

2009

Korilee Lilly v. Aaron Matthew Lilly : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

KORILEE LILLY,

Petitioner/Appellee,

vs.

AARON MATTHEW LILLY,

Respondent/Appellant.

:

:

:

:

:

Case No. 20090933-CA

BRIEF OF APPELLEE

Appeal from the Third Judicial District Court, Salt Lake County, State of Utah, the
Honorable Glenn K. Iwasaki

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UTAH APPELLATE COURTS

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STATEMENT OF JURISDICTION

This Court’s jurisdiction is established by Utah Code Ann. §78A-4-103(2) (h).

STATEMENT OF ADDITIONAL ISSUES

Issue. Whether the doctrine of claim preclusion bars Appellant from litigating his claims in this proceeding.

Issue preserved: R., pgs 398 to 414 and 555 to 558.

Standard of Review. The issue was mooted by the Court's dismissal of the proceeding on other grounds and no substantive disposition was made of the issue.

Issue. Whether Appellee is entitled to attorneys under the Uniform Interstate Family Support Act as a prevailing party or as a result of a presumption that Appellant proceeded below primarily for delay.

Issue preserved. R., pgs 216- 217, 347-348 and 418-419.

Standard of review. Statutory interpretation is a matter of law. A correction of error standard applies. No deference is given to the trial court's interpretation.

STATUTES WHOSE INTERPRETATION ARE DETERMINATIVE OF OR OF CENTRAL IMPORTANCE TO THE APPEAL

1. Utah Code Annotated, 78B-14-611. Modification of child-support order of another state.

(1) If Section **78B-14-613** does not apply, except as otherwise

provided in Section **78B-14-615**, upon petition a tribunal of this state may modify a child-support order issued in another state which is registered in this state if, after notice and hearing, the tribunal finds that:

(a) the following requirements are met:

(i) neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state;

(ii) a petitioner who is a nonresident of this state seeks modification; and

(iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(b) this state is the state of residence of the child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

(2) Modification of a registered child-support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(3) Except as otherwise provided in Section **78B-14-615**, a tribunal of this state may not modify any aspect of a child-support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child-support orders for the same obligor and same child, the order that controls and must be so recognized under Section **78B-14-207** establishes the aspects of the support order which are nonmodifiable.

(4) In a proceeding to modify a child-support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

(5) On issuance of an order by a tribunal of this state modifying a child-support order issued in another state, the tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.

2. Utah Code Annotated, 78B-14-313. Costs and fees.

(1) The petitioner may not be required to pay a filing fee or other costs.

(2) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by law. Attorney fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(3) The tribunal shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding under Part 6, Registration, Enforcement, and Modification of Support Order, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change

3. Service Members Civil Relief Act, 50 U.S.C. 501-596.

Due to its length, such statute is included in the Appendix in its entirety.

STATEMENT OF THE CASE

This matter arises from Appellant's (the child support obligor) registration of a California child support order in Utah for the purpose of modification, in accordance with the Uniform Interstate Family Support Act ("UIFSA"). The Court below determined that although Appellee and the child resided in Utah, that Appellant continued to reside in California, thereby depriving Utah of jurisdiction to modify the child support order, which led to the dismissal of the petition to modify, without prejudice, for lack of subject matter jurisdiction.

During the pendency of this matter, and prior to the dismissal of the petition to modify herein, the California court which had issued the child support order which Appellant seeks to modify herein, found, after a contested hearing, that Appellant is a resident of California and that subject matter jurisdiction over child support remains in California. Based upon those findings and other relevant facts, the amount of Appellant's child support obligation was increased.

In the proceedings below, Appellee was awarded judgment against Appellant for attorneys fees totaling \$5,355.00, with the issue of additional attorneys fees to be reserved should this matter be remanded.

RELEVANT FACTS

The following material and undisputed facts are established from the Record on Appeal:

1. The parties marriage was dissolved on December 8, 2006 by Judgment of Dissolution, hereinafter referred to as "Judgment of Dissolution" of the Superior Court of San Diego County, California, hereinafter referred to as "California Court" in Case Number D489897, hereinafter referred to as "California proceeding". (R. pg 4)

2. The Judgment of Dissolution contained an attached Marital Settlement Agreement and the Judgment of Dissolution by its terms ordered child support as set forth in such Marital Settlement Agreement. (R. pg 4, reverse side)
3. Pursuant to paragraph 17A of the Judgment of Dissolution, Appellant was ordered to pay child support of \$1,000.00 per month. (R. pg 12)
4. Appellee and the parties minor child relocated to Salt Lake County, Utah, where they have resided since April, 2005 (R. pgs. 53 and 57)
5. In conjunction with a hearing on December 3, 2007 in the California proceeding, in which each party appeared, the California Court declined “to make orders on the issue of modification of child support based on the knowledge that there is a pending motion in Utah. If Utah refuses to exert jurisdiction over the issue, either party may file there (sic) motion to be heard before this court.” (R. pg 106)
6. In conjunction with Appellant’s Motion to Dismiss Verified Parentage Petition herein, the Court below found that Appellant continued to reside in California. (R. pg 124)
7. On September 30, 2008, in the California proceeding, the California Court issued an Order, which provides, inter alia:

- a. That both Appellee and Appellant appeared at a hearing on September 30, 2008;
 - b. That Appellant's child support obligation was increased to \$1,225.00 per month, effective August 1, 2008; and
 - c. That jurisdiction over child support is in California. (R. pg 252)
8. In conjunction with the September 30, 2008 Order, the California Court made the following Findings:
- a. That Appellant is a resident of California; and
 - b. That Appellant made a general appearance to the Order to Show Cause which Order to Show Cause gave rise to the Order increasing his child support obligation. (R. pg 256)
9. In conjunction with Appellant's Motion to Determine Residency and Choice of Law herein, the Court below found by Order dated October 1, 2008 that:
- a. Appellant dwells, maintains an abode, has a bodily presence and lives in the physical sense in the State of California;
 - b. The parties maintained their marital residence in the State of California;

- c. Both parties were residents of the State of California for the purpose of invoking jurisdiction for their divorce;
- d. Appellant did not object to the exercise of jurisdiction of the parties' divorce by the State of California; and
- e. It is a fiction that Appellant lives in the State of Utah.

(R. pgs 225 and 226)

10. Appellant's Motion for Award of Attorneys Fees dated September 28, 2008 and Motion for Award of Additional Attorneys Fees dated November 24, 2008 were made pursuant to the provisions of 78B-14-313, Utah Code Annotated. (R. pgs 216, 347 and 348)

11. Appellant's attorneys fees of \$3,325.00 were awarded pursuant to the provisions of the Uniform Interstate Family Support Act and 30-3-3, Utah Code Annotated, based upon the following facts:

- a. Appellee was the prevailing party;
- b. The attorneys fees were reasonable in amount and relevant to the issues herein;
- c. That there was no evidence that Appellant was impecunious; and
- d. There are no facts that indicate that the requested attorneys fees should not be awarded. (R. pg 323)

12. Appellant did not object to Appellee's second Motion for an award of attorneys, which request was for the sum of \$2,030.00. (R. pg 367)

SUMMARY OF THE ARGUMENT

During the pendency below of Appellant's attempt via UIFSA to obtain a reduction of his child support obligation established by the parties' California Judgment of Dissolution, the California Court found that Appellant remained a resident of California and that California retained subject matter jurisdiction over the determination of Appellant's child support obligation. Based upon such Findings, the California Court increased Appellant's child support obligation from \$1,000.00 per month to \$1,225.00 per month. Appellant did not appeal that order and the time for so doing has long passed. Nor has Appellant taken any steps to collaterally attack the California order, having opted to pursue this litigation.

Based upon the California order, which involves the same parties and the same claims as are involved herein and which resulted in a final order on the merits, Appellant is barred from pursuing his claim herein under the doctrine of claim preclusion and the California order is entitled to recognition under the Full Faith and Credit clause of the United States Constitution.

Appellant asserts that as a uniformed servicemember since 1994, that he resides in Utah for purposes of UIFSA regardless of where he is physically living and that since Appellee and the parties' child reside in Utah that Utah has subject matter jurisdiction over a child support modification, including the utilization of the Utah child support guidelines, rather than the California child support guidelines. Assuming that claim preclusion does not exist, Appellee asserts that the federal Servicemembers Civil Relief Act contains the only relief available to servicemembers and that pursuant to that Act, that military service does not alter a servicemembers residence only for purposes of voting and filing of taxes. Accordingly, Appellee argues that Appellant's military service is in and of itself irrelevant to a determination of where he resides.

Appellee further argues that this Court should define the meaning of "reside(s)" in UIFSA to be consistent with the definition applied to "residency" or "resides" in other areas of domestic relations law. In so doing, reside would not be synonymous with "domicile" and Appellant's physical presence as an inhabitant, his dwelling in and his having a settled abode would constitute his residence as remaining in California and precluding the transfer of subject matter jurisdiction over child support to Utah.

Based upon the foregoing, Appellee argues that the order of dismissal should be affirmed and that the award of attorneys fees to Appellee should also be affirmed, under the provisions of UIFSA, Appellant having been the prevailing party, Appellant's litigation herein having been presumed to have been primarily requested for delay. Further, Appellant failed to object to the second judgment below awarding attorneys fees to Appellee, which precludes him from raising that issue for the first time on appeal.

ARGUMENT

POINT ONE

RESPONDENT'S AMENDED PETITION TO MODIFY REGISTERED FOREIGN SUPPORT ORDER IS BARRED BY THE DOCTRINE OF CLAIM PRECLUSION AND THE CALIFORNIA ORDER MUST BE GIVEN FULL FAITH AND CREDIT

On September 30, 2008, pursuant to Appellee's Motion, a hearing was conducted in the parties' California divorce action, Civil No. D489897, in the San Diego County, California Superior Court. Appellant appeared at such Hearing, and objected to the existence of jurisdiction with such Court to modify the existing child support order that it had entered in December, 2006. Notwithstanding Appellant's objection, the California Court found that Appellant was a resident of California and entered an Order increasing the child support order from \$1,000.00 to \$1,225.00, effective August 1, 2008. In so doing, the California Court

specifically determined that jurisdiction over the issue of child support remained in the State of California.

As a result of the entry of the September 30, 2008 California child support order modification, Appellant's claims herein are barred by the doctrine of claim preclusion. The Utah Supreme Court, in Snyder v. Murray City Corp, 73 P.2d 325 (Utah 2003) discussed the two arms of res judicata, i.e., claim preclusion and issue preclusion and set forth the elements of each. For claim preclusion, “ ‘First, both cases must involve the same parties or their privies. Second, the claim that is alleged to be barred must have been presented in the first suit or be one that could and should have been raised in the first action. Third, the first suit must have resulted in a final judgment on the merits.’ ” (Citing Miller v. USAA Casualty Insurance Company, 44 P.3d 663 (2002)).

It is clear that all three such elements are present herein. Both the California and Utah proceedings involve the exact same parties and the exact same claim. That is, in the Utah proceeding, Appellant seeks a modification of the child support, while in the California proceeding, Appellee sought and obtained a modification of the child support award. In each proceeding, the issue of jurisdiction was raised, Appellant asserting that jurisdiction was in Utah and Appellee asserting that jurisdiction was in California. The September 30, 2008

hearing, in which proceeding Appellant filed a Motion to Dismiss asserting the lack of jurisdiction in California, resulted in an Order determining that jurisdiction to modify the child support order was in fact in California, which resulted in the increase of Appellant's child support obligation to \$1,225.00 per month.

