellate courts shall give preference in sched-
33 uling such proceedings, upon the motion of any person in the uniformed
34 services, or the person's attorney, who presents certification that the per-
35 son has performed service in the uniformed services or is in service in
36 the uniformed services.

37 (c) Suits to enforce the provisions of this act may be instituted in any
38 court of competent jurisdiction and appropriate venue by the attorney
39 general of Kansas.

40 Sec. 15. This act shall take effect and be in force from and after its
41 publication in the Kansas register.