

**2001 DRAFTING REQUEST**

**Bill**

Received: 10/05/2001

Received By: kahlepj

Wantcd: Soon

Identical to LRB:

For: Terry Musser (608) 266-7461

By/Representing: his office

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Addl. Drafters: kahlepj  
rmarchan

Subject: Veterans - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: terry.musser@legis.state.wi.us

Carbon copy (CC:) to: pam.shannon@legis.state.wi.us  
terence.mcardle@wi.ngb.army.mil

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Soldiers' and sailors' civil relief act for state service

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**Instructions:**

See Attached

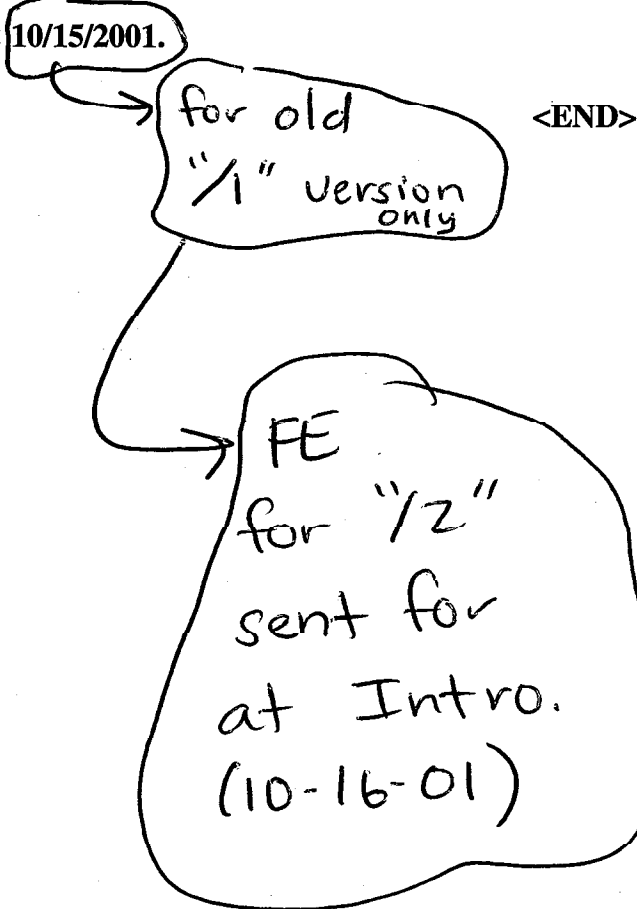
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terence.mcardle@wi.ngb.army.mil**

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**Topic:**

*10/15 Terry McCardle  
suggestions*

Soldiers' and sailors' civil relief act for state service

**Instructions:**

See Attached

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OK 10-15*

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→ 10-15-2001  
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← Requested  
by Marlene

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rmarchan

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Requester's email: Rep.Musser@legis.state.wi.us

Carbon copy (CC:) to: pam.shannon@legis.state.wi.us  
terence.mcardle@wi.ngb.army.mil

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May Contact:

Addl. Drafters: kahlepj  
rmarchan/KAC

Subject: Veterans - miscellaneous

Extra Copies:  
(e-mail) Pat Shannon  
Terry O'Carroll

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Soldiers' and sailors' civil relief act for state service

Instructions:

See Attached

50 USC APP. 501 +  
Create fed. S&S relief act language for state

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FE Sent For:

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1

AN ACT...; relating to: the rights of persons who are called into state service.

that in active

for the period they are service

Analysis by the Legislative Reference Bureau

Under current federal law, persons who are in active service in the U.S. armed forces and their dependents are given certain protections related to law suits, leases, obligations and contracts. Generally, these protections are provided under federal law only if the service in the military materially affects the armed forces member's ability to meet the obligation. In most cases, the armed forces member may waive the protections afforded by the law if done in writing after the member enters the armed forces. six percent he or she does so entering

Under federal law, all interest on obligations incurred before entry into the armed forces are capped at 6% for the duration of the military service. The federal law tolls the running of all statutes of limitations during the period of active service with respect to civil and administrative proceedings involving the service member as either a plaintiff or a defendant. The federal law stays all civil actions effecting the service member, including actions to repossess property and garnishment actions. Under the federal law, if in a court action a default judgment is requested, the person requesting the default judgment must submit an affidavit regarding the military status of the opposing party, and the court is required to appoint an attorney for the other party if he or she may be in military service. That attorney may seek a stay of the proceedings under federal law. Federal law also allows the reopening of a default judgment if that judgment was entered against a service member during or with 30 days after his or her period of active service.

Under federal law, members of the U.S. armed forces and their dependents are protected from eviction from their dwelling if the monthly rent does not exceed



service member if discharged from active duty

is

affected

law

In this situation,

\$1200. In addition, the federal law allows a service member to terminate a lease occupied as a dwelling or for professional, business, or agricultural purposes if the lease was entered into before the service member was called into active service. The service member does not need to show <sup>be</sup> a materially ~~affected~~ <sup>in this situation,</sup> ~~circumstances~~ to terminate the lease. The federal ~~act~~ allows a court to stay of the enforcement of installment contracts, storage liens, and mortgage obligations.

This bill provides these same benefits to persons who are called into state service either as part of the state national guard or as part of the state militia.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 21.75 of the statutes is created to read:

**21.75 Soldiers' and sailors' relief act; state service.** (1) DEFINITIONS. In this section:

(a) "Active state service" means active service in the national guard or the state defense force under an order of the governor issued under this chapter or active service in the national guard under 32 USC 502 (f) or 506 that is not considered to be "service in the uniformed services," as defined in 38 USC 4303 (13).

(b) "Court" means a court of record.

(c) "Department" means the department of military affairs.

(d) "Service member" means a person who may be called into active state service.

(e) "Period of active state service" means the period beginning on the date on which the service member receives an order to enter active state service and ending on the date of the service member's release from active state service or death while in active state service.

(2) PROTECTION OF PERSONS SECONDARILY LIABLE. (a) If this section results in the stay or suspension of any obligation, liability, court action, order, writ, or judgment, the court that issued the stay or suspension may grant the same remedy to sureties,

1 guarantors, endorsers, and others subject to the obligation, liability, court action,  
2 order, writ, or judgment.

3 (b) If a service member is the principal on a criminal bail bond and his or her  
4 active state service causes the surety upon the bond to be prevented from enforcing  
5 the attendance of the service member at court, the court shall not enforce the  
6 provisions of the bond during the service member's period of active state service and  
7 may either during or after the period of active service discharge the surety and  
8 exonerate the bail. ✓

9 (c) A surety, guarantor, endorser, or other person subject to the obligation,  
10 liability, court action, order, writ, or judgment under par. (a) or (b) may waive in  
11 writing the rights afforded by this subsection, except that the waiver is not valid  
12 unless the waiver is executed as an instrument separate from the obligation, liability,  
13 court action, order, writ, or judgment. The waiver under this paragraph is not valid  
14 after the beginning of the period of active state service if executed by a service  
15 member who subsequently is called into active state service. The waiver under this  
16 paragraph is not valid if executed by a dependent of a service member unless the  
17 waiver is executed during the period of active state service. ✓

18 (3) EFFECT ON RIGHTS UNDER A WRITTEN AGREEMENT. This section does not prevent  
19 the modification, termination, or cancelation of any contract, lease, bailment, or  
20 secured obligation, or the repossession, retention, foreclosure, sale, or forfeiture of  
21 property that is security for any obligation or which has been purchased or received  
22 under a contract, lease, or bailment under a written agreement of the parties if that  
23 agreement is executed during or after the period of active state service. ✓

24 (4) EXERCISE OF RIGHTS. No person may use the fact that a service member has  
25 applied for, or received, a stay, postponement, or suspension in the payment of a tax,

SECTION 1

1 fine, penalty, insurance premium, or other civil obligation or liability as the basis for  
2 doing any of the following:

3 (a) If the person is a lender, ~~determine~~<sup>determining</sup> that the service member is unable to pay  
4 any such civil obligation or liability in accordance with the terms of the obligation or  
5 liability.