Since all three of the elements of claim preclusion are met, Appellant is precluded from pursuing his claim to have Utah reduce his child support obligation and the parties are bound by California Order modifying Appellant's child support obligation.

Appellant asserts that the doctrine of claim preclusion is not applicable herein, citing Section 28 of the Restatement (Second) of Judgments, which reads in pertinent part as follows: "Although an issue is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the parties is not precluded in the following circumstances: (1) The party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action;" Appellant does not explain, however, why Appellant, as a matter of law, was unable to obtain a review of the California child support modification. All Appellant needed to do to obtain such a review was to initiate an appeal in California. He failed to do so and the time for doing so has long since passed.

Had Appellant successfully appealed the California modification, he could then seek modification in Utah, since his petition for modification herein was dismissed, without prejudice.

Appellant also asserts that there can be no claim preclusion as a result of the California order because he considers it to be a void judgment. Appellant's argument ignores the reality that the California order is a void judgment only if the California court so determines. It has not done so, Appellant having neither appealed the California trial court order, nor having attempted to collaterally attack it by filing a motion to vacate the order. Whether Appellant is in fact entitled to collaterally attack the California order and whether such an attack would be successful is a matter of California law and is for California courts to decide.

Utah is obligated to give full faith and credit to the California Order. Article IV, Section 1 of the United States Constitution provides, "Full Faith and Credit shall be given to each State to the public Acts, records and judicial Proceedings of every other State." In order to be entitled to full faith and credit, a judgment must be both valid and final.

In In the matter of the Estate of Herbert Lee Jones, 858 P.2d 983 (Utah 1993), the Court held that "a foreign judgment that is both valid and final cannot be collaterally attacked even if grounded in errors of law or fact" and that if "the

judgment meets these criteria, it is entitled to full faith and credit.” The Court then discussed the meaning of validity as:

To be “valid,” for purposes of full faith and credit, a judgment must have been entered by a court with competent jurisdiction and in compliance with the constitutional requirements of due process.

Appellant has made no claim of denial of due process in the California proceeding. If the issue of jurisdiction has been raised and adjudicated in the foreign proceeding, as is the case herein, the determination of the foreign court is conclusive on the issue in Utah proceedings. See H.U.F and G.F v. W.P.W., 203 P.3d 943 (Utah 2009), Paffel v. Paffel, 732 P.2d 96 (Utah 1986) and Fullenwider Company v. Patterson, 611 P.2d 387 (Utah 1980). Thus, the California Judgment of modification is valid, the jurisdictional question having been conclusively determined therein and no claim having been made by Appellant of a denial of due process

The second requirement set forth in Estate of Jones to trigger the application of full faith and credit is “finality” of the judgment, meaning that no appeal has been taken therefrom. Appellant has made no claim herein that the California Order is not final. Per Estate of Jones, the finality must be determined in accordance with the laws of the rendering state . The California Rules of Court provide, at Rule 8.104 (a) (3) that the latest that a notice of appeal can be filed is

within 180 days after entry of judgment. More than eighteen months have passed since the entry of the September 30, 2008 California Order and no appeal has been filed. Accordingly, such Order is final. Inasmuch as the California Order is valid and final, it must be given full faith and credit and cannot now be collaterally attacked herein.

POINT TWO

THE SERVICEMEMBERS CIVIL RELIEF ACT AFFORDS NO SPECIAL PROTECTIONS TO SERVICEMEMBERS PERTAINING TO THEIR PLACE OF RESIDENCE IN THE CONTEXT OF A CHILD SUPPORT DETERMINATION

Since it is undisputed that Appellee and the parties' minor daughter reside in Utah and have done so since prior to the entry of the California Judgment of Dissolution containing existing child support order, it is clear that under the provisions of the Uniform Interstate Family Support Act (UIFSA), that Utah only has jurisdiction to modify such order if Appellant also "resides" in Utah (78B-14-613(1), Utah Code Annotated) or if Appellant does not "reside" in California or if both parties have consented to the exercise of such jurisdiction by Utah (78B-14-611(1), Utah Code Annotated). Since there has not been consent of each party to Utah exercising jurisdiction herein, in order for Utah to have jurisdiction, Appellant must either be a resident of Utah or not be a resident of California. As is

hereinabove set forth, the California Order has determined Appellant to be a resident of California. If that Order is not given full faith and credit to preclude Appellant's claim herein, then this Court must determine the meaning of "reside(s)" for the purposes of UIFSA. Unfortunately, the term "reside(s)" is not defined within UIFSA.

Appellant asserts that by virtue of his service as a uniformed member of the United States Marine Corps, that he cannot for any purpose, including a determination for child support purposes, lose his ability to claim Utah, the state from which he enlisted in 1994 and where he has not lived since that time, as his state of residence. In order to determine what rights are actually afforded to a servicemember, however, it is necessary to consult the applicable statutory provisions, i.e., The Servicemembers Civil Relief Act, 50 U.S.C. App. 501-596., hereinafter "Relief Act."

The purposes of the Relief Act are articulated at Section 502 as:

- (1) to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and
- (2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

In furtherance of those purposes, the Relief Act provides only two areas of protection to a servicemember with respect to the loss or acquisition of a residence or domicile in conjunction with his military service. First, at Section 571(a), pertaining to residence for tax purposes (a), which reads: “A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.” The fact that federal law specifically enables Respondent to continue to file his state income taxes in Utah (while using the address of his California residence) does not and cannot afford him residence status in Utah for the purposes of UIFSA.

Secondly, at Section 595 of the Relief Act, which provides that:

For purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C.431) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence—

- (1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;
- (2) be deemed to have acquired a residence or domicile in any other State; or
- (3) be deemed to have become a resident in or a resident of any other State.

Thus, the only circumstances under which Congress has provided that a person's military service in and of itself does not affect his place of residence are with respect to his rights regarding where he files taxes and where he votes. It is telling that the Relief Act does not contain any language that indicates that there is any special treatment for servicemembers pertaining to their place of residence, as a result of their compliance with military orders, for any other purposes except voting and taxes. The non-existence of any special residency provisions obviously extends to the domestic relations arena, including child support issues. Having specifically afforded special accommodations to servicemembers in the context of taxes and voting must give rise to the inference that Congress only intended to afford such specific protections, and limit those protections, to the specific exceptions that it carved out. Congress clearly did not intend that there be a general, across the board, restriction that a servicemember's residence not be affected by his military service and allow him to designate his place of residence, regardless of the reality of his actual physical residence. To rule otherwise would allow a party, in order to seek a perceived advantage, to forum shop and in this instance, to utilize a fictitious residence in order to attempt to minimize the amount of support payable to his child.

POINT THREE

APPELLANT REMAINS A RESIDENT OF CALIFORNIA FOR THE PURPOSES OF THE UNIFORM INTERSTATE FAMILY SUPPORT ACT AND AS SUCH, UTAH LACKS JURISDICTION TO MODIFY THE EXISTING CALIFORNIA CHILD SUPPORT ORDER

Although Appellant goes to great lengths to cite authority for his assertion that he “resides” in Utah for purposes of child support modification under UIFSA, including citations to unpublished opinions from Minnesota and Texas, which have no precedential effect, he has failed to cite a single case that is on all fours with the facts of this proceeding, which are:

- a. A child support obligor (obligor) having originally enlisted in the military from the state in which he was born and raised;
- b. The obligor having never been stationed in the state from which he enlisted during the course of his military service (approximately 16 years);
- c. The obligor and the child support obligee (obligee) having maintained their marital residence in the state that issued the child support order (issuing state);
- d. The obligor and obligee having been residents of the issuing state for the purpose of invoking that state’s jurisdiction for their divorce;

- e. The obligee having failing to object to the exercise of jurisdiction of the parties' divorce by the issuing state;
- f. The relocation of the obligee and the parties' child from the issuing state;
- g. The obligee having continued to dwell, maintain an abode, have a bodily presence and live in the physical sense in the issuing state; and
- h. The obligee having brought a child support modification proceeding under UIFSA in the state to which the obligee and child relocated.

Of the foreign state authority cited by Appellant, only three of such citations pertain to modifications of child support orders and residency under UIFSA, in conjunction with a modification that involved an obligor who was serving in the military. All other foreign state citations are not helpful and should not be considered, inasmuch as they turn on the particular statutory language and developed case law of such states, all of which is distinct from Utah law.

The cases cited by Appellant which deal with the issue of residency in the context of a UIFSA modification and an obligor who is a military servicemember are: Lattimore v. Lattimore, 991 So. 2d 239 (Ala.Civ.App. 2008), Kean v. Marshall, 669 S.E. 463 (Ga. App.2008) and In re the Marriage of Amezquita, 124 Cal. Rptr. 2d (Cal. App. 3 Dist. 2002). All of these cases are distinguishable from

the instant action. Unlike the instant case, all three proceedings involve a modification sought by the obligee. In Lattimore, the support order for which modification was sought was entered by Alabama, the obligee and the children claimed residence in Tennessee and the obligor claimed residence in Texas, where he was then stationed in the military. The Court allowed the obligee to proceed with the modification against the obligor in the issuing state, notwithstanding his military assignment to Texas, in part because under existing Alabama law, “a person who is inducted into military service retains residence in the state from which he is inducted until a new residence is established or the initial residence is abandoned” (at page 244). Utah has not adopted a similar holding.

In Kean, the obligee sought to modify an Alabama support order in Georgia where the obligor was stationed. As with Alabama, settled Georgia law is that “[a] person’s domicile is not changed merely by his enlistment in the army, and his transfer or assignment by military order to another jurisdiction.” (At page 465) The Court further defined “reside” as used in the Georgia version of UIFSA to mean “domicile” and was also based upon Georgia’s unique definition of domicile as contained in its domestic relations code. Once again, Utah has not adopted a blanket position similar to Alabama that enlistment in the military and a transfer by

the military to another jurisdiction does not alter the servicemembers placed of domicile

Similarly, Appellant's reliance in Amezquita is misplaced. That matter involves an attempt by the obligee to modify a New Mexico support order in California after the obligee and the children relocated to California and after obligee was stationed in California. In this proceeding, however, the opposite situation exists. Appellant and the child moved to Utah, Appellee continues to be physically located in California, where the divorce was granted and Appellant now seeks to have Utah reduce the California child support award, merely as a result of the relocation of Appellee and the child. This is not a case where the obligee and the child moved and where the obligor, serving in the military was transferred to a state that is now seeking to exercise jurisdiction to modify a foreign decree. Further, in Amezquita, the California Court based its determination by construing the word "reside" in UIFSA to be interchangeable with "domicile." Such is not the case in Utah, where a distinction between the meaning of "residence" and "domicile" has been consistently recognized.

Appellant urges the recognition of two distinct types of residency in Utah, which he refers to as "legal" residency and "physical" residency and argues that

this Court should construe “reside(s)” as set forth in UIFSA to be consistent with his definition of “legal” residency. The Court should resist any such urge.

