

No. 499

**SOLDIERS' AND SAILORS' CIVIL RELIEF ACT—MILITARY SERVICE—INSTALLMENT CONTRACTS—CONDITIONAL SALES CONTRACTS—JUDGMENTS AGAINST PERSONS IN MILITARY SERVICE—RENTS—TAXES**

**Held:** Provisions of Soldiers' and Sailors' Relief Act of 1940 interpreted in detail herein.

October 9, 1942.

Adjutant General  
Armory Building  
Helena, Montana

Dear Sir:

You have requested an interpretation of the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 with reference to one who has purchased real or personal property on the installment plan and who, by reason of his entry into the military service, is unable to make the payments under such contract.

The purpose of the act is best expressed in Section 100 thereof, in the following words:

"In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such person to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act remains in force."

50 U. S. C. A., Section 501; 11 F. C. A., Title 50, Appx. 9; 54 Stat. 1178.

Dealing with contracts for the purchase of real and personal property, Section 301 of the Act provides:

"(1) No person who prior to the date of approval of this Act has received, or whose assignor has received, under the contract for the purchase of real or personal property, or for lease or bailment with a view to purchase of such property, a deposit or installment of the purchase price from a person or from the assignor of a person who, after the date of payment of such deposit or installment, has entered military service, shall exercise any right or option under such contract to rescind or terminate the contract or resume possession of the property for nonpayment of any installment falling due during the period of such military service, except by action in a court of competent jurisdiction; PROVIDED, That nothing contained in this section shall prevent the modification, termination, or cancellation of any such contract, or prevent the repossession or retention of property purchased or received 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 contract and during or after the period of military service of the person concerned."

Under the act, the vendor is prohibited from exercising any option or right under such contract to rescind or terminate the contract or to repossess the property, except by action in court. It is then provided upon the hearing 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, or may, on application of such person in military service, or some person on his behalf, order a stay of proceedings, unless in the opinion of the court the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service, or the court may make such other disposition of the case as may be equitable to conserve the interests of all parties.

With reference to the action above referred to, it is provided if the defendant does not appear in the action in person or by counsel, the plaintiff before entering judgment shall file in the court an affidavit setting forth facts showing the defendant is not in military service. If unable to file such an affidavit, the plaintiff may file an affidavit setting forth either the defendant is in the military service or plaintiff is not able to determine whether or not defendant is in such service. If the affidavit showing the defendant is not in the military service is not filed, no judgment shall be entered without first securing an order of court directing such entry, and no such order shall be made if the defendant is in such service until after the court shall have appointed an attorney to represent him and protect his rights and interests. The court, on application, must appoint such attorney. It is further provided, unless it is shown by affidavit the defendant is not in military service, the court may require, as a condition before judgment is entered, the plaintiff file a bond approved by the court conditioned in indemnify the defendant, if in military service, against any loss or damage he may suffer by reason of such judgment should the judgment be thereafter set aside in whole or in part.

It is further provided by the act, if any judgment is rendered against any person in military service during the period of such service, or within thirty days thereafter, and it appears such person was prejudiced by reason of his military service in making defense thereto, such judgment may, upon application of the defendant or his legal representative within ninety days after the termination of such service, be opened by the court rendering the same and the defendant or his legal representative let in to defend, provided it is made to appear the defendant has a legal and meritorious defense.

The act further provides, when an action is stayed, no fine or penalty shall accrue by reason of failure to comply with the terms of such contract during the period of the stay, and where a person fails to perform any

obligation and a fine or penalty for such nonperformance is incurred, the court may—on such terms as may be just—relieve against the enforcement of such fine or penalty, if the court shall find that because of his military service the ability of the person to pay or perform was materially impaired.

With respect to stay of proceedings, it is provided such stay may be ordered by the court or the full period of such military service and three months thereafter.

In summary, then, by the terms of this act, the person, firm or corporation who sells real or personal property on the installment plan is prohibited from exercising any option to repossess or reclaim such property without a suit in court. If such suit is brought, the person in military service, or someone in his behalf, may request the appointment of an attorney to represent him in the action. Before a judgment may be entered in the action, the plaintiff must file an affidavit showing the defendant is or is not in military service or plaintiff cannot determine whether or not he is in military service, and even then judgment may be entered only upon order of the court. Unless it is shown by affidavit the defendant is in the military service, the judge may, before entering judgment, require the plaintiff to furnish a bond to indemnify the defendant against any loss or damage he may suffer by reason of such judgment, should the judgment be thereafter set aside.

If suit is instituted on such installment contract, the court may at any stage of the proceedings, upon application of the defendant, or someone in his behalf, order a stay for the period of such military service and three months thereafter, on such terms as he may determine to be just. The court may also permit the cancellation of the contract and repossession of the property by payment to the plaintiff of all installments paid on the contract prior to the suit.

With respect to rented premises, the act provides there shall be no eviction or distress during the period of military service of premises where the rent agreed to be paid does not exceed eighty dollars per month and which premises are occupied chiefly for dwelling purposes by the wife, children, or other dependents of the person in military service, except upon leave of court granted upon application therefor or granted in an action or proceeding affecting the right of possession. Upon such proceedings, the court may in its discretion, on its own motion, and shall upon application, unless the court finds the person in military service has the ability to pay the rent, stay the proceedings for not more than three months, and may make such other order as may be just. It is also provided provision may be made for the allotment of part of the pay of the person in service to pay the rent each month.

A penalty is provided for the violation of any of the provisions of the act or for doing any of the acts prohibited thereby.

With respect to life insurance, the act provides for the suspension—under certain conditions and in certain cases—of payment of premiums on policies, the face value not exceeding five thousand dollars in all, during the period of military service and for one year thereafter. It is provided the United States Government shall insure the payment of these premiums during the period of military service for one year thereafter. The insured may pay the defaulted premiums during the year after discharge, with interest, and redeem the policy.

Similar provisions and safeguards are made for the suspension and payment of taxes on real property. Provision is also made to protect homestead entries, mining claims, grazing land, etc.

The impression may be gained this act is designed to prevent the enforcement of obligations of those persons in military service. The act, however, merely safeguards the rights of such persons by suspending his obligations and preserving his property until his return from the service, under conditions which are intended to protect equally the rights of the other party. The provisions and benefits of the act of course apply only to those in service who, because of such service, are unable to meet their

obligations. If the person in service is financially able to meet his obligations, he cannot take advantage of the Act, but must comply with the terms of his contract and perform the obligations he has incurred.

Very truly yours,

R. V. BOTTOMLY  
Attorney General