6 (b) If the person is a creditor, ~~deny~~<sup>denying</sup> or ~~revoke~~<sup>revoking</sup> any credit extended to the service  
7 member, ~~change~~<sup>changing</sup> the terms of a credit agreement to which the service member is a  
8 party, or ~~refuse~~<sup>refusing</sup> to grant credit to the service member in substantially the amount or  
9 on substantially the terms requested by the service member.

10 (c) If the person is in the business of assembling or evaluating consumer credit  
11 information, ~~make~~<sup>making</sup> an adverse report on the creditworthiness of the service member.

12 (d) If the person is an insurer, ~~refuse~~<sup>refusing</sup> to insure the service member.

13 (5) DEFAULT JUDGMENTS, AFFIDAVITS AND ATTORNEY REPRESENTATION. (a) If, in any  
14 court action, there is a default of any appearance of the defendant, the plaintiff,  
15 ~~before entering~~<sup>when requesting</sup> a default judgment, shall file with the court an affidavit setting forth  
16 facts showing that the defendant is not in active state service. If the plaintiff is  
17 unable to file such an affidavit, the plaintiff shall, ~~before entering~~<sup>when requesting</sup> a default  
18 judgment, file an affidavit setting forth that the defendant is in active state service  
19 or that the plaintiff is unable to determine if the defendant is in active state service.

20 If an affidavit is not filed showing that the defendant is not in active state service,  
21 a default judgment may not be entered ~~without a court order~~<sup>set</sup>. A court may not order  
22 the entry of a default judgment if the defendant is in active state service until the  
23 court has appointed an attorney to represent the defendant and protect the  
24 defendant's interests. Unless the court determines that the defendant is not in active  
25 state service, the court may require, as a condition of entering judgment, the plaintiff

1 to file a bond to indemnify the defendant, if he or she is in active state service, against  
2 any loss or damage resulting from the judgment if any part of the judgment is later  
3 set aside. The court may make any other order as may be necessary to protect the  
4 ~~rights~~ <sup>interests</sup> of the defendant under this section. ✓

5 (b) If a judgment is rendered in a court action against a service member during  
6 the period of active state service or within 30 days after the end of that period of active  
7 state service, and it appears that the service member was prejudiced in making a  
8 defense by reason of his or her active state service, the court may reopen that  
9 judgment if all of the following conditions exist:

10 1. The service member moves the court to reopen the judgment within 90 days  
11 after his or her period of active state service ends.

12 2. The service member has a meritorious or legal defense to the action.

13 (c) Vacating, setting aside, or reversing a judgment under this subsection does ✓  
14 not impair any right or title acquired by a bona fide purchaser for value under the  
15 judgment. ✓

16 (d) Any person who shall make or use an affidavit required under this  
17 subsection that he or she knows to be false shall be fined not more than \$10,000 or  
18 imprisoned <sup>for</sup> not ~~to~~ more than 9 months, or both.

19 (6) STAY OF ACTION. During any stage of a court action <sup>STET</sup> in which a service  
20 member in active state service is involved as a party, or within 60 days after the end  
21 of the period of active state service, the court in which the action is pending may on  
22 its own motion, and shall, on application of the service member or some person acting  
23 on behalf of the service member, stay the action unless the court determines that the  
24 service member's ability to represent his or her interest in the action is not materially  
25 affected by reason of his or her active state service. ✓

SECTION 1

1 (7) STAY OR VACATION OF EXECUTIONS OR ATTACHMENTS. In any court action that  
 2 is commenced against a service member before or after entering active state service,  
 3 or within 60 days after the period of active state service ends, the court may on its  
 4 own motion, and shall, on application of the service member or some person acting  
 5 on behalf of the service member, stay the execution of any judgment or order entered  
 6 against the service member, or stay or vacate any attachment or garnishment  
 7 regarding the service member's property, unless the court determines that the  
 8 service member's ability to comply with the judgment or order is not materially  
 9 affected by reason of his or her active state service.

10 (8) DURATION AND TERMS OF STAYS. (a) Any stay of any action, attachment,  
 11 execution, or garnishment under this section may be ordered for the period of the  
 12 active state service and ~~three~~ <sup>3</sup> months after that period has ended, or for any part of  
 13 that time.

14 (b) Any stay under par. (a) may be subject to such terms as may be just,  
 15 including the payment of installments in an amount and at the times that the court  
 16 determines.

17 (c) If the service member is a codefendant in an action, the plaintiff may, by  
 18 leave of the court, proceed against the other codefendants.

19 (9) STATUTES OF LIMITATIONS. The period of active state service may not be  
 20 included in computing any period for the bringing of any action or proceeding in any  
 21 court or before any public agency, as defined in s. 36.54 (2) (a) 2., by or against a  
 22 person in active state service or by or against his or her heirs, executors,  
 23 administrators or assigns, whether the cause of action or proceeding or the right to  
 24 bring the ~~cause~~ action or proceeding accrued before or during the period of active  
 25 state service.



1 (10) EVICTION STAY. (a) No eviction may be made during the period of active state  
2 service in respect to any premises for which the agreed rent does not exceed \$1,200  
3 per month, occupied chiefly for dwelling purposes by the spouse, children, or other  
4 dependents of a service member who is in active state service, except upon order of  
5 a court in an action affecting the right of possession.

6 (b) In an action for eviction under par. (a), the court may on its own motion, and  
7 shall, on application of the service member or some person acting on behalf of the  
8 service member, stay the proceedings for not longer than three months unless the  
9 court determines that the ability of the tenant to pay the agreed rent is not materially  
10 affected by the active state service. The court may make any other order in the  
11 eviction action as it considers necessary and just. If a stay or order is issued under  
12 this paragraph, the court may, upon the request of the owner of the premises, make  
13 any other order as may be applicable to conserve the interests of all of the parties.

14 (c) Any person who knowingly takes part in any eviction, except as provided in  
15 this subsection, or attempts to do so, shall be fined not more than \$10,000 or  
16 imprisoned not more than 9 months, or both.

~~(11) *bank mortgages s. 2532*~~

Insert 7-17

Personal = Property contracts

18 (12) When an action to resume possession of personal property, or to rescind  
19 or terminate a contract for the purchase of personal property, has been stayed under  
20 this section, the court may appoint three disinterested persons to appraise the  
21 property. Based upon the report of the appraisers, and unless undue hardship would  
22 result to the dependents of the service member in active state service, the court may  
23 be paid to the service member as a condition of resuming possession of the property, or  
24 rescinding or terminating the contract.

~~(13) *termination of leases s. 834*~~

Insert 7-25

## SECTION 1

1 (14) STORAGE LIENS (a) Notwithstanding ss. 704.05 (5) and 704.90, no person  
2 may enforce a lien for storage of any household goods, furniture, or personal effects  
3 of a service member during the period in which the service member is in military  
4 service and for 90 days after the member's completion of military service, except as  
5 permitted by a court order under sub. (2).

6 (b) No person may exercise any right to foreclose or enforce a lien for the storage  
7 of household goods, furniture, or personal effects of a service member during the  
8 service member's period of active state service and for ~~three~~ <sup>3</sup> months after that period  
9 ends except upon an order of the court. In an action under this paragraph, the court,  
10 after a hearing, may on its own motion, and shall, on application of the service  
11 member or some person acting on behalf of the service member, unless the court  
12 determines that the ability of the service member to pay storage charges due is not  
13 materially ~~affect~~ <sup>affected</sup> by his or her active state service, stay the proceeding or make such  
14 other order as may be equitable to conserve the interests of all parties.