It is certainly true that in Utah that the term “reside(s), when not defined by the statute in which it is contained, has been defined differently, based upon the context in which such term is used. In the realm of domestic relations law, however, the term has been consistently defined. For example:

Cohabitant Abuse proceedings. In Keene v. Bonser, 107 P.3d 693 (Utah App. 2005), at page 697, this Court acknowledged the prior use by the Supreme Court to utilize the dictionary to define “reside” as “(‘t)o dwell permanently or for a length of time; to have a settled abode for a time” *Citations omitted*, and “to dwell permanently or continuously.” *Citations omitted*. and incorporated such language in its definition of residence. In so doing, this Court determined that a distinction exists between “residence” and “domicile” in that “. . . residence usually ‘just means bodily presence as an inhabitant in a given place,’ while domicile usually ‘requires bodily presence plus an intention to make the place one’s home.’

Divorce proceedings. In Munsee v. Munsee, 363 P.2d 71 (Utah 1961), the Court discussed the meaning of “actual and bona fide resident” which must exist to invoke jurisdiction for a divorce. In so doing, the Court recognized “actual and

bona fide” residence was something greater than mere residence and stated that “bona fide residence” was synonymous with “domicile” and that “actual residence” required one to “have some abode in the county to which he intends to return, and where, in doing so, he would be no trespasser.” The concurring opinion stated at page 73: Undoubtedly the phrase was intended to mean one’s *real* residence, (fn1), as distinguished from a false, pretended or pseudo residence such as is sometimes adopted by divorce seekers in an effort to avoid unpleasant publicity on the home grounds; or to obtain other advantages such as making it difficult for the defendant to appear, or to effectively defend; or where it is thought that a more favorable judgment may be had in regard to property rights, alimony or children.

For the purposes of defining “reside(s) under UIFSA, such term should be construed consistently with the foregoing prior definitions in the domestic relations area of the law, to be less than synonymous with domicile, but merely “to have a bodily presence as an inhabitant in a given place, “to have a settled abode for a time” and “to dwell permanently or continuously.” As such, Appellant clearly is a resident of California, the lower court having found that 1) he dwells, maintains an abode, has a bodily presence and lives in the physical sense in California, 2) that he maintained his marital residence in California, that he was a resident of California

for the purpose of invoking jurisdiction for the divorce and 4) that it is a fiction that he lives in Utah.

To rule otherwise would result in the realization of the fear expressed by the concurring opinion in Munsee that a party, in order to seek a perceived advantage, would attempt to utilize a “pseudo” residence as opposed to his “real” residence.

Even if the Court were, however, to construe “reside(s)” to be consistent with “domicile,” Appellant’s domicile can be determined to be in California. In Allen v. Greyhound Lines, Inc., 583 P.2d 613 (Utah 1978), which was also cited by Respondent, the Court stated at 614:

Domicile is based on residence and intent to remain for an indefinite time. The intent need not be to remain for all time, it being sufficient if the intention is to remain for an indefinite period. Domicile follows residency and the burden of proof is on the person contending to the contrary.

Thus, the fact that Appellant has not maintained a residence in Utah since his enlistment in 1994, during which period of time he has maintained a residence in California and has been physically present in California except when temporarily deployed elsewhere, coupled with his intent to remain in California for an indefinite period, although not forever, is sufficient to establish his domicile in California, notwithstanding his stated intent to eventually return to Utah. He bears the burden of proof to establish that domicile does not follow his residency in

California. Appellant asserts that the foregoing presumption does not apply to service members, citing 20A-2-105(4)(c)(i), Utah Code Annotated. That statute, however, merely provides that “a person employed in the service of the United States or Utah” does not lose or gain a residence for voting purposes by virtue of being physically present or absent in Utah. That statute is consistent with the rights that Appellee has hereinabove acknowledged flow to Appellant as a servicemember, consistent with 50 U.S.C. 595.

Appellant has failed to met his burden of proof to establish that his domicile does not follow his residence in California and, accordingly, even if “reside(s)” in UIFSA is defined to be synonymous with “domicile”, he remains a resident of California for UIFSA purposes, and as such, modification jurisdiction of child support remains in California.

POINT FOUR

AS THE PREVAILING PARTY, APPELLEE IS ENTITLED TO BE AWARDED HER ATTORNEYS FEES PURSUANT TO THE PROVISIONS OF 78B-14-313, UTAH CODE ANNOTATED

Appellee was awarded judgment below against Appellant for attorneys fees on two occasions. The first such Judgment was entered on November 4, 2008 in the sum of \$3,325.00 and the second such Judgment was entered on January 15, 2009 in the sum of \$2,030.00. Appellee’s third request for her attorneys fees was

reserved in the October 20, 2009 Order which dismissed the Amended Petition to Modify, in the event this matter is remanded.

As an initial matter, Appellant did not object to Appellee's second Motion for an award of attorneys fees. He cannot now raise that issue for the first time on appeal and the second award should stand without any further inquiry.

Appellant asserts that the award of attorneys fees to Appellee was an abuse of discretion, due to the failure of the court to make a finding as to Appellee's need. That assertion ignores that the attorneys fees were awarded, however, both pursuant to 30-3-3, Utah Code Annotated and the provisions of UIFSA, specifically 78B-14-313, Utah Code Annotated. Section 313 of UIFSA gives the court both discretionary authority to award attorneys fees to an obligee who prevails (78B-14-313(1)) and mandates the award of attorneys fees if the hearing was "requested primarily for delay." (78B-14-313(2)) The statute further states in a modification proceeding, that a presumption exists that a hearing has been primarily requested for delay "if a registered support order is confirmed or enforced without change."

Appellant cites no authority that the discretionary award under UIFSA requires a finding of need by the prevailing obligee. As to the mandatory award,

the California support order was confirmed without change, thereby triggering the presumption that the hearing was primarily requested for delay. Nothing was presented to the court below by Appellant to overcome that presumption.

The judgments awarding Appellee her attorneys fees should be affirmed and in addition this matter should be remanded for the court below to determine and award Appellee both the attorneys fees reserved by the October 20, 2009 Order dismissing Appellant's Amended Petition to Modify and her attorneys fees on appeal. Bolliger v. Bolliger, 997 P.3d 903 (Utah App. 2000)

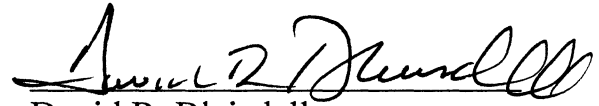
CONCLUSION

Appellant's modification proceeding in Utah is barred by September, 2008 California modification by the doctrine of claim preclusion and such order is entitled to recognition by Utah under the Full Faith and Credit Clause.

Even if it were to be determined that claim preclusion is not applicable herein, Appellant nonetheless remains a resident of California under UIFSA and subject matter jurisdiction over child support remains in California.

Appellee is entitled to the affirmance of the order dismissing Appellant's petition to modify and the affirmance of the award of attorneys to her under the applicable UIFSA provisions and on remand to such additional attorneys fees as were reserved by the lower court, together with her attorneys fees incurred herein.

Dated this 20th day of April, 2010.

A handwritten signature in black ink, appearing to read "David R. Blaisdell", written over a horizontal line.

David R. Blaisdell

Attorney for Petitioner/ Appellee

MAILING CERTIFICATE

The undersigned certifies that two true and correct copies of the foregoing Brief were mailed, postage prepaid, this 20th day of April to:

MARK W. WISER #10754
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2825 E. Cottonwood Pkwy. Ste. 500
Salt Lake City, Utah 84121
Attorneys for Respondent/Appellant



David R. Funnell

ADDENDUM

1. Servicemembers Civil Relief Act, 50 U.S.C. 501-596.
2. Order Awarding Additional Attorneys Fees to Petitioner signed January 14, 2009 and entered on January 15, 2009.

SERVICEMEMBERS CIVIL RELIEF ACT

50 U.S.C. App. §§501-596

**Public Law 108-189 (19 Dec 2003)
as amended by P.L. 108-454 (10 Dec 2004)
as further amended by P.L. 110-181 (28 Jan 2008) (amending Sec. 521 and 522)
and as further amended by P.L. 110-289 (30 Jul 2008) (amending Sec. 527 and
533), and by P.L. 110-389 (10 Oct 2008) (amending Sec. 527 and 535 and
adding Sec. 535A)**

[Note: The section numbers shown herein are citations to 50 U.S.C. App. §____. If a section appeared in the Soldiers' and Sailors' Civil Relief Act, the former SSCRA section number is shown above the citation. The section numbers from P.L. 108-189 (the text of the SCRA as enacted by Congress) are shown after the section titles in bracketed *italics*.]

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§ 501. Short title [Sec. 1]

This Act [sections 501 to 596 of this Appendix] may be cited as the "Servicemembers Civil Relief Act".

Formerly cited as 50 U.S.C. App. § 510

§ 502. Purpose [Sec. 2]

The purposes of this Act [sections 501 to 596 of this Appendix] are--

- (1) to provide for, strengthen, and expedite the national defense through protection extended by this Act [said sections] to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and
- (2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

TITLE I -- GENERAL PROVISIONS

§ 511. Definitions [Sec. 101]

For the purposes of this Act [sections 501 to 596 of this Appendix]:

(1) Servicemember

The term "servicemember" means a member of the uniformed services, as that term is defined in section 101(a)(5) of title 10, United States Code.

(2) Military service

The term "military service" means--

(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard—

(i) active duty, as defined in section 101(d)(1) of title 10, United States Code, and

(ii) in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds;

(B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(3) Period of military service

The term "period of military service" means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

(4) Dependent

The term "dependent", with respect to a servicemember, means--

(A) the servicemember's spouse;

(B) the servicemember's child (as defined in section 101(4) of title 38, United States Code); or

(C) an individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief under this Act [sections 501 to 596 of this Appendix].

(5) Court

The term "court" means a court or an administrative agency of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record.

(6) State

The term "State" includes--

(A) a commonwealth, territory, or possession of the United States; and

(B) the District of Columbia.

(7) Secretary concerned

The term "Secretary concerned"--

(A) with respect to a member of the armed forces, has the meaning given that term in section 101(a)(9) of title 10, United States Code;

(B) with respect to a commissioned officer of the Public Health Service, means the Secretary of Health and Human Services; and

(C) with respect to a commissioned officer of the National Oceanic and Atmospheric Administration, means the Secretary of Commerce.

(8) Motor vehicle

The term "motor vehicle" has the meaning given that term in section 30102(a)(6) of title 49, United States Code.

(9) JUDGMENT – The term ‘judgment’ means any judgment, decree, order, or ruling, final or temporary. **[Added by P.L. 108-454, 10 Dec 2004.]**

§ 512. Jurisdiction and applicability of Act [Sec. 102]

(a) Jurisdiction

This Act [sections 501 to 596 of this Appendix] applies to--

- (1) the United States;
- (2) each of the States, including the political subdivisions thereof; and
- (3) all territory subject to the jurisdiction of the United States.

(b) Applicability to proceedings

This Act [sections 501 to 596 of this Appendix] applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act [said sections]. This Act [said sections] does not apply to criminal proceedings.

(c) Court in which application may be made

When under this Act [sections 501 to 596 of this Appendix] any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court which would otherwise have jurisdiction over the matter.

