

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 chapter.

**(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, 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 3932 procedures**

A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 3932 of this title.

**(f) Section 3932 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 3932 of this title.

**(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 chapter, that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

(Oct. 17, 1940, ch. 888, title II, §201, as added Pub. L. 108-189, §1, Dec. 19, 2003, 117 Stat. 2840; amended Pub. L. 110-181, div. A, title V, §584(a), Jan. 28, 2008, 122 Stat. 128.)

CODIFICATION

Section was formerly classified to section 521 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

PRIOR PROVISIONS

A prior section 201 of act Oct. 17, 1940, ch. 888, art. II, 54 Stat. 1181, related to stay of proceedings where military service affects conduct thereof, prior to the general amendment of this Act by Pub. L. 108-189. See section 3932 of this title.

Provisions similar to this section were contained in section 200 of act Oct. 17, 1940, ch. 888, art. II, 54 Stat. 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”.

EFFECTIVE DATE

Section applicable to any case not final before Dec. 19, 2003, see section 3 of Pub. L. 108-189, set out as a note under section 3901 of this title.

**§ 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; amend-

ed 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.

**EFFECTIVE DATE**

Section applicable to any case not final before Dec. 19, 2003, see section 3 of Pub. L. 108-189, set out as a note under section 3901 of this title.

**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

(2) the ability of the servicemember to perform the obligation was materially affected by such military service.

(Oct. 17, 1940, ch. 888, title II, § 203, as added Pub. L. 108-189, § 1, Dec. 19, 2003, 117 Stat. 2843.)

**CODIFICATION**

Section was formerly classified to section 523 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.