15 (c) Any person who violates par. (a) may be fined not more than \$10,000 or  
16 imprisoned for not more than 9 months, or both.

17 (15) DEPENDENT BENEFITS. Upon application to the court, a dependent of a  
18 service member is entitled to the same benefits given to a service member while in  
19 active state service, unless the court determines that the ability of <sup>the</sup> dependent to  
20 comply with the terms of an obligation, contract, lease, or bailment is not materially  
21 impaired by reason of the service member's active state service.

22 (16) TRANSFERS OR ACQUISITIONS. If a court determines that any interest,  
23 property, or contract has been transferred or acquired with the intent to delay the  
24 enforcement of a civil right by taking advantage of this section, the court shall enter

1 any judgment or make any order that is just, notwithstanding the provisions of this  
2 section. ✓

3 (17) CERTIFICATE OF SERVICE; PERSON REPORTED MISSING. (a) In any action or  
4 proceeding under this section, a certificate signed by the adjutant general or a person  
5 designated by the adjutant general as to the period of active service of a service  
6 member shall be prima facie evidence as to any of the following facts:

- 7 1. That the service member named has been in active state service.
- 8 2. The period of the active state service, including the date ~~he or she~~ <sup>the service member</sup> was  
9 ordered into active state service.
- 10 3. The monthly pay received by the service member in active state service at  
11 the time the certificate was issued.
- 12 4. If the service member died while in active state service, the date and the  
13 place where he or she died.

14 (b) The adjutant general shall provide the certificate under par. (a) upon ✓  
15 request of the service member or of a person acting on behalf of the service member,  
16 and any certificate so provided shall be prima facie <sup>or his or her estate</sup> evidence of ~~its contents~~ <sup>the facts stated in the certificate</sup> and of the authority  
17 of the signer to issue the certificate.

18 (c) When a service member in active state service has been reported missing  
19 to the department, the service member shall be presumed to continue in active state  
20 service until accounted for, and no period limited under this section which begins or  
21 ends with the death of a service member shall begin or end until the death of the  
22 service member is determined by the department or by a court.

23 (18) INTERLOCUTORY ORDERS. A court may revoke, modify, or extend any  
24 interlocutory order made by the court under this section, upon the court's own motion  
25 or on the motion of a party, upon such notice to the parties as the court may require.

SECTION 1

1           **(19) STAY OF ENFORCEMENT OF OBLIGATIONS OR LIABILITIES.** (a) A service member  
 2           may, at any time during his or her period of active state service, or within <sup>44 44</sup> ~~six~~ <sup>6</sup> months  
 3           after that service ends, apply to a court for relief with respect to any obligation or  
 4           liability incurred by the service member before his or her period of active state  
 5           service. The court, after appropriate notice and hearing, may grant the following  
 6           relief unless the court determines that the ability of the service member to comply  
 7           with the terms of the obligation or liability has not been materially affected by his  
 8           or her state active service:

9           1. In the case of an obligation payable in installments under a contract for the  
 10          purchase of real estate, or secured by a mortgage upon real estate, a stay of the  
 11          enforcement of the obligation during the period of active state service and, from the  
 12          date of the end of the period of active state service or from the date of requesting the  
 13          relief if made after the service is ended, for a period equal to the period of the  
 14          remaining life of the installment contract or instrument evidencing the obligation  
 15          plus a period of time equal to the period of active state service, or any part of that  
 16          combined period. The court may issue a stay under this paragraph if the service  
 17          member makes payments of the balance of the principal and accumulated interest  
 18          due and unpaid at the date of the end of the period of active state service or from the  
 19          date of requesting the relief, whichever is appropriate, in equal installments during  
 20          the combined period and at the rate of interest as is prescribed in the contract or  
 21          instrument evidencing the obligation for installments paid when due. The court may  
 22          order other terms under this paragraph as are just.

23          2. In the case of any other obligation or liability, a stay of the enforcement of  
 24          that obligation or liability during the service member's period of active state service  
 25          and, from the date of the end of the period of active state service or from the date of

1 requesting the relief if made after the service is ended, for a period equal to the period  
 2 of time equal to the period of active state service or any part of that period. The court  
 3 may issue a stay under this paragraph if the service member makes payments of the  
 4 balance of the principal and accumulated interest due and unpaid ~~at~~ <sup>STET →</sup> the date of the  
 5 end of the period of active state service or from the date of requesting the relief,  
 6 whichever is appropriate, in equal installments during the extended period and at  
 7 the rate of interest as is prescribed for the obligation or liability when due. The court  
 8 may order other terms under this paragraph as are just.

9 (b) When a court ~~had~~ <sup>has</sup> granted a stay under this subsection, no penalty may  
 10 accrue during the period that the terms and conditions of the stay are complied with  
 11 by reason of the failure to comply with the terms or conditions of the obligation or  
 12 liability in respect to which the stay was granted.

13 (20) POWER OF ATTORNEY EXTENSION FOR MISSING SERVICE MEMBER. (a) A power  
 14 of attorney that was duly executed by a service member that is reported missing to  
 15 the department, <sup>and</sup> that designates the service member's spouse, parent or named  
 16 relative as his or her attorney <sup>in fact</sup> ~~in fact~~ for specified, or all, purposes, and that expires  
 17 after the service member is reported missing, is extended for the period that the  
 18 service member is missing.

19 (b) No power of attorney executed after the effective date of this subsection  
 20 <sup>Δ....Δ</sup> [revisor inserts date] by a service member in active state service may be extended  
 21 under par. (a) if the document <sup>creating the power of attorney</sup> clearly indicates that the power granted expires on the  
 22 date specified even if the service member, after the date of execution of the document,  
 23 is reported missing to the department.

24 ~~(21) (LR-392)~~ ← urgent 11-24  
 25 ~~(PJK-5932)~~

22 B

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~~(2) PENALTIES. (but, if put a general penalty section, it will apply to service members, the department, and others that we may not want it applicable to)~~

~~(3) NOTICE OF BENEFITS UNDER THIS SECTION. The department of veterans affairs shall provide each service member a brochure explaining this section when that service member enters active state service.~~

SECTION 2. 45.53 (title) of the statutes is amended to read:

**45.53 (title) Soldiers' and sailors' civil relief act; federal service.**

History: 1975 c. 94 s. 91 (5); 1975 c. 199, 211; 1979 c. 110 s. 60 (13); 1981 c. 167; 1983 a. 186, 189; 1987 a. 378; 1989 a. 56; 1991 a. 156; 1993 a. 301.

**SECTION 3. Initial applicability.**

(1) This act first applies to service members who enter active state service on September 12, 2001.

(END)

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3971/Plins  
PJK:.....

INSERT S

Insert 7-17

1 (11) ACTION TO ENFORCE OBLIGATION SECURED BY MORTGAGE. (a) In this  
2 subsection, "obligation" means an obligation of a service member in the active state  
3 service that was incurred before the service member's period of active state service  
4 began and that is secured by a mortgage, deed of trust, or other security in the nature  
5 of a mortgage on real or personal property that is owned by the service member.

6 (b) If a court action against a service member is commenced during the service  
7 member's period of active state service to enforce an obligation for nonpayment of  
8 any sum due or for any other breach of terms occurring before or during the service  
9 member's period of active state service, the court shall hold a hearing on the matter.  
10 Unless the court determines that the service member's ability to comply with the  
11 terms of the obligation is not materially affected by reason of his or her active state  
12 service, the court on its own motion may, or upon application of the service member  
13 or another person on his or her behalf shall, do any of the following:

- 14 1. Stay the action as provided in this section.  
15 2. Make such other disposition of the case as the court determines is equitable  
16 to the interests of all parties.