§ 513. Protection of persons secondarily liable [Sec. 103]

(a) Extension of protection when actions stayed, postponed, or suspended

Whenever pursuant to this Act [sections 501 to 596 of this Appendix] a court stays, postpones, or suspends (1) the enforcement of an obligation or liability, (2) the prosecution of a suit or proceeding, (3) the entry or enforcement of an order, writ, judgment, or decree, or (4) the performance of any other act, the court may likewise grant such a stay, postponement, or suspension to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation or liability the performance or enforcement of which is stayed, postponed, or suspended.

(b) Vacation or set-aside of judgments

When a judgment or decree is vacated or set aside, in whole or in part, pursuant to this Act [sections 501 to 596 of this Appendix], the court may also set aside or vacate, as the case may be, the judgment or decree as to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily liable on the contract or liability for the enforcement of the judgment or decree.

(c) Bail bond not to be enforced during period of military service

A court may not enforce a bail bond during the period of military service of the principal on the bond when military service prevents the surety from obtaining the attendance of the principal. The court may discharge the surety and exonerate the bail, in accordance with principles of equity and justice, during or after the period of military service of the principal.

(d) Waiver of rights

(1) Waivers not precluded

This Act [sections 501 to 596 of this Appendix] does not prevent a waiver in writing by a surety, guarantor, endorser, accommodation maker, comaker, or other person (whether primarily or secondarily liable on an obligation or liability) of the protections provided under subsections (a) and (b). Any such waiver is effective only if it is executed as an instrument separate from the obligation or liability with respect to which it applies.

(2) Waiver invalidated upon entrance to military service

If a waiver under paragraph (1) is executed by an individual who after the execution of the waiver enters military service, or by a dependent of an individual who after the execution of the waiver enters military service, the waiver is not valid after the beginning of the period of such military service unless the waiver was executed by such individual or dependent during the period specified in section 106 [section 516 of this Appendix].

§ 514. Extension of protections to citizens serving with allied forces [Sec. 104]

A citizen of the United States who is serving with the forces of a nation with which the United States is allied in the prosecution of a war or military action is entitled to the relief and protections provided under this Act [sections 501 to 596 of this Appendix] if that service with the allied force is similar to military service as defined in this Act [sections 501 to 596 of this Appendix]. The relief and protections provided to such citizen shall terminate on the date of discharge or release from such service.

§ 515. Notification of benefits [Sec. 105]

The Secretary concerned shall ensure that notice of the benefits accorded by this Act [sections 501 to 596 of this Appendix] is provided in writing to persons in military service and to persons entering military service.

§ 516. Extension of rights and protections to reserves ordered to report for military service and to persons ordered to report for induction [Sec. 106]

(a) Reserves ordered to report for military service

A member of a reserve component who is ordered to report for military service is entitled to the rights and protections of this title and titles II and III [of this Appendix] during the period beginning on the date of the member's receipt of the order and ending on the date on which the member reports for military service (or, if the order is revoked before the member so reports, or the date on which the order is revoked).

(b) Persons ordered to report for induction

A person who has been ordered to report for induction under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) is entitled to the rights and protections provided a servicemember under this title and titles II and III [of this Appendix] during the period beginning on the date of receipt of the order for induction and ending on the date on which the person reports for induction (or, if the order to report for induction is revoked before the date on which the person reports for induction, on the date on which the order is revoked).

§ 517. Waiver of rights pursuant to written agreement [Sec. 107]

(a) In general

A servicemember may waive any of the rights and protections provided by this Act [sections 501 to 596 of this Appendix]. Any such waiver that applies to an action listed in subsection (b) of this section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies. **[Preceding sentence added by P.L. 108-454, 10 Dec 2004.]** In the case of a waiver that permits an action described in subsection (b), the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the servicemember is not a party to that instrument, the servicemember concerned.

(b) Actions requiring waivers in writing

The requirement in subsection (a) for a written waiver applies to the following:

- (1)** The modification, termination, or cancellation of--
 - (A)** a contract, lease, or bailment; or
 - (B)** an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.
- (2)** The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that--
 - (A)** is security for any obligation; or

(B) was purchased or received under a contract, lease, or bailment.

(c) Prominent Display of Certain Contract Rights Waivers – Any waiver in writing of a right or protection provided by this Act that applies to a contract, lease, or similar legal instrument must be in at least 12 point type. **[Added by P.L. 108-454, 10 Dec 2004.]**

(d) Coverage of periods after orders received

For the purposes of this section—

(1) a person to whom section 106 [section 516 of this Appendix] applies shall be considered to be a servicemember; and

(2) the period with respect to such a person specified in subsection (a) or (b), as the case may be, of section 106 [section 516 of this Appendix] shall be considered to be a period of military service.

§ 518. Exercise of rights under Act not to affect certain future financial transactions

[Sec. 108]

Application by a servicemember for, or receipt by a servicemember of, a stay, postponement, or suspension pursuant to this Act [sections 501 to 596 of this Appendix] in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability of that servicemember shall not itself (without regard to other considerations) provide the basis for any of the following:

(1) 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.

(2) With respect to a credit transaction between a creditor and the servicemember--

(A) a denial or revocation of credit by the creditor;

(B) a change by the creditor in the terms of an existing credit arrangement; or

(C) a refusal by the creditor to grant credit to the servicemember in substantially the amount or on substantially the terms requested.

(3) 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.

(4) A refusal by an insurer to insure the servicemember.

(5) An annotation in a servicemember's record 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.

(6) A change in the terms offered or conditions required for the issuance of insurance.

§ 519. Legal representatives [Sec. 109]

(a) Representative

A legal representative of a servicemember for purposes of this Act [sections 501 to 596 of this Appendix] is either of the following:

- (1)** An attorney acting on the behalf of a servicemember.
- (2)** An individual possessing a power of attorney.

(b) Application

Whenever the term "servicemember" is used in this Act [sections 501 to 596 of this Appendix], such term shall be treated as including a reference to a legal representative of the servicemember.

§ 520. Omitted

TITLE II – GENERAL RELIEF

Formerly cited as 50 U.S.C. App. § 520

§ 521. Protection of servicemembers against default judgments [Sec. 201]

(a) Applicability of section

This section applies to any civil action or proceeding, **including any child custody proceeding**, in which the defendant does not make an appearance. ***[Text in bold added by Public Law 110-181, effective 28 January 2008.]***

(b) Affidavit requirement

(1) Plaintiff to file affidavit

In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit--

- (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or
- (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

(2) Appointment of attorney to represent defendant in military service

If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

(3) Defendant's military status not ascertained by affidavit

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act [sections 501 to 596 of this Appendix].

(4) Satisfaction of requirement for affidavit

The requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

(c) Penalty for making or using false affidavit

A person who makes or uses an affidavit permitted under subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection (b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(d) Stay of proceedings

In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that--

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

(2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(e) Inapplicability of section 202 procedures

A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 202 [section 522] of this Appendix].

(f) Section 202 protection

If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of proceeding under section 202 [section 522] of this Appendix].

(g) Vacation or setting aside of default judgments

(1) Authority for court to vacate or set aside judgment

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 after termination of or release from such military service), 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--

- (A) the servicemember was materially affected by reason of that military service in making a defense to the action; and
- (B) the servicemember has a meritorious or legal defense to the action or some part of it.

(2) Time for filing application

An application under this subsection must be filed not later than 90 days after the date of the termination of or release from military service.

(h) Protection of bona fide purchaser

If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of this Act [sections 501 to 596 of this Appendix], that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

Formerly cited as 50 U.S.C. App. § 521

§ 522. Stay of proceedings when servicemember has notice [Sec. 202]

(a) Applicability of section

This section applies to any civil action or proceeding, **including any child custody proceeding**, in which the plaintiff or defendant at the time of filing an application under this section-- **[“plaintiff” added by P.L. 108-454, 10 Dec 2004; “including any child custody proceeding,” added by P.L. 110-181, 28 Jan 2008]**

- (1) is in military service or is within 90 days after termination of or release from military service; and
- (2) has received notice of the action or proceeding.

(b) Stay of proceedings

(1) Authority for stay

At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.

(2) Conditions for stay

An application for a stay under paragraph (1) shall include the following:

- (A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's

ability to appear and stating a date when the servicemember will be available to appear.

(B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

(c) Application not a waiver of defenses

An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).

(d) Additional stay

(1) Application

A servicemember who is granted a stay of a civil action or proceeding under subsection (b) may apply for an additional stay based on continuing material affect of military duty on the servicemember's ability to appear. Such an application may be made by the servicemember at the time of the initial application under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.

(2) Appointment of counsel when additional stay refused

If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

(e) Coordination with section 201 [section 521 of this Appendix]

A servicemember who applies for a stay under this section and is unsuccessful may not seek the protections afforded by section 201 [section 521 of this Appendix].

(f) Inapplicability to section 301 [section 531 of this Appendix]

The protections of this section do not apply to section 301 [section 531 of this Appendix].

Formerly cited as 50 U.S.C. App. § 522
§ 523. Fines and penalties under contracts [Sec. 203]

(a) Prohibition of penalties

When an action for compliance with the terms of a contract is stayed pursuant to this Act [sections 501 to 596 of this Appendix], a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

(b) Reduction or waiver of fines or penalties

If a servicemember fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if--

- (1) the servicemember was in military service at the time the fine or penalty was incurred; and
- (2) the ability of the servicemember to perform the obligation was materially affected by such military service.

Formerly cited as 50 U.S.C. App. § 523
§ 524. Stay or vacation of execution of judgments, attachments, and garnishments [Sec. 204]

(a) Court action upon material affect determination

If a servicemember, in the opinion of the court, is materially affected by reason of military service in complying with a court judgment or order, the court may on its own motion and shall on application by the servicemember--

- (1) stay the execution of any judgment or order entered against the servicemember; and
- (2) vacate or stay an attachment or garnishment of property, money, or debts in the possession of the servicemember or a third party, whether before or after judgment.

(b) Applicability

This section applies to an action or proceeding commenced in a court against a servicemember before or during the period of the servicemember's military service or within 90 days after such service terminates.

Formerly cited as 50 U.S.C. App. § 524
§ 525. Duration and term of stays; codefendants not in service [Sec. 205]

(a) Period of stay

A stay of an action, proceeding, attachment, or execution made pursuant to the

provisions of this Act [sections 501 to 596 of this Appendix] by a court may be ordered for the period of military service and 90 days thereafter, or for any part of that period. The court may set the terms and amounts for such installment payments as is considered reasonable by the court.

(b) Codefendants

If the servicemember is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under this Act [sections 501 to 596 of this Appendix], the plaintiff may proceed against those other defendants with the approval of the court.

(c) Inapplicability of section

This section does not apply to sections 202 and 701 [sections 522 and 591 of this Appendix].

Formerly cited as 50 U.S.C. App. § 525
§ 526. Statute of limitations [*Sec. 206*]

(a) Tolling of statutes of limitation during military service

The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

(b) Redemption of real property

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

(c) Inapplicability to internal revenue laws

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

Formerly cited as 50 U.S.C. App. § 526
§ 527. Maximum rate of interest on debts incurred before military service
[Sec. 207]

[Text in bold added by P.L. 110-289, effective 30 Jul 08, and by P.L. 110-389, effective 10 Oct 2008.]

(a) Interest rate limitation

(1) Limitation to 6 percent

An obligation or liability bearing interest at a rate in excess of 6 percent per year that is 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 6 percent –

(A) during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage; or

(B) during the period of military service, in the case of any other obligation or liability.

