

1180; Pub. L. 86-721, §§1, 2, Sept. 8, 1960, 74 Stat. 820, prior to the general amendment of this Act by Pub. L. 108-189.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-181 inserted “, including any child custody proceeding,” after “proceeding”.

§ 3932. Stay of proceedings when servicemember has notice

(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—

(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 3931

A servicemember who applies for a stay under this section and is unsuccessful may not seek the protections afforded by section 3931 of this title.

(f) Inapplicability to section 3951

The protections of this section do not apply to section 3951 of this title.

(Oct. 17, 1940, ch. 888, title II, § 202, as added Pub. L. 108-189, § 1, Dec. 19, 2003, 117 Stat. 2842; amended Pub. L. 108-454, title VII, § 703, Dec. 10, 2004, 118 Stat. 3624; Pub. L. 110-181, div. A, title V, § 584(b), Jan. 28, 2008, 122 Stat. 128.)

CODIFICATION

Section was formerly classified to section 522 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

PRIOR PROVISIONS

A prior section 202 of act Oct. 17, 1940, ch. 888, art. II, 54 Stat. 1181, related to fines and penalties on contracts, prior to the general amendment of this Act by Pub. L. 108-189. See section 3933 of this title.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-181 inserted “, including any child custody proceeding,” after “civil action or proceeding” in introductory provisions.

2004—Subsec. (a). Pub. L. 108-454 inserted “plaintiff or” before “defendant” in introductory provisions.

STAY OF JUDICIAL PROCEEDINGS

Pub. L. 102-12, § 6, Mar. 18, 1991, 105 Stat. 37, provided that:

“(a) STAY OF ACTION OR PROCEEDING.—In any judicial action or proceeding (other than a criminal proceeding) in which a member of the Armed Forces described in subsection (b) is involved (either as plaintiff or defendant), the court shall, upon application by such member (or some other person on the member's behalf) at any stage before final judgment is entered, stay the action or proceeding until a date after June 30, 1991.

“(b) MEMBERS COVERED.—A member of the Armed Forces is covered by subsection (a) if at the time of application for the stay of a judicial action or proceeding the member—

“(1) is on active duty; and

“(2) is serving outside the State in which the court having jurisdiction over the action or proceeding is located.

“(c) DEFINITION.—For purposes of this section, the term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.”

§ 3933. Fines and penalties under contracts

(a) Prohibition of penalties

When an action for compliance with the terms of a contract is stayed pursuant to this chapter, 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