17 (c) 1. Notwithstanding the times provided in ss. 846.10, 846.101, 846.102, and  
18 846.103 for sales of real property, no foreclosure, sale, or seizure of property for  
19 nonpayment of any sum due or for any other breach of terms is valid if it occurs  
20 during or within 3 months after the service member's period of active state service,  
21 unless the court ordered the foreclosure, sale, or seizure of property before the  
22 beginning of the service member's period of active state service and approves the  
23 foreclosure, sale, or seizure after it occurs.

1            2. Any person who knowingly causes a foreclosure, sale, or seizure of property  
 2 that is invalid under subd. 1. ~~is guilty of a Class A misdemeanor~~ *shall be fined not more than \$10,000*  
*or imprisoned for not more than 9 months, or both*  
 (END OF INSERT 7-17)

INSERT 7-25

3            (13) TERMINATION OF LEASES BY LESSEES. (a) This subsection applies to a lease  
 4 to which all of the following apply:

5            1. The lease was executed by or on behalf of a service member who entered  
 6 active state service after the lease was executed.

7            2. The lease covers premises that are occupied for dwelling, professional,  
 8 business, agricultural, or similar purposes by the service member, or the service  
 9 member and his or her dependents.

10           (b) A lease to which this subsection <sup>✓</sup> applies may be terminated by the service  
 11 member at any time after the beginning of the service member's period of active state  
 12 service by giving notice in writing by personal delivery or first class mail to the  
 13 landlord or the person who has been receiving rent or managing the property as the  
 14 landlord's agent.

15           (c) If the lease provides for monthly payment of rent, termination shall be  
 16 effective 30 days after the first date on which the next rental payment is due and  
 17 payable after the date on which the notice is delivered or mailed. In any other case,  
 18 all of the following apply:

19           1. Termination shall be effective on the last day of the month after the month  
 20 in which the notice was delivered or mailed.

21           2. Any unpaid rent for the period preceding termination shall be computed on  
 22 a prorated basis.



1           3. The landlord or the landlord's agent shall refund to the service member any  
2 rent paid in advance that applies to the period after termination.

3           (d) Upon application of a landlord after receiving notice under this subsection  
4 and before the lease termination date provided for in this subsection, a court may  
5 make such modifications to or restrictions on the relief granted in this subsection  
6 ~~that~~ <sup>(as)</sup> the court determines are appropriate under the circumstances.

7           (e) No person may knowingly seize or retain personal property belonging to a  
8 service member who lawfully terminates a lease under this subsection, or in any  
9 manner interfere with the removal of the service member's personal property from  
10 the premises covered by the lease, for the purpose of subjecting the personal property  
11 to a claim for rent accruing after the termination of the lease. Any person who  
12 violates this paragraph ~~is guilty of a Class A misdemeanor~~ <sup>shall be fined not more than \$10,000 or imprisoned for</sup>  
~~not more than 9 months, or both~~

13           (f) Section 704.29 does not apply to the termination of a lease as provided in this  
14 subsection.

(END OF INSERT 9-25

INSERT 11-24

15           (21) PROFESSIONAL LIABILITY PROTECTION. (a) 1. If a service member who is called  
16 into active state service has coverage under a professional liability insurance policy  
17 that does not cover claims filed with respect to the service member during the period  
18 of active state service unless the premiums are paid for the coverage for that period,  
19 the insurer that provides the coverage shall suspend the service member's coverage  
20 under the policy upon receipt of a written request from the service member to do so.  
21 The insurer may not require that premiums be paid for the suspended coverage. The  
22 insurer shall refund any premium amount already paid for coverage of the service

1 member for the period after the coverage is suspended or shall, at the option of the  
2 service member, apply such amount to payment of any premium that becomes due  
3 upon reinstatement of the coverage.

4 2. Subdivision 1. does not require the suspension of coverage for any other  
5 person who has coverage under the policy and who is not a service member called into  
6 active state service or relieve any person of the obligation to pay premiums for  
7 coverage that is not required to be suspended under subd. 1.

8 (b) 1. Subject to subd. 2., an insurer that suspends coverage under par. (a) is  
9 not liable with respect to any claim that is based on the professional conduct,  
10 including the failure to take an action in a professional capacity, of the service  
11 member that occurs while the service member's professional liability coverage is  
12 suspended under this subsection.

13 2. For purposes of subd. 1., a claim that is based on the failure of a professional  
14 to make adequate provision for the care of patients during the professional's period  
15 of active state service shall be considered to be based on an action or the failure to  
16 take action before the beginning of the period during which coverage is suspended  
17 under this subsection, unless professional services were provided after the date on  
18 which the suspension of coverage began.

19 (c) 1. If a service member whose professional liability insurance coverage is  
20 suspended under par. (a) transmits to the insurer, within 30 days after the date on  
21 which the service member is released from active state service, a written request for  
22 reinstatement of his or her professional liability insurance coverage, the insurer  
23 must reinstate the coverage as of the date on which the insurer receives the written  
24 request. The period for which the coverage must be reinstated may not be less than

1 the balance of the period for which the coverage would have continued under the  
2 policy had the coverage not been suspended. ✓

3 2. Upon receipt of the written request under subd. 1., the insurer shall notify  
4 the service member of the due date for paying the premium for the insurance, and  
5 the service member shall pay the premium within 30 days after receiving the notice. ✓  
6 For the minimum period of reinstatement required under subd. 1., the insurer may  
7 not increase the amount of the premium over the amount that was chargeable before  
8 the suspension <sup>of</sup> (for) the coverage for that period, except to the extent of any general  
9 increase in premiums charged by the insurer for the same professional liability  
10 coverage for persons similarly covered by such insurance during the period of the  
11 suspension.

12 (d) 1. Any action or proceeding in any court or before any public agency, as  
13 defined in s. 36.54 (2) (a) 2., based on the alleged professional negligence or other  
14 professional liability of a service member whose professional liability insurance  
15 coverage has been suspended under par. (a) shall be stayed until the end of the period  
16 of suspension if all of the following apply:

- 17 a. The action or proceeding was commenced during the period of suspension.  
18 b. The action or proceeding is based on an act or omission that occurred before  
19 the date on which the period of suspension began.  
20 c. The professional liability insurance policy would, except for the suspension,  
21 on its face cover the alleged professional negligence or other professional liability of  
22 the service member. ✓

23 2. Whenever an action or proceeding is stayed under subd. 1., the action or  
24 proceeding shall be considered to have been filed on the date on which the service  
25 member's coverage is reinstated under par. (c) 1. ✓

1           3. In any action or proceeding in which a stay may be granted under subd. 1.,  
2 the period during which the professional liability insurance coverage is suspended  
3 may not be included in computing any limitations period for commencing the action  
4 or proceeding.

5           (e) If a service member whose professional liability insurance coverage is  
6 suspended under par. (a) dies during the period of suspension, all of the following  
7 apply:

8           1. The requirement to stay any action or proceeding under par. (d) 1. terminates  
9 on the date of the service member's death.

10           2. The insurer that suspended the coverage is liable for any claim for damages  
11 for the professional negligence or other professional liability of the deceased service  
12 member in the same manner and to the same extent as the insurer would be liable  
13 if the service member had died while covered by the insurance but before the claim  
14 was filed.

(END OF INSERT 11-2 ✓)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3971/P1dn  
RPN, PJK & RAC:/:.....

*ejs*

I created an <sup>*initial*</sup> applicability section to first apply the provisions of this bill to service members that enter active state service on September 12, 2001. OK? ✓

We created a penalty where the federal law had a penalty, but used the penalties that are consistent with a Class A misdemeanor. OK? ✓

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511  
E-mail: robert.nelson@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3971/P1dn  
RPN:cjs:pg

October 12, 2001

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Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511  
E-mail: robert.nelson@legis.state.wi.us

**Nelson, Robert P.**

---

**From:** Marchant, Robert  
**Sent:** Thursday, October 04, 2001 4:29 PM  
**To:** Nelson, Robert P.  
**Subject:** SSRA

Bob--

When you incorporate 50 USC 526 into Wisconsin law, you will need to notwithstand ss. 138.04, 138.09 (7) (b), (bm), (bn) and (bp), 138.12 (10) (a), 218.0101 to 218.0163, 422.201 (2), (3), (9), and (10s), 422.205 (1), and 422.206 (2).