(2) Forgiveness of interest in excess of 6 percent:

Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.

(3) Prevention of acceleration of principal

The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made.

(b) Implementation of limitation

(1) Written notice to creditor

In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.

(2) Limitation effective as of date of order to active duty

Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with subsection (a), effective as of the date on which the servicemember is called to military service.

(c) Creditor protection

A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of the servicemember's military service.

(d) DEFINITIONS. In this section:

(1) **INTEREST.** – The term “interest” includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.

(2) **OBLIGATION OR LIABILITY.** – The term “obligation or liability” includes an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage.

(e) **PENALTY.**—Whoever knowingly violates subsection (a) shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

(f) **PRESERVATION OF OTHER REMEDIES.**—The penalties provided under subsection (e) are in addition to and do not preclude any other remedy available under law to a person claiming relief under this section, including any award for consequential or punitive damages.

[NOTE: Subsections (e) and (f) added by P.L. 110-389, effective 10 Oct 2008.]

§ 530. Omitted

**TITLE III – RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS,
ASSIGNMENT, LEASES**

Formerly cited as 50 U.S.C. App. § 530
§ 531. Evictions and distress [Sec. 301]

(a) Court-ordered eviction

(1) In general

Except by court order, a landlord (or another person with paramount title) may not--

(A) evict a servicemember, or the dependents of a servicemember, during a period of military service of the servicemember, from premises--

(i) that are occupied or intended to be occupied primarily as a residence; and

(ii) for which the monthly rent does not exceed \$2,400, as adjusted under paragraph (2) for years after 2003 [**Note: for 2006, the amount is \$2,615.16**]; or

(B) subject such premises to a distress during the period of military service.

(2) Housing price inflation adjustment

(A) For calendar years beginning with 2004, the amount in effect under paragraph (1)(A)(ii) shall be increased by the housing price inflation adjustment for the calendar year involved.

(B) For purposes of this paragraph--

(i) The housing price inflation adjustment for any calendar year is the percentage change (if any) by which--

(I) the CPI housing component for November of the preceding calendar year, exceeds

(II) the CPI housing component for November of 1984.

(ii) The term "CPI housing component" means the index published by the Bureau of Labor Statistics of the Department of Labor known as the Consumer Price Index, All Urban Consumers, Rent of Primary Residence, U.S. City Average.

(3) Publication of housing price inflation adjustment

The Secretary of Defense shall cause to be published in the Federal Register each year the amount in effect under paragraph (1)(A)(ii) for that year following the housing price inflation adjustment for that year pursuant to paragraph (2). Such publication shall be made for a year not later than 60 days after such adjustment is made for that year.

(b) Stay of execution

(1) Court authority

Upon an application for eviction or distress with respect to premises covered by this section, the court may on its own motion and shall, if a request is made by or on behalf of a servicemember whose ability to pay the agreed rent is materially affected by military service-

- (A) stay the proceedings for a period of 90 days, unless in the opinion of the court, justice and equity require a longer or shorter period of time; or
- (B) adjust the obligation under the lease to preserve the interests of all parties.

(2) Relief to landlord

If a stay is granted under paragraph (1), the court may grant to the landlord (or other person with paramount title) such relief as equity may require.

(c) Penalties

(1) Misdemeanor

Except as provided in subsection (a), a person who knowingly takes part in an eviction or distress described in subsection (a), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies and rights

The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion (or wrongful eviction) otherwise available under the law to the person claiming relief under this section, including any award for consequential and punitive damages.

(d) Rent allotment from pay of servicemember

To the extent required by a court order related to property which is the subject of a court action under this section, the Secretary concerned shall make an allotment from the pay of a servicemember to satisfy the terms of such order, except that any such allotment shall be subject to regulations prescribed by the Secretary concerned establishing the maximum amount of pay of servicemembers that may be allotted under this subsection.

(e) Limitation of applicability

Section 202 [section 522 of this Appendix] is not applicable to this section.

Formerly cited as 50 U.S.C. App. § 531

§ 532. Protection under installment contracts for purchase or lease [Sec. 302]

(a) Protection upon breach of contract

(1) Protection after entering military service

After a servicemember enters military service, a contract by the servicemember for--

(A) the purchase of real or personal property (including a motor vehicle); or

(B) the lease or bailment of such property,

may not be rescinded or terminated for a breach of terms of the contract occurring before or during that person's military service, nor may the property be repossessed for such breach without a court order.

(2) Applicability

This section applies only to a contract for which a deposit or installment has been paid by the servicemember before the servicemember enters military service.

(b) Penalties

(1) Misdemeanor

A person who knowingly resumes possession of property in violation of subsection

(a), or in violation of section 107 of this Act [section 517 of this Appendix], or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies and rights

The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

(c) Authority of court

In a hearing based on this section, the court--

(1) may order repayment to the servicemember of all or part of the prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

(2) may, on its own motion, and shall on application by a servicemember when the servicemember's ability to comply with the contract is materially affected by military

service, stay the proceedings for a period of time as, in the opinion of the court, justice and equity require; or
(3) may make other disposition as is equitable to preserve the interests of all parties.

Formerly cited as 50 U.S.C. App. § 532
§ 533. Mortgages and trust deeds [Sec. 303]

[Text in bold added by P.L. 110-289, effective 30 Jul 08.]

(a) Mortgage as security

This section applies only to an obligation on real or personal property owned by a servicemember that--

- (1)** originated before the period of the servicemember's military service and for which the servicemember is still obligated; and
- (2)** is secured by a mortgage, trust deed, or other security in the nature of a mortgage.

(b) Stay of proceedings and adjustment of obligation

In an action filed during, or within **9 months** after, a servicemember's period of military service to enforce an obligation described in subsection (a), the court may after a hearing and on its own motion and shall upon application by a servicemember when the servicemember's ability to comply with the obligation is materially affected by military service--

- (1)** stay the proceedings for a period of time as justice and equity require, or
- (2)** adjust the obligation to preserve the interests of all parties.

(c) Sale or foreclosure

A sale, foreclosure, or seizure of property for a breach of an obligation described in subsection (a) shall not be valid if made during, or within **9 months** after, the period of the servicemember's military service except—

- (1)** upon a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court; or
- (2)** if made pursuant to an agreement as provided in section 107 [section 517 of this Appendix].

[NOTE: the 2008 amendments to §533 concerning extension of mortgage foreclosure protection from 90 days to 9 months expire

31 Dec 2010 and the former provisions are revived effective 1 Jan 2011.]

(d) Penalties

(1) Misdemeanor

A person who knowingly makes or causes to be made a sale, foreclosure, or seizure of property that is prohibited by subsection (c), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies

The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including consequential and punitive damages.

Formerly cited as 50 U.S.C. App. § 533

§ 534. Settlement of stayed cases relating to personal property [Sec. 304]

(a) Appraisal of property

When a stay is granted pursuant to this Act [sections 501 to 596 of this Appendix] in a proceeding to foreclose a mortgage on or to repossess personal property, or to rescind or terminate a contract for the purchase of personal property, the court may appoint three disinterested parties to appraise the property.

(b) Equity payment

Based on the appraisal, and if undue hardship to the servicemember's dependents will not result, the court may order that the amount of the servicemember's equity in the property be paid to the servicemember, or the servicemember's dependents, as a condition of foreclosing the mortgage, repossessing the property, or rescinding or terminating the contract.

Formerly cited as 50 U.S.C. App. § 534

§ 535. Termination of residential or motor vehicle leases [Sec. 305]

(a) Termination by lessee

(1) IN GENERAL – The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after –

(a) the lessee's entry into military service; or

(b) the date of the lessee's military orders described in paragraph (1)(B) of (2)(B) of subsection (b), as the case may be.

(2) JOINT LEASES – A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.

(b) Covered leases

This section applies to the following leases:

(1) Leases of premises

A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if—

- (A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or
- (B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit or as an individual in support of a military operation for a period of not less than 90 days.

(2) Leases of motor vehicles

A lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation if—

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days); or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders –

- (i) for a change of permanent station –
 - (I) from a location in the continental United States to a location outside the continental United States; or
 - (II) from a location in a State outside the continental United States to any location outside that State; or
- (ii) to deploy with a military unit or as an individual in support of a military operation for a period of not less than 180 days.

(c) Manner of termination

(1) In general

Termination of a lease under subsection (a) is made—

(A) by delivery by the lessee of written notice of such termination, and a copy of the servicemember's military orders, to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee); and

(B) in the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee), not later than 15 days after the date of the delivery of written notice under subparagraph (A).

(2) Delivery of notice

Delivery of notice under paragraph (1)(A) may be accomplished—

(A) by hand delivery;

(B) by private business carrier; or

(C) by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and depositing the written notice in the United States mails.

(d) Effective date of lease termination

(1) Lease of premises

In the case of a lease described in subsection (b)(1) that provides for monthly payment of rent, termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered. In the case of any other lease described in subsection (b)(1), termination of the lease under subsection (a) is effective on the last day of the month following the month in which the notice is delivered.

(2) Lease of motor vehicles

In the case of a lease described in subsection (b)(2), termination of the lease under subsection (a) is effective on the day on which the requirements of subsection (c) are met for such termination.

(e) Arrearages and other obligations and liabilities

Rents or lease amounts unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. In the case of the lease of a motor vehicle, the lessor may not impose an early termination charge, but any taxes, summonses, and title and registration fees and any other obligation and liability of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

(f) Rent paid in advance

Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent) within 30 days of the effective date of the termination of the lease.

(g) Relief to lessor

Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.

(h) Penalties

(1) Misdemeanor

Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies

The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential or punitive damages.

(i) Definitions –

(1) **MILITARY ORDERS** – The term ‘military orders’, with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember’s commanding officer, with respect to the servicemember’s current or future military duty status.

(2) **CONUS** – The term ‘continental United States’ means the 48 contiguous States and the District of Columbia.

[Various provisions of Section 535 were amended or added by P.L. 108-454, 10 Dec 2004.]

§535A. TERMINATION OR SUSPENSION OF CONTRACTS FOR CELLULAR TELEPHONE SERVICE. [Sec. 305A – added by P.L. 110-389, 10 Oct 08]

(a) **IN GENERAL.**—A servicemember who receives orders to deploy outside of the continental United States for not less than 90 days or for a permanent change of duty station within the United States may request the termination or suspension of any contract for cellular telephone service entered into by the servicemember before the date of the commencement of such deployment or permanent change if the servicemember’s ability to satisfy the contract or to utilize the service will be materially affected by such deployment or permanent change. The request shall include a copy of the servicemember’s military orders.

(b) **RELIEF.**—Upon receiving the request of a servicemember under subsection (a), the cellular telephone service contractor concerned shall—

(1) grant the requested relief without imposition of an early termination fee for termination of the contract or a reactivation fee for suspension of the contract; or

(2) in the case that such servicemember is deployed outside the continental United States as described in subsection (a), permit the servicemember to suspend the contract at no charge until the end of the deployment without requiring, whether as a condition of suspension or otherwise, that the contract be extended.

(c) **CELLULAR TELEPHONE SERVICE DEFINED.**—In this section, the term ‘cellular telephone service’ has the meaning given the term ‘commercial mobile service’ in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)).

(b) **CLERICAL AMENDMENT.**—The table of contents for that Act is amended by inserting after the item relating to section 305 the following new item:
“Sec. 305A. Termination or suspension of contracts for cellular telephone service.”.

§ 536. Protection of life insurance policy [Sec. 306]

(a) Assignment of policy protected

If a life insurance policy on the life of a servicemember is assigned before military service to secure the payment of an obligation, the assignee of the policy (except the insurer in connection with a policy loan) may not exercise, during a period of military service of the servicemember or within one year thereafter, any right or option obtained under the assignment without a court order.

(b) Exception

The prohibition in subsection (a) shall not apply—

- (1)** if the assignee has the written consent of the insured made during the period described in subsection (a);
- (2)** when the premiums on the policy are due and unpaid; or
- (3)** upon the death of the insured.

(c) Order refused because of material affect

A court which receives an application for an order required under subsection (a) may refuse to grant such order if the court determines the ability of the servicemember to comply with the terms of the obligation is materially affected by military service.

(d) Treatment of guaranteed premiums

For purposes of this subsection, premiums guaranteed under the provisions of title IV of this Act shall not be considered due and unpaid.

(e) Penalties

(1) Misdemeanor

A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies

The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

Formerly cited as 50 U.S.C. App. § 536
§ 537. Enforcement of storage liens [Sec. 306]

(a) Liens

(1) Limitation on foreclosure or enforcement

A person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement.

(2) Lien defined

For the purposes of paragraph (1), the term "lien" includes a lien for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason.

(b) Stay of proceedings

In a proceeding to foreclose or enforce a lien subject to this section, the court may on its own motion, and shall if requested by a servicemember whose ability to comply with the obligation resulting in the proceeding is materially affected by military service--

(1) stay the proceeding for a period of time as justice and equity require; or

(2) adjust the obligation to preserve the interests of all parties.

The provisions of this subsection do not affect the scope of section 303 [section 533 of this Appendix].

(c) Penalties

(1) Misdemeanor

A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) Preservation of other remedies

The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

§ 538. Extension of protections to dependents [Sec. 308]

Upon application to a court, a dependent of a servicemember is entitled to the protections of this title if 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.

§ 540. Omitted

TITLE IV – LIFE INSURANCE

Formerly cited as 50 U.S.C. App. § 540

§ 541. Definitions [Sec. 401]

For the purposes of this title [sections 541 to 549 of this Appendix]:

(1) Policy

The term "policy" means any individual contract for whole, endowment, universal, or term life insurance (other than group term life insurance coverage), including any benefit in the nature of such insurance arising out of membership in any fraternal or beneficial association which—

(A) provides that the insurer may not—

- (i)** decrease the amount of coverage or require the payment of an additional amount as premiums if the insured engages in military service (except increases in premiums in individual term insurance based upon age); or
- (ii)** limit or restrict coverage for any activity required by military service; and

(B) is in force not less than 180 days before the date of the insured's entry into military service and at the time of application under this title.

(2) Premium

The term "premium" means the amount specified in an insurance policy to be paid to keep the policy in force.

(3) Insured

The term "insured" means a servicemember whose life is insured under a policy.

(4) Insurer

The term "insurer" includes any firm, corporation, partnership, association, or business that is chartered or authorized to provide insurance and issue contracts or policies by the laws of a State or the United States.

Formerly cited as 50 U.S.C. App. § 541
§ 542. Insurance rights and protections [Sec. 402]

(a) Rights and protections

The rights and protections under this title [sections 541 to 549 of this Appendix] apply to the insured when—

- (1) the insured,
- (2) the insured's legal representative, or
- (3) the insured's beneficiary in the case of an insured who is outside a State,

applies in writing for protection under this title [said sections], unless the Secretary of Veterans Affairs determines that the insured's policy is not entitled to protection under this title [said sections].

(b) Notification and application

The Secretary of Veterans Affairs shall notify the Secretary concerned of the procedures to be used to apply for the protections provided under this title [said sections]. The applicant shall send the original application to the insurer and a copy to the Secretary of Veterans Affairs.

(c) Limitation on amount

The total amount of life insurance coverage protection provided by this title [said sections] for a servicemember may not exceed \$250,000, or an amount equal to the Servicemember's Group Life Insurance maximum limit, whichever is greater, regardless of the number of policies submitted.

Formerly cited as 50 U.S.C. App. § 542
§ 543. Application for insurance protection [Sec. 403]

(a) Application procedure

An application for protection under this title [sections 541 to 549 of this Appendix] shall—

(1) be in writing and signed by the insured, the insured's legal representative, or the insured's beneficiary, as the case may be;

(2) identify the policy and the insurer; and

(3) include an acknowledgement that the insured's rights under the policy are subject to and modified by the provisions of this title [said sections].

(b) Additional requirements

The Secretary of Veterans Affairs may require additional information from the applicant, the insured and the insurer to determine if the policy is entitled to protection under this title [said sections].

(c) Notice to the Secretary by the insurer

Upon receipt of the application of the insured, the insurer shall furnish a report concerning the policy to the Secretary of Veterans Affairs as required by regulations prescribed by the Secretary.

(d) Policy modification

Upon application for protection under this title [sections 541 to 549 of this Appendix], the insured and the insurer shall have constructively agreed to any policy modification necessary to give this title [said sections] full force and effect.

Formerly cited as 50 U.S.C. App. § 543
§ 544. Policies entitled to protection and lapse of policies [Sec. 404]

(a) Determination

The Secretary of Veterans Affairs shall determine whether a policy is entitled to protection under this title [sections 541 to 549 of this Appendix] and shall notify the insured and the insurer of that determination.

(b) Lapse protection

A policy that the Secretary determines is entitled to protection under this title [said sections] shall not lapse or otherwise terminate or be forfeited for the nonpayment of a premium, or interest or indebtedness on a premium, after the date on which the application for protection is received by the Secretary.

(c) Time application

The protection provided by this title [said sections] applies during the insured's period of military service and for a period of two years thereafter.

Formerly cited as 50 U.S.C. App. § 544
§ 545. Policy restrictions [Sec. 405]

(a) Dividends

While a policy is protected under this title [sections 541 to 549 of this Appendix], a dividend or other monetary benefit under a policy may not be paid to an insured or used to purchase dividend additions without the approval of the Secretary of Veterans Affairs. If such approval is not obtained, the dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with the insurer.

(b) Specific restrictions

While a policy is protected under this title [sections 541 to 549 of this Appendix], cash value, loan value, withdrawal of dividend accumulation, unearned premiums, or other value of similar character may not be available to the insured without the approval of the Secretary. The right of the insured to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this title [said sections].

Formerly cited as 50 U.S.C. App. § 545
§ 546. Deduction of unpaid premiums [Sec. 406]

(a) Settlement of proceeds

If a policy matures as a result of a servicemember's death or otherwise during the period of protection of the policy under this title [sections 541 to 549 of this Appendix], the insurer in making settlement shall deduct from the insurance proceeds the amount of the unpaid premiums guaranteed under this title [said sections], together with interest due at the rate fixed in the policy for policy loans.

(b) Interest rate

If the interest rate is not specifically fixed in the policy, the rate shall be the same as for policy loans in other policies issued by the insurer at the time the insured's policy was issued.

(c) Reporting requirement

The amount deducted under this section, if any, shall be reported by the insurer to the Secretary of Veterans Affairs.

Formerly cited as 50 U.S.C. App. § 546

§ 547. Premiums and interest guaranteed by United States [Sec. 407]

(a) Guarantee of premiums and interest by the United States

(1) Guarantee

Payment of premiums, and interest on premiums at the rate specified in section 406 [section 546 of this Appendix], which become due on a policy under the protection of this title [sections 541 to 549 of this Appendix] is guaranteed by the United States. If the amount guaranteed is not paid to the insurer before the period of insurance protection under this title [said sections] expires, the amount due shall be treated by the insurer as a policy loan on the policy.

(2) Policy termination

If, at the expiration of insurance protection under this title [sections 541 to 549 of this Appendix], the cash surrender value of a policy is less than the amount due to pay premiums and interest on premiums on the policy, the policy shall terminate. Upon such termination, the United States shall pay the insurer the difference between the amount due and the cash surrender value.

(b) Recovery from insured of amounts paid by the United States

(1) Debt payable to the United States

The amount paid by the United States to an insurer under this title [sections 541 to 549 of this Appendix] shall be a debt payable to the United States by the insured on whose policy payment was made.

(2) Collection

Such amount may be collected by the United States, either as an offset from any amount due the insured by the United States or as otherwise authorized by law.

(3) Debt not dischargeable in bankruptcy

Such debt payable to the United States is not dischargeable in bankruptcy proceedings.

(c) Crediting of amounts recovered

Any amounts received by the United States as repayment of debts incurred by an insured under this title [sections 541 to 549 of this Appendix] shall be credited to the appropriation for the payment of claims under this title [said sections].

Formerly cited as 50 U.S.C. App. § 547

§ 548. Regulations [Sec. 408]

The Secretary of Veterans Affairs shall prescribe regulations for the implementation of this title [sections 541 to 549 of this Appendix].

§ 549. Review of findings of fact and conclusions of law [Sec. 409]

The findings of fact and conclusions of law made by the Secretary of Veterans Affairs in administering this title [sections 541 to 549 of this Appendix] are subject to review on appeal to the Board of Veterans' Appeals pursuant to chapter 71 of title 38, United States Code, and to judicial review only as provided in chapter 72 of such title.

§§ 550 to 554. Omitted

§ 560. Omitted

TITLE V – TAXES AND PUBLIC LANDS

Formerly cited as 50 U.S.C. App. § 560

§ 561. Taxes respecting personal property, money, credits, and real property [Sec. 501]

(a) Application

This section applies in any case in which a tax or assessment, whether general or special (other than a tax on personal income), falls due and remains unpaid before or during a period of military service with respect to a servicemember's—

(1) personal property (including motor vehicles); or

(2) real property occupied for dwelling, professional, business, or agricultural purposes by a servicemember or the servicemember's dependents or employees—

(A) before the servicemember's entry into military service; and

(B) during the time the tax or assessment remains unpaid.

(b) Sale of property

(1) Limitation on sale of property to enforce tax assessment

Property described in subsection (a) may not be sold to enforce the collection of such tax or assessment except by court order and upon the determination by the court that military service does not materially affect the servicemember's ability to pay the unpaid tax or assessment.

(2) Stay of court proceedings

A court may stay a proceeding to enforce the collection of such tax or assessment, or sale of such property, during a period of military service of the servicemember and for a period not more than 180 days after the termination of, or release of the servicemember from, military service.

(c) Redemption

When property described in subsection (a) is sold or forfeited to enforce the collection of a tax or assessment, a servicemember shall have the right to redeem or commence an action to redeem the servicemember's property during the period of military service or within 180 days after termination of or release from military service. This subsection may not be construed to shorten any period provided by the law of a State (including any political subdivision of a State) for redemption.

(d) Interest on tax or assessment

Whenever a servicemember does not pay a tax or assessment on property described in subsection (a) when due, the amount of the tax or assessment due and unpaid shall bear interest until paid at the rate of 6 percent per year. An additional penalty or interest shall not be incurred by reason of nonpayment. A lien for such unpaid tax or assessment may include interest under this subsection.

(e) Joint ownership application

This section applies to all forms of property described in subsection (a) owned individually by a servicemember or jointly by a servicemember and a dependent or dependents.