Robert J. Marchant  
Legislative Attorney  
State of Wisconsin Legislative Reference Bureau  
608-261-4454

?? 74.47(a)?  
-

SJS

## SOLDIERS' RELIEF ACT OF 1940

## 50 USCS Appx § 526

plied to decree in bankruptcy providing for reorganization of corporation and stipulating that stockholders wishing to exchange their stock in old corporation for that of reorganized corporation must apply before certain date, with respect to one of stockholders who had not applied because he was in military service. *Detroit Harbor Terminals, Inc. v Kuschiński* (1950, CA6 Mich) 181 F2d 541.

### 50. Insurance policy stipulation

Under predecessor to 50 USCS Appx § 525, period of plaintiff's military service was not included in computing 90 day period, after payment of loss or expense, within which he was required by stipulation in policy of indemnity insurance to bring suit for such loss or expense. *Steinfeld v Massachusetts Bonding & Ins. Co.* (1921) 80 NH 39, 112 A 800.

### 51. Laches

Suits by former United States Air Force Reserve officers who waited more than 6 years to challenge their release from active service as result of pass-overs for promotion by improperly constituted selection boards are barred by operation of defense of laches, notwithstanding that Soldiers' and Sail-

ors' Civil Relief Act of 1940 (50 USCS Appx § 525) exonerates plaintiffs from 6-year statutory period for bringing suit, where none of former officers adequately explained failure to inquire about boards' composition during period between release from active duty and learning of judicial decision holding unlawful certain selection boards not containing appropriate number of reserve officers, and where delay amounted to between 4 1/2 years and 7 years. *Andrews v United States* (1984) 6 Cl Ct 204, *affd without op* (1985, CA FC) 770 F2d 179.

Plaintiff cannot be excused for delay in bringing claim, laches bars claims of military personnel who challenge their nonselection for promotion by selection boards that were not constituted as required by law when personnel have re-enlisted and thereby obtain protection of 50 USCS Appx § 525 from this court's 6-year statute of limitations. *Hankins v United States* (1985) 7 Cl Ct 698.

Although Soldiers' and Sailors' Civil Relief Act suspends for military personnel running of time for computing whether statute of limitations applies, it does not correspondingly suspend running of time for determining whether laches applies. *Deering v United States* (1980) 223 Ct Cl 342, 620 F2d 242.

## § 526. Maximum rate of interest

No obligation or liability bearing interest at a rate in excess of 6 percent per year incurred by a person in military service before that person's entry into that service shall, during any part of the period of military service, bear interest at a rate in excess of 6 percent per year unless, in the opinion of the court, upon application thereto by the obligee, the ability of such person in military service to pay interest upon such obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of such service, in which case the court may make such order as in its opinion may be just. As used in this section the term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) in respect of such obligation or liability.

(Oct. 17, 1940, ch 888, § 206, as added Oct. 6, 1942, ch 581, § 6, 56 Stat. 771; March 18, 1991, P. L. 102-12, § 9(7), 105 Stat. 39.)

### HISTORY; ANCILLARY LAWS AND DIRECTIVES

#### Amendments:

1991. Act March 18, 1991 substituted "percent per year" for "per centum per annum" in three places, and substituted "before that person's entry into that service shall, during any part of the period of military service, bear interest" for "prior to his entry into such service shall, during any part of the period of military service which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, bear interest".

*Search interest and percent to identify statute that permit / require interest > 6%*

*(other than)*





PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Bob - this is the only  
change I found

1  
2

AN ACT to amend 45.53 (title); and to create 21.75 of the statutes; relating to:  
the rights of persons who are called into state service.

*Analysis by the Legislative Reference Bureau*

Under current federal law, persons who are in active service in the U.S. armed forces and their dependents are given certain protections related to lawsuits, leases, obligations and contracts for the period that they are in active service. Generally, these protections are provided under federal law only if the service in the military materially affects the armed forces member's ability to meet the obligation. In most cases, the armed forces member may waive the protections afforded by the law if he or she does so in writing after entering the armed forces.

Under federal law, all interest on obligations incurred before entry into the armed forces is capped at six percent for the duration of the military service. The federal law tolls the running of all statutes of limitations during the period of active service with respect to civil and administrative proceedings involving the service member as either a plaintiff or a defendant. The federal law stays all civil actions effecting the service member, including actions to repossess property and garnishment actions. Under the federal law, if in a court action a default judgment is requested, the person requesting the default judgment must submit an affidavit regarding the military status of the opposing party, and the court is required to appoint an attorney for the other party if he or she may be in military service. That attorney may seek a stay of the proceedings under federal law. Federal law also allows the reopening of a default judgment if that judgment was entered against a service member during or with 30 days after his or her period of active service.

s/b  
affecting  
↑

**Nelson, Robert P.**

---

**From:** McArdle, Terrence  
**Sent:** Sunday, October 14, 2001 1:12 PM  
**To:** Nelson, Robert P.  
**Subject:** RE: Here is the first edited draft of the S&S relief bill

Bob, Is this the whole of the SSCRA as you envisioned it or is someone else drafting the provision of the 6% interest cap on indebtedness? That's 50 US Code Appendix Section 526 under the federal act. As to your question about the applicability start date 12 Sep 01 seems to be fine for me as long as Rep Musser agrees. I also have no problem with the use of the class A misdemeanor punishments for violations of the act. Thanks for all the quick work, you and your fellow LRB Drafters are really good at your jobs and we do appreciate all your efforts. Terry M

> -----Original Message-----  
> From: Nelson, Robert P. [mailto:Robert.Nelson@legis.state.wi.us]  
> Sent: Friday, October 12, 2001 11:45 AM  
> To: Reineking, Marlene  
> Cc: McArdle, Terrence; Shannon, Pam  
> Subject: Here is the first edited draft of the S&S relief bill  
>  
> << File: 01-3971/P1 >>



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSERT

- 1 **AN ACT to amend 45.53 (title); and to create 21.75 of the statutes; relating to:**
- 2 **the rights of persons who are called into state service.**

***Analysis by the Legislative Reference Bureau***

Under current federal law, persons who are in active service in the U.S. armed forces and their dependents are given certain protections related to lawsuits, leases, obligations and contracts for the period that they are in active service. Generally, these protections are provided under federal law only if the service in the military materially affects the armed forces member's ability to meet the obligation. In most cases, the armed forces member may waive the protections afforded by the law if he or she does so in writing after entering the armed forces.

Under federal law, all interest on obligations incurred before entry into the armed forces is capped at six percent for the duration of the military service. The federal law tolls the running of all statutes of limitations during the period of active service with respect to civil and administrative proceedings involving the service member as either a plaintiff or a defendant. The federal law stays all civil actions affecting the service member, including actions to repossess property and garnishment actions. Under the federal law, if in a court action a default judgment is requested, the person requesting the default judgment must submit an affidavit regarding the military status of the opposing party, and the court is required to appoint an attorney for the other party if he or she may be in military service. That attorney may seek a stay of the proceedings under federal law. Federal law also allows the reopening of a default judgment if that judgment was entered against a service member during or with 30 days after his or her period of active service.

K  
①

Under federal law, members of the U.S. armed forces and their dependents are protected from eviction from their dwelling if the monthly rent does not exceed \$1200. In addition, the federal law allows a service member to terminate a lease occupied as a dwelling or for professional, business, or agricultural purposes if the lease was entered into before the service member was called into active service. In this situation, the service member does not need to be materially affected to terminate the lease. The federal law allows a court to stay the enforcement of installment contracts, storage liens, and mortgage obligations.