Formerly cited as 50 U.S.C. App. § 561
§ 562. Rights in public lands [Sec. 502]

(a) Rights not forfeited

The rights of a servicemember to lands owned or controlled by the United States,

and initiated or acquired by the servicemember under the laws of the United States (including the mining and mineral leasing laws) before military service, shall not be forfeited or prejudiced as a result of being absent from the land, or by failing to begin or complete any work or improvements to the land, during the period of military service.

(b) Temporary suspension of permits or licenses

If a permittee or licensee under the Act of June 28, 1934 (43 U.S.C. 315 et seq.), enters military service, the permittee or licensee may suspend the permit or license for the period of military service and for 180 days after termination of or release from military service.

(c) Regulations

Regulations prescribed by the Secretary of the Interior shall provide for such suspension of permits and licenses and for the remission, reduction, or refund of grazing fees during the period of such suspension.

Formerly cited as 50 U.S.C. App. § 564
§ 563. Desert-land entries [Sec. 503]

(a) Desert-land rights not forfeited

A desert-land entry made or held under the desert-land laws before the entrance of the entryman or the entryman's successor in interest into military service shall not be subject to contest or cancellation--

(1) for failure to expend any required amount per acre per year in improvements upon the claim;

(2) for failure to effect the reclamation of the claim during the period the entryman or the entryman's successor in interest is in the military service, or for 180 days after termination of or release from military service; or

(3) during any period of hospitalization or rehabilitation due to an injury or disability incurred in the line of duty.

The time within which the entryman or claimant is required to make such expenditures and effect reclamation of the land shall be exclusive of the time periods described in paragraphs (2) and (3).

(b) Service-related disability

If an entryman or claimant is honorably discharged and is unable to accomplish reclamation of, and payment for, desert land due to a disability incurred in the line of duty, the entryman or claimant may make proof without further reclamation or

payments, under regulations prescribed by the Secretary of the Interior, and receive a patent for the land entered or claimed.

(c) Filing requirement

In order to obtain the protection of this section, the entryman or claimant shall, within 180 days after entry into military service, cause to be filed in the land office of the district where the claim is situated a notice communicating the fact of military service and the desire to hold the claim under this section.

Formerly cited as 50 U.S.C. App. § 565
§ 564. Mining claims [Sec. 504]

(a) Requirements suspended

The provisions of section 2324 of the Revised Statutes of the United States (30 U.S.C. 28) specified in subsection (b) shall not apply to a servicemember's claims or interests in claims, regularly located and recorded, during a period of military service and 180 days thereafter, or during any period of hospitalization or rehabilitation due to injuries or disabilities incurred in the line of duty.

(b) Requirements

The provisions in section 2324 of the Revised Statutes [30 U.S.C.A. § 28] that shall not apply under subsection (a) are those which require that on each mining claim located after May 10, 1872, and until a patent has been issued for such claim, not less than \$100 worth of labor shall be performed or improvements made during each year.

(c) Period of protection from forfeiture

A mining claim or an interest in a claim owned by a servicemember that has been regularly located and recorded shall not be subject to forfeiture for nonperformance of annual assessments during the period of military service and for 180 days thereafter, or for any period of hospitalization or rehabilitation described in subsection (a).

(d) Filing requirement

In order to obtain the protections of this section, the claimant of a mining location shall, before the end of the assessment year in which military service is begun or within 60 days after the end of such assessment year, cause to be filed in the office where the location notice or certificate is recorded a notice communicating the fact of military service and the desire to hold the mining claim under this section.

Formerly cited as 50 U.S.C. App. § 566
§ 565. Mineral permits and leases [Sec. 505]

(a) Suspension during military service

A person holding a permit or lease on the public domain under the Federal mineral leasing laws who enters military service may suspend all operations under the permit or lease for the duration of military service and for 180 days thereafter. The term of the permit or lease shall not run during the period of suspension, nor shall any rental or royalties be charged against the permit or lease during the period of suspension.

(b) Notification

In order to obtain the protection of this section, the permittee or lessee shall, within 180 days after entry into military service, notify the Secretary of the Interior by registered mail of the fact that military service has begun and of the desire to hold the claim under this section.

(c) Contract modification

This section shall not be construed to supersede the terms of any contract for operation of a permit or lease.

Formerly cited as 50 U.S.C. App. § 567
§ 566. Perfection or defense of rights [Sec. 506]

(a) Right to take action not affected

This title [sections 561 to 571 of this Appendix] shall not affect the right of a servicemember to take action during a period of military service that is authorized by law or regulations of the Department of the Interior, for the perfection, defense, or further assertion of rights initiated or acquired before entering military service.

(b) Affidavits and proofs

(1) In general

A servicemember during a period of military service may make any affidavit or submit any proof required by law, practice, or regulation of the Department of the Interior in connection with the entry, perfection, defense, or further assertion of rights initiated or acquired before entering military service before an officer authorized to provide notary services under section 1044a of title 10, United States Code, or any superior commissioned officer.

(2) Legal status of affidavits

Such affidavits shall be binding in law and subject to the same penalties as prescribed by section 1001 of title 18, United State Code.

Formerly cited as 50 U.S.C. App. § 569

§ 567. Distribution of information concerning benefits of title [Sec. 507]

(a) Distribution of information by Secretary concerned

The Secretary concerned shall issue to servicemembers information explaining the provisions of this title [sections 561 to 571 of this Appendix].

(b) Application forms

The Secretary concerned shall provide application forms to servicemembers requesting relief under this title [sections 561 to 571 of this Appendix].

(c) Information from Secretary of the Interior

The Secretary of the Interior shall furnish to the Secretary concerned information explaining the provisions of this title [sections 561 to 571 of this Appendix] (other than sections 501, 510, and 511 [sections 561, 570, and 571 of this Appendix]) and related application forms.

Formerly cited as 50 App. USCA § 571

§ 568. Land rights of servicemembers [Sec. 508]

(a) No age limitations

Any servicemember under the age of 21 in military service shall be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including mining and mineral leasing laws, as those servicemembers who are 21 years of age.

(b) Residency requirement

Any requirement related to the establishment of a residence within a limited time shall be suspended as to entry by a servicemember in military service until 180 days after termination of or release from military service.

(c) Entry applications

Applications for entry may be verified before a person authorized to administer oaths

under section 1044a of title 10, United States Code, or under the laws of the State where the land is situated.

§ 569. Regulations [Sec. 509]

The Secretary of the Interior may issue regulations necessary to carry out this title [sections 561 to 571 of this Appendix] (other than sections 501, 510, and 511 [sections 561, 570, and 571 of this Appendix]).

Formerly cited as 50 U.S.C. App. § 573

§ 570. Income taxes [Sec. 510]

(a) Deferral of tax

Upon notice to the Internal Revenue Service or the tax authority of a State or a political subdivision of a State, the collection of income tax on the income of a servicemember falling due before or during military service shall be deferred for a period not more than 180 days after termination of or release from military service, if a servicemember's ability to pay such income tax is materially affected by military service.

(b) Accrual of interest or penalty

No interest or penalty shall accrue for the period of deferment by reason of nonpayment on any amount of tax deferred under this section.

(c) Statute of limitations

The running of a statute of limitations against the collection of tax deferred under this section, by seizure or otherwise, shall be suspended for the period of military service of the servicemember and for an additional period of 270 days thereafter.

(d) Application limitation

This section shall not apply to the tax imposed on employees by section 3101 of the Internal Revenue Code of 1986.

Formerly cited as 50 U.S.C. App. § 574

§ 571. Residence for tax purposes

(a) Residence or domicile

A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the

United States solely in compliance with military orders.

(b) Military service compensation

Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) Personal property

(1) Relief from personal property taxes

The personal property of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2) Exception for property within member's domicile or residence

This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's domicile or residence.

(3) Exception for property used in trade or business

This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) Relationship to law of State of domicile

Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(d) Increase of tax liability

A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(e) Federal Indian reservations

An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(f) Definitions

For purposes of this section:

(1) Personal property

The term "personal property" means intangible and tangible property (including motor vehicles).

(2) Taxation

The term "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

(3) Tax jurisdiction

The term "tax jurisdiction" means a State or a political subdivision of a State.

§§ 572 to 574. Omitted

§ 580. Omitted

TITLE VI – ADMINISTRATIVE REMEDIES

Formerly cited as 50 U.S.C. App. § 580

§ 581. Inappropriate use of Act [Sec. 601]

If a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred or acquired with the intent to delay the just enforcement of such right by taking advantage of this Act [sections 501 to 596 of this Appendix], the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition.

Formerly cited as 50 App. USCA § 581

§ 582. Certificates of service; persons reported missing [Sec. 602]

(a) Prima facie evidence

In any proceeding under this Act [sections 501 to 596 of this Appendix], a certificate signed by the Secretary concerned is prima facie evidence as to any of the following facts stated in the certificate:

(1) That a person named is, is not, has been, or has not been in military service.

- (2) The time and the place the person entered military service.
- (3) The person's residence at the time the person entered military service.
- (4) The rank, branch, and unit of military service of the person upon entry.
- (5) The inclusive dates of the person's military service.
- (6) The monthly pay received by the person at the date of the certificate's issuance.
- (7) The time and place of the person's termination of or release from military service, or the person's death during military service.

(b) Certificates

The Secretary concerned shall furnish a certificate under subsection (a) upon receipt of an application for such a certificate. A certificate appearing to be signed by the Secretary concerned is prima facie evidence of its contents and of the signer's authority to issue it.

(c) Treatment of servicemembers in missing status

A servicemember who has been reported missing is presumed to continue in service until accounted for. A requirement under this Act [sections 501 to 596 of this Appendix] that begins or ends with the death of a servicemember does not begin or end until the servicemember's death is reported to, or determined by, the Secretary concerned or by a court of competent jurisdiction.

Formerly cited as 50 U.S.C. App. § 582
§ 583. Interlocutory orders [Sec. 603]

An interlocutory order issued by a court under this Act [sections 501 to 596 of this Appendix] may be revoked, modified, or extended by that court upon its own motion or otherwise, upon notification to affected parties as required by the court.

§ 584. Omitted

§ 585. Omitted

§ 590. Omitted

TITLE VII – FURTHER RELIEF

Formerly cited as 50 U.S.C. App. § 590
§ 591. Anticipatory relief [Sec. 701]

(a) Application for relief

A servicemember may, during military service or within 180 days of termination of or release from military service, apply to a court for relief—

(1) from any obligation or liability incurred by the servicemember before the servicemember's military service; or

(2) from a tax or assessment falling due before or during the servicemember's military service.

(b) Tax liability or assessment

In a case covered by subsection (a), the court may, if the ability of the servicemember to comply with the terms of such obligation or liability or pay such tax or assessment has been materially affected by reason of military service, after appropriate notice and hearing, grant the following relief:

(1) Stay of enforcement of real estate contract

(A) In the case of an obligation payable 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, the court may grant a stay of the enforcement of the obligation—

(i) during the servicemember's period of military service; and

(ii) from the date of termination of or release from military service, or from the date of application if made after termination of or release from military service.

(B) Any stay under this paragraph shall be—

(i) for a period equal to the remaining life of the installment contract or other instrument, plus a period of time equal to the period of military service of the servicemember, or any part of such combined period; and

(ii) subject to payment of the balance of the principal and accumulated interest due and unpaid at the date of termination or release from the applicant's military service or from the date

of application in equal installments during the combined period at the rate of interest on the unpaid balance prescribed in the contract or other instrument evidencing the obligation, and subject to other terms as may be equitable.

(2) Stay of enforcement of other contracts

(A) In the case of any other obligation, liability, tax, or assessment, the court may grant a stay of enforcement—

- (i) during the servicemember's military service; and
- (ii) from the date of termination of or release from military service, or from the date of application if made after termination or release from military service.

(B) Any stay under this paragraph shall be—

- (i) for a period of time equal to the period of the servicemember's military service or any part of such period; and
- (ii) subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination or release from military service, or the date of application, in equal periodic installments during this extended period at the rate of interest as may be prescribed for this obligation, liability, tax, or assessment, if paid when due, and subject to other terms as may be equitable.

(c) Effect of stay on fine or penalty

When a court grants a stay under this section, a fine or penalty shall not accrue on the obligation, liability, tax, or assessment for the period of compliance with the terms and conditions of the stay.

Formerly cited as 50 U.S.C. App. § 591
§ 592. Power of attorney [Sec. 702]

(a) Automatic extension

A power of attorney of a servicemember shall be automatically extended for the period the servicemember is in a missing status (as defined in section 551(2) of title 37, United States Code) if the power of attorney--

(1) was duly executed by the servicemember—

- (A) while in military service; or

(B) before entry into military service but after the servicemember—

- (i) received a call or order to report for military service; or
 - (ii) was notified by an official of the Department of Defense that the person could receive a call or order to report for military service;
- (2) designates the servicemember's spouse, parent, or other named relative as the servicemember's attorney in fact for certain, specified, or all purposes; and
- (3) expires by its terms after the servicemember entered a missing status.

(b) Limitation on power of attorney extension

A power of attorney executed by a servicemember may not be extended under subsection (a) if the document by its terms clearly indicates that the power granted expires on the date specified even though the servicemember, after the date of execution of the document, enters a missing status.

Formerly cited as 50 U.S.C. App. § 592
§ 593. Professional liability protection [Sec. 703]

(a) Applicability

This section applies to a servicemember who—

- (1) after July 31, 1990, is ordered to active duty (other than for training) pursuant to sections 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12307 of title 10, United States Code, or who is ordered to active duty under section 12301(d) of such title during a period when members are on active duty pursuant to any of the preceding sections; and
- (2) immediately before receiving the order to active duty—
 - (A) was engaged in the furnishing of health-care or legal services or other services determined by the Secretary of Defense to be professional services; and
 - (B) had in effect a professional liability insurance policy that does not continue to cover claims filed with respect to the servicemember during the period of the servicemember's active duty unless the premiums are paid for such coverage for such period.

(b) Suspension of coverage

(1) Suspension

Coverage of a servicemember referred to in subsection (a) by a professional liability insurance policy shall be suspended by the insurance carrier in accordance with this subsection upon receipt of a written request from the servicemember by the insurance carrier.

(2) Premiums for suspended contracts

A professional liability insurance carrier—

(A) may not require that premiums be paid by or on behalf of a servicemember for any professional liability insurance coverage suspended pursuant to paragraph (1); and

(B) shall refund any amount paid for coverage for the period of such suspension or, upon the election of such servicemember, apply such amount for the payment of any premium becoming due upon the reinstatement of such coverage.

(3) Nonliability of carrier during suspension

A professional liability insurance carrier shall not be liable with respect to any claim that is based on professional conduct (including any failure to take any action in a professional capacity) of a servicemember that occurs during a period of suspension of that servicemember's professional liability insurance under this subsection.

(4) Certain claims considered to arise before suspension

For the purposes of paragraph (3), a claim based upon the failure of a professional to make adequate provision for a patient, client, or other person to receive professional services or other assistance during the period of the professional's active duty service shall be considered to be based on an action or failure to take action before the beginning of the period of the suspension of professional liability insurance under this subsection, except in a case in which professional services were provided after the date of the beginning of such period.

(c) Reinstatement of coverage

(1) Reinstatement required

Professional liability insurance coverage suspended in the case of any servicemember pursuant to subsection (b) shall be reinstated by the insurance carrier on the date on which that servicemember transmits to the insurance carrier a written request for reinstatement.

(2) Time and premium for reinstatement

The request of a servicemember for reinstatement shall be effective only if the servicemember transmits the request to the insurance carrier within 30 days after the date on which the servicemember is released from active duty. The insurance carrier shall notify the servicemember of the due date for payment of the premium of such insurance. Such premium shall be paid by the servicemember within 30 days after receipt of that notice.

(3) Period of reinstated coverage

The period for which professional liability insurance coverage shall be reinstated for a servicemember under this subsection may not be less than the balance of the period for which coverage would have continued under the insurance policy if the coverage had not been suspended.

(d) Increase in premium

(1) Limitation on premium increases

An insurance carrier may not increase the amount of the premium charged for professional liability insurance coverage of any servicemember for the minimum period of the reinstatement of such coverage required under subsection (c)(3) to an amount greater than the amount chargeable for such coverage for such period before the suspension.

(2) Exception

Paragraph (1) does not prevent an increase in premium to the extent of any general increase in the premiums charged by that carrier for the same professional liability coverage for persons similarly covered by such insurance during the period of the suspension.

(e) Continuation of coverage of unaffected persons

This section does not—

(1) require a suspension of professional liability insurance protection for any person who is not a person referred to in subsection (a) and who is covered by the same professional liability insurance as a person referred to in such subsection; or

(2) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.

(f) Stay of civil or administrative actions

(1) Stay of actions

A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a servicemember whose professional liability insurance coverage has been suspended under subsection (b) shall be stayed until the end of the period of the suspension if—

(A) the action was commenced during the period of the suspension;

(B) the action is based on an act or omission that occurred before the date on which the suspension became effective; and

(C) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional liability negligence or other professional liability of the servicemember.

(2) Date of commencement of action

Whenever a civil or administrative action for damages is stayed under paragraph (1) in the case of any servicemember, the action shall have been deemed to have been filed on the date on which the professional liability insurance coverage of the servicemember is reinstated under subsection (c).

(g) Effect of suspension upon limitations period

In the case of a civil or administrative action for which a stay could have been granted under subsection (f) by reason of the suspension of professional liability insurance coverage of the defendant under this section, the period of the suspension of the coverage shall be excluded from the computation of any statutory period of limitation on the commencement of such action.

(h) Death during period of suspension

If a servicemember whose professional liability insurance coverage is suspended under subsection (b) dies during the period of the suspension—

(1) the requirement for the grant or continuance of a stay in any civil or administrative action against such servicemember under subsection (f)(1) shall terminate on the date of the death of such servicemember; and

(2) the carrier of the professional liability insurance so suspended shall be liable for any claim for damages for professional negligence or other professional liability of the deceased servicemember in the same manner and to the same extent as such carrier would be liable if the servicemember had died while covered by such insurance but before the claim was filed.

(i) Definitions

For purposes of this section:

(1) Active duty

The term "active duty" has the meaning given that term in section 101(d)(1) of title 10, United States Code.

(2) Profession

The term "profession" includes occupation.

(3) Professional

The term "professional" includes occupational.

Formerly cited as 50 U.S.C. App. § 593
§ 594. Health insurance reinstatement [Sec. 704]

(a) Reinstatement of health insurance

A servicemember who, by reason of military service as defined in section 703(a)(1) [section 593(a)(1) of this Appendix], is entitled to the rights and protections of this Act [sections 501 to 596 of this Appendix] shall also be entitled upon termination or release from such service to reinstatement of any health insurance that—

(1) was in effect on the day before such service commenced; and

(2) was terminated effective on a date during the period of such service.

(b) No exclusion or waiting period

The reinstatement of health care insurance coverage for the health or physical condition of a servicemember described in subsection (a), or any other person who is covered by the insurance by reason of the coverage of the servicemember, shall not be subject to an exclusion or a waiting period, if—

(1) the condition arose before or during the period of such service;

(2) an exclusion or a waiting period would not have been imposed for the condition during the period of coverage; and

(3) if the condition relates to the servicemember, the condition has not been determined by the Secretary of Veterans Affairs to be a disability incurred or aggravated in the line of duty (within the meaning of section 105 of title 38, United States Code).

(c) Exceptions

Subsection (a) does not apply to a servicemember entitled to participate in employer-offered insurance benefits pursuant to the provisions of chapter 43 of title 38, United States Code.

(d) Time for applying for reinstatement

An application under this section must be filed not later than 120 days after the date of the termination of or release from military service.

Formerly cited as 50 U.S.C. App. § 594

§ 595. Guarantee of residency for military personnel [Sec. 705]

For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence—

(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

(2) be deemed to have acquired a residence or domicile in any other State; or

(3) be deemed to have become a resident in or a resident of any other State.

§ 596. Business or trade obligations [Sec. 706]

(a) Availability of non-business assets to satisfy obligations

If the trade or business (without regard to the form in which such trade or business is carried out) 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 the trade or business may not be available for satisfaction of the obligation or liability during the servicemember's military service.

(b) Relief to obligors

Upon application to a court by the holder of an obligation or liability covered by this section, relief granted by this section to a servicemember may be modified as justice and equity require.

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IMAGED

DAVID R. BLAISDELL #360
BLAISDELL & CHURCH, P.C.
Attorneys for Petitioner
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Salt Lake City, Utah 84123
Telephone: (801) 261-3407

FILED DISTRICT COURT
Third Judicial District

JAN 14 2009
SALT LAKE COUNTY
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR

SALT LAKE COUNTY, UTAH

ENTERED IN REGISTRY
OF JUDGMENTS

KORILEE LILLY,	:	DATE <u>01/15/09</u>
Petitioner,	:	ORDER AWARDING ADDITIONAL
	:	ATTORNEYS FEES TO PETITIONER
vs.	:	
	:	Civil No. 074904948
AARON MATTHEW LILLY,	:	Judge Iwasaki
Respondent.	:	Commissioner Casey

Petitioner, by Motion dated November 24, 2008, sought the award of additional attorneys fees. Such Motion was supported by the Unsworn Declaration of David R. Blaisdell dated November 24, 2008. No opposition was filed to such Motion and the Motion was submitted for ruling in accordance with Rule 7(d) of the Utah Rules of Civil Procedure, by Request to Submit dated December 15, 2008. Based upon the foregoing and good cause appearing,

IT IS HEREBY ORDERED as follows:

1. Petitioner's Motion for Award of Additional Attorneys Fees is granted.
2. Petitioner is awarded Judgment against Respondent in the additional sum of \$2,030.00

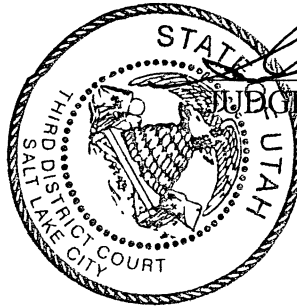


for her attorneys fees.

074904948

DATED this 14 day of January, 2009.

BY THE COURT:



Glenn K. Iwasaki
JUDGE GLENN K. IWASAKI

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Order, postage prepaid, this 30th day of December, 2008 to:

Mark Wiser
Attorney for Respondent
2825 East Cottonwood Parkway, Suite 500
Salt Lake City, Utah 84121

David R. Durdall