This bill provides these same benefits to persons who are called into state service either as part of the state national guard or as part of the state militia.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 21.75 of the statutes is created to read:

2           **21.75 Soldiers' and sailors' relief act; state service. (1) DEFINITIONS.** In  
3 this section:

4           (a) "Active state service" means active service in the national guard or the state  
5 defense force under an order of the governor issued under this chapter or active  
6 service in the national guard under 32 USC 502 (f) or 506 that is not considered to  
7 be "service in the uniformed services," as defined in 38 USC 4303 (13).

8           (b) "Court" means a court of record.

9           (c) "Department" means the department of military affairs.

10          (d) "Service member" means a person who may be called into active state  
11 service.

12          (e) "Period of active state service" means the period beginning on the date on  
13 which the service member receives an order to enter active state service and ending  
14 on the date of the service member's release from active state service or death while  
15 in active state service.

1           **(2) PROTECTION OF PERSONS SECONDARILY LIABLE.** (a) If this section results in the  
2 stay or suspension of any obligation, liability, court action, order, writ, or judgment,  
3 the court that issued the stay or suspension may grant the same remedy to sureties,  
4 guarantors, endorsers, and others subject to the obligation, liability, court action,  
5 order, writ, or judgment.

6           (b) If a service member is the principal on a criminal bail bond and his or her  
7 active state service causes the surety upon the bond to be prevented from enforcing  
8 the attendance of the service member at court, the court shall not enforce the  
9 provisions of the bond during the service member's period of active state service and  
10 may either during or after the period of active service discharge the surety and  
11 exonerate the bail.

12           (c) A surety, guarantor, endorser, or other person subject to the obligation,  
13 liability, court action, order, writ, or judgment under par. (a) or (b) may waive in  
14 writing the rights afforded by this subsection, except that the waiver is not valid  
15 unless the waiver is executed as an instrument separate from the obligation, liability,  
16 court action, order, writ, or judgment. The waiver under this paragraph is not valid  
17 after the beginning of the period of active state service if executed by a service  
18 member who subsequently is called into active state service. The waiver under this  
19 paragraph is not valid if executed by a dependent of a service member unless the  
20 waiver is executed during the period of active state service.

21           **(3) EFFECT ON RIGHTS UNDER A WRITTEN AGREEMENT.** This section does not prevent  
22 the modification, termination, or cancelation of any contract, lease, bailment, or  
23 secured obligation, or the repossession, retention, foreclosure, sale, or forfeiture of  
24 property that is security for any obligation or which has been purchased or received

1 under a contract, lease, or bailment under a written agreement of the parties if that  
2 agreement is executed during or after the period of active state service.

3 (4) EXERCISE OF RIGHTS. No person may use the fact that a service member has  
4 applied for, or received, a stay, postponement, or suspension in the payment of a tax,  
5 fine, penalty, insurance premium, or other civil obligation or liability as the basis for  
6 doing any of the following:

7 (a) If the person is a lender, determining that the service member is unable to  
8 pay any such civil obligation or liability in accordance with the terms of the obligation  
9 or liability.

10 (b) If the person is a creditor, denying or revoking any credit extended to the  
11 service member, changing the terms of a credit agreement to which the service  
12 member is a party, or refusing to grant credit to the service member in substantially  
13 the amount or on substantially the terms requested by the service member.

14 (c) If the person is in the business of assembling or evaluating consumer credit  
15 information, making an adverse report on the creditworthiness of the service  
16 member.

17 (d) If the person is an insurer, refusing to insure the service member.

18 (5) DEFAULT JUDGMENTS, AFFIDAVITS, AND ATTORNEY REPRESENTATION. (a) If, in any  
19 court action, there is a default of any appearance of the defendant, the plaintiff, when  
20 requesting a default judgment, shall file with the court an affidavit setting forth facts  
21 showing that the defendant is not in active state service. If the plaintiff is unable to  
22 file such an affidavit, the plaintiff shall, when requesting a default judgment, file an  
23 affidavit setting forth that the defendant is in active state service or that the plaintiff  
24 is unable to determine if the defendant is in active state service. If an affidavit is not  
25 filed showing that the defendant is not in active state service, a default judgment

1 may not be entered without a court order. A court may not order the entry of a default  
2 judgment if the defendant is in active state service until the court has appointed an  
3 attorney to represent the defendant and protect the defendant's interests. Unless  
4 the court determines that the defendant is not in active state service, the court may  
5 require, as a condition of entering judgment, the plaintiff to file a bond to indemnify  
6 the defendant, if he or she is in active state service, against any loss or damage  
7 resulting from the judgment if any part of the judgment is later set aside. The court  
8 may make any other order as may be necessary to protect the interests of the  
9 defendant under this section.

10 (b) If a judgment is rendered in a court action against a service member during  
11 the period of active state service or within 30 days after the end of that period of active  
12 state service, and it appears that the service member was prejudiced in making a  
13 defense by reason of his or her active state service, the court may reopen that  
14 judgment if all of the following conditions exist:

15 1. The service member moves the court to reopen the judgment within 90 days  
16 after his or her period of active state service ends.

17 2. The service member has a meritorious or legal defense to the action.

18 (c) Vacating, setting aside, or reversing a judgment under this subsection does  
19 not impair any right or title acquired by a bona fide purchaser for value under the  
20 judgment.

21 (d) Any person who shall make or use an affidavit required under this  
22 subsection that he or knows to be false shall be fined not more than \$10,000 or  
23 imprisoned for not more than 9 months, or both.

24 (6) **STAY OF ACTION.** During any stage of a court action in which a service  
25 member in active state service is involved as a party, or within 60 days after the end

1 of the period of active state service, the court in which the action is pending may on  
2 its own motion, and shall, on application of the service member or some person acting  
3 on behalf of the service member, stay the action unless the court determines that the  
4 service member's ability to represent his or her interest in the action is not materially  
5 affected by reason of his or her active state service.

6 (7) STAY OR VACATION OF EXECUTIONS OR ATTACHMENTS. In any court action that  
7 is commenced against a service member before or after entering active state service,  
8 or within 60 days after the period of active state service ends, the court may on its  
9 own motion, and shall, on application of the service member or some person acting  
10 on behalf of the service member, stay the execution of any judgment or order entered  
11 against the service member, or stay or vacate any attachment or garnishment  
12 regarding the service member's property, unless the court determines that the  
13 service member's ability to comply with the judgment or order is not materially  
14 affected by reason of his or her active state service.

15 (8) DURATION AND TERMS OF STAYS. (a) Any stay of any action, attachment,  
16 execution, or garnishment under this section may be ordered for the period of the  
17 active state service and 3 months after that period has ended, or for any part of that  
18 time.

19 (b) Any stay under par. (a) may be subject to such terms as may be just,  
20 including the payment of installments in an amount and at the times that the court  
21 determines.

22 (c) If the service member is a codefendant in an action, the plaintiff may, by  
23 leave of the court, proceed against the other codefendants.

24 (9) STATUTES OF LIMITATIONS. The period of active state service may not be  
25 included in computing any period for the bringing of any action or proceeding in any



1 court or before any public agency, as defined in s. 36.54 (2) (a) 2., by or against a  
2 person in active state service or by or against his or her heirs, executors,  
3 administrators or assigns, whether the cause of action or proceeding or the right to  
4 bring the action or proceeding accrued before or during the period of active state  
5 service.

*Insert  
2-5*  
6 ~~(10)~~ <sup>11 ← B</sup> EVICTION STAY. (a) No eviction may be made during the period of active  
7 state service in respect to any premises for which the agreed rent does not exceed  
8 \$1,200 per month, occupied chiefly for dwelling purposes by the spouse, children, or  
9 other dependents of a service member who is in active state service, except upon  
10 order of a court in an action affecting the right of possession.

11 (b) In an action for eviction under par. (a), the court may on its own motion, and  
12 shall, on application of the service member or some person acting on behalf of the  
13 service member, stay the proceedings for not longer than 3 months unless the court  
14 determines that the ability of the tenant to pay the agreed rent is not materially  
15 affected by the active state service. The court may make any other order in the  
16 eviction action as it considers necessary and just. If a stay or order is issued under  
17 this paragraph, the court may, upon the request of the owner of the premises, make  
18 any other order as may be applicable to conserve the interests of all of the parties.

19 (c) Any person who knowingly takes part in any eviction prohibited under par.  
20 (a) except as provided in this subsection, or attempts to do so, shall be fined not more  
21 than \$10,000 or imprisoned not more than 9 months, or both.

22 <sup>12 ← B</sup> ~~(11)~~ ACTION TO ENFORCE OBLIGATION SECURED BY MORTGAGE. (a) In this  
23 subsection, "obligation" means an obligation of a service member in active state  
24 service that was incurred before the service member's period of active state service

1 began and that is secured by a mortgage, deed of trust, or other security in the nature  
2 of a mortgage on real or personal property that is owned by the service member.

3 (b) If a court action against a service member is commenced during the service  
4 member's period of active state service to enforce an obligation for nonpayment of  
5 any sum due or for any other breach of terms occurring before or during the service  
6 member's period of active state service, the court shall hold a hearing on the matter.  
7 Unless the court determines that the service member's ability to comply with the  
8 terms of the obligation is not materially affected by reason of his or her active state  
9 service, the court on its own motion may, or upon application of the service member  
10 or another person on his or her behalf shall, do any of the following:

11 1. Stay the action as provided in this section.

12 2. Make such other disposition of the case as the court determines is equitable  
13 to the interests of all parties.

14 (c) 1. Notwithstanding the times provided in ss. 846.10, 846.101, 846.102, and  
15 846.103 for sales of real property, no foreclosure, sale, or seizure of property for  
16 nonpayment of any sum due or for any other breach of terms is valid if it occurs  
17 during or within 3 months after the service member's period of active state service,  
18 unless the court ordered the foreclosure, sale, or seizure of property before the  
19 beginning of the service member's period of active state service and approves the  
20 foreclosure, sale, or seizure after it occurs.

21 2. Any person who knowingly causes a foreclosure, sale, or seizure of property  
22 that is invalid under subd. 1. shall be fined not more than \$10,000 or imprisoned for  
23 not more than 9 months, or both.

24 <sup>13 ← ①</sup>  
~~(12)~~ PERSONAL PROPERTY CONTRACTS. When an action to resume possession of  
25 personal property, or to rescind or terminate a contract for the purchase of personal

1 property, has been stayed under this section, the court may appoint 3 disinterested  
2 persons to appraise the property. Based upon the report of the appraisers, and unless  
3 undue hardship would result to the dependents of the service member in active state  
4 service, the court may order that a sum be paid to the service member as a condition  
5 of resuming possession of the property or rescinding or terminating the contract.

6 ~~(13)~~ <sup>(14)</sup> ← (B)

7 (a) TERMINATION OF LEASES BY LESSEES. (a) This subsection applies to a lease  
8 to which all of the following apply:

9 1. The lease was executed by or on behalf of a service member who entered  
10 active state service after the lease was executed.

11 2. The lease covers premises that are occupied for dwelling, professional,  
12 business, agricultural, or similar purposes by the service member, or the service  
13 member and his or her dependents.

14 (b) A lease to which this subsection applies may be terminated by the service  
15 member at any time after the beginning of the service member's period of active state  
16 service by giving notice in writing by personal delivery or first class mail to the  
17 landlord or the person who has been receiving rent or managing the property as the  
18 landlord's agent.

19 (c) If the lease provides for monthly payment of rent, termination shall be  
20 effective 30 days after the first date on which the next rental payment is due and  
21 payable after the date on which the notice is delivered or mailed. In any other case,  
22 all of the following apply:

23 1. Termination shall be effective on the last day of the month after the month  
24 in which the notice was delivered or mailed.

25 2. Any unpaid rent for the period preceding termination shall be computed on  
a prorated basis.

1           3. The landlord or the landlord's agent shall refund to the service member any  
2 rent paid in advance that applies to the period after termination.

3           (d) Upon application of a landlord after receiving notice under this subsection  
4 and before the lease termination date provided for in this subsection, a court may  
5 make such modifications to or restrictions on the relief granted in this subsection as  
6 the court determines are appropriate under the circumstances.

7           (e) No person may knowingly seize or retain personal property belonging to a  
8 service member who lawfully terminates a lease under this subsection, or in any  
9 manner interfere with the removal of the service member's personal property from  
10 the premises covered by the lease, for the purpose of subjecting the personal property  
11 to a claim for rent accruing after the termination of the lease. Any person who  
12 violates this paragraph shall be fined not more than \$10,000 or imprisoned for not  
13 more than 9 months, or both.

14           (f) Section 704.29 does not apply to the termination of a lease as provided in this  
15 subsection.

16           <sup>15 ← B</sup>  
~~(17)~~ STORAGE LIENS. (a) Notwithstanding ss. 704.05 (5) and 704.90, no person  
17 may enforce a lien for storage of any household goods, furniture, or personal effects  
18 of a service member during the period in which the service member is in military  
19 service and for 90 days after the member's completion of military service, except as  
20 permitted by a court order under sub. (2).

21           (b) No person may exercise any right to foreclose or enforce a lien for the storage  
22 of household goods, furniture, or personal effects of a service member during the  
23 service member's period of active state service and for 3 months after that period  
24 ends except upon an order of the court. In an action under this paragraph, the court,  
25 after a hearing, may on its own motion, and shall, on application of the service

1 member or some person acting on behalf of the service member, stay the proceeding  
2 or make such other order as may be equitable to conserve the interests of all parties,  
3 unless the court determines that the ability of the service member to pay storage  
4 charges due is not materially affected by his or her active state service.

5 (c) Any person who violates par. (a) may be fined not more than \$10,000 or  
6 imprisoned for not more than 9 months, or both.

7 <sup>16 ← (B)</sup>  
(15) DEPENDENT BENEFITS. Upon application to the court, a dependent of a  
8 service member is entitled to the same benefits given to a service member while in  
9 active state service, unless the court determines that the ability of the dependent to  
10 comply with the terms of an obligation, contract, lease, or bailment is not materially  
11 impaired by reason of the service member's active state service.

12 <sup>17 ← (B)</sup>  
(16) TRANSFERS OR ACQUISITIONS. If a court determines that any interest,  
13 property, or contract has been transferred or acquired with the intent to delay the  
14 enforcement of a civil right by taking advantage of this section, the court shall enter  
15 any judgment or make any order that is just, notwithstanding the provisions of this  
16 section.

17 <sup>18 ← (B)</sup>  
(17) CERTIFICATE OF SERVICE; PERSON REPORTED MISSING. (a) In any action or  
18 proceeding under this section, a certificate signed by the adjutant general or a person  
19 designated by the adjutant general as to the period of active service of a service  
20 member shall be prima facie evidence as to any of the following facts:

- 21 1. That the service member named has been in active state service.
- 22 2. The period of the active state service, including the date the service member  
23 was ordered into active state service.
- 24 3. The monthly pay received by the service member in active state service at  
25 the time the certificate was issued.

## SECTION 1

1           4. If the service member died while in active state service, the date and the  
2 place where he or she died.

3           (b) The adjutant general shall provide the certificate under par. (a) upon  
4 request of the service member or of a person acting on behalf of the service member  
5 or his or her estate, and any certificate so provided shall be prima facie evidence of  
6 the facts stated in the certificate and of the authority of the signer to issue the  
7 certificate.

8           (c) When a service member in active state service has been reported missing  
9 to the department, the service member shall be presumed to continue in active state  
10 service until accounted for, and no period limited under this section which begins or  
11 ends with the death of a service member shall begin or end until the death of the  
12 service member is determined by the department or by a court.

13           <sup>19 ← B</sup>  
~~(18)~~ INTERLOCUTORY ORDERS. A court may revoke, modify, or extend any  
14 interlocutory order made by the court under this section, upon the court's own motion  
15 or on the motion of a party, upon such notice to the parties as the court may require.

16           <sup>20 ← B</sup>  
~~(19)~~ STAY OF ENFORCEMENT OF OBLIGATIONS OR LIABILITIES. (a) A service member  
17 may, at any time during his or her period of active state service, or within 6 months  
18 after that service ends, apply to a court for relief with respect to any obligation or  
19 liability incurred by the service member before his or her period of active state  
20 service. The court, after appropriate notice and hearing, may grant the following  
21 relief unless the court determines that the ability of the service member to comply  
22 with the terms of the obligation or liability has not been materially affected by his  
23 or her state active service:

24           1. In the case of an obligation payable in installments under a contract for the  
25 purchase of real estate, or secured by a mortgage upon real estate, a stay of the

1 enforcement of the obligation during the period of active state service and, from the  
2 date of the end of the period of active state service or from the date of requesting the  
3 relief if made after the service is ended, for a period equal to the period of the  
4 remaining life of the installment contract or instrument evidencing the obligation  
5 plus a period of time equal to the period of active state service, or any part of that  
6 combined period. The court may issue a stay under this paragraph if the service  
7 member makes payments of the balance of the principal and accumulated interest  
8 due and unpaid at the date of the end of the period of active state service or from the  
9 date of requesting the relief, whichever is appropriate, in equal installments during  
10 the combined period and at the rate of interest as is prescribed in the contract or  
11 instrument evidencing the obligation for installments paid when due. The court may  
12 order other terms under this paragraph as are just.

13 2. In the case of any other obligation or liability, a stay of the enforcement of  
14 that obligation or liability during the service member's period of active state service  
15 and, from the date of the end of the period of active state service or from the date of  
16 requesting the relief if made after the service is ended, for a period equal to the period  
17 of active state service or any part of that period. The court may issue a stay under  
18 this paragraph if the service member makes payments of the balance of the principal  
19 and accumulated interest due and unpaid at the date of the end of the period of active  
20 state service or from the date of requesting the relief, whichever is appropriate, in  
21 equal installments during the extended period and at the rate of interest as is  
22 prescribed for the obligation or liability when due. The court may order other terms  
23 under this paragraph as are just.

24 (b) When a court has granted a stay under this subsection, no penalty may  
25 accrue during the period that the terms and conditions of the stay are complied with

1 by reason of the failure to comply with the terms or conditions of the obligation or  
2 liability in respect to which the stay was granted.

3 <sup>21</sup>~~(20)~~ POWER OF ATTORNEY EXTENSION FOR MISSING SERVICE MEMBER. (a) A power  
4 of attorney that was duly executed by a service member that is reported missing to  
5 the department and that designates the service member's spouse, parent or named  
6 relative as his or her attorney-in-fact for specified, or all, purposes, and that expires  
7 after the service member is reported missing, is extended for the period that the  
8 service member is missing.

9 (b) No power of attorney executed after the effective date of this subsection ...  
10 [revisor inserts date], by a service member in active state service may be extended  
11 under par. (a) if the document creating the power of attorney clearly indicates that  
12 the power granted expires on the date specified even if the service member, after the  
13 date of execution of the document, is reported missing to the department.

14 <sup>22</sup>~~(21)~~ PROFESSIONAL LIABILITY PROTECTION. (a) 1. If a service member who is called  
15 into active state service has coverage under a professional liability insurance policy  
16 that does not cover claims filed with respect to the service member during the period  
17 of active state service unless the premiums are paid for the coverage for that period,  
18 the insurer that provides the coverage shall suspend the service member's coverage  
19 under the policy upon receipt of a written request from the service member to do so.  
20 The insurer may not require that premiums be paid for the suspended coverage. The  
21 insurer shall refund any premium amount already paid for coverage of the service  
22 member for the period after the coverage is suspended or shall, at the option of the  
23 service member, apply such amount to payment of any premium that becomes due  
24 upon reinstatement of the coverage.



1           2. Subdivision 1. does not require the suspension of coverage for any other  
2 person who has coverage under the policy and who is not a service member called into  
3 active state service or relieve any person of the obligation to pay premiums for  
4 coverage that is not required to be suspended under subd. 1.

5           (b) 1. Subject to subd. 2., an insurer that suspends coverage under par. (a) is  
6 not liable with respect to any claim that is based on the professional conduct,  
7 including the failure to take an action in a professional capacity, of the service  
8 member that occurs while the service member's professional liability coverage is  
9 suspended under this subsection.

10           2. For purposes of subd. 1., a claim that is based on the failure of a professional  
11 to make adequate provision for the care of patients during the professional's period  
12 of active state service shall be considered to be based on an action or the failure to  
13 take action before the beginning of the period during which coverage is suspended  
14 under this subsection, unless professional services were provided after the date on  
15 which the suspension of coverage began.

16           (c) 1. If a service member whose professional liability insurance coverage is  
17 suspended under par. (a) transmits to the insurer, within 30 days after the date on  
18 which the service member is released from active state service, a written request for  
19 reinstatement of his or her professional liability insurance coverage, the insurer  
20 must reinstate the coverage as of the date on which the insurer receives the written  
21 request. The period for which the coverage must be reinstated may not be less than  
22 the balance of the period for which the coverage would have continued under the  
23 policy had the coverage not been suspended.

24           2. Upon receipt of the written request under subd. 1., the insurer shall notify  
25 the service member of the due date for paying the premium for the insurance, and

1 the service member shall pay the premium within 30 days after receiving the notice.  
2 For the minimum period of reinstatement required under subd. 1., the insurer may  
3 not increase the amount of the premium over the amount that was chargeable before  
4 the suspension of the coverage for that period, except to the extent of any general  
5 increase in premiums charged by the insurer for the same professional liability  
6 coverage for persons similarly covered by such insurance during the period of the  
7 suspension.

8 (d) 1. Any action or proceeding in any court or before any public agency, as  
9 defined in s. 36.54 (2) (a) 2., based on the alleged professional negligence or other  
10 professional liability of a service member whose professional liability insurance  
11 coverage has been suspended under par. (a) shall be stayed until the end of the period  
12 of suspension if all of the following apply:

13 a. The action or proceeding was commenced during the period of suspension.

14 b. The action or proceeding is based on an act or omission that occurred before  
15 the date on which the period of suspension began.

16 c. The professional liability insurance policy would, except for the suspension,  
17 on its face cover the alleged professional negligence or other professional liability of  
18 the service member.

19 2. Whenever an action or proceeding is stayed under subd. 1., the action or  
20 proceeding shall be considered to have been filed on the date on which the service  
21 member's coverage is reinstated under par. (c) 1.

22 3. In any action or proceeding in which a stay may be granted under subd. 1.,  
23 the period during which the professional liability insurance coverage is suspended  
24 may not be included in computing any limitations period for commencing the action  
25 or proceeding.

1 (e) If a service member whose professional liability insurance coverage is  
2 suspended under par. (a) dies during the period of suspension, all of the following  
3 apply:

4 1. The requirement to stay any action or proceeding under par. (d) 1. terminates  
5 on the date of the service member's death.

6 2. The insurer that suspended the coverage is liable for any claim for damages  
7 for the professional negligence or other professional liability of the deceased service  
8 member in the same manner and to the same extent as the insurer would be liable  
9 if the service member had died while covered by the insurance but before the claim  
10 was filed.

11 <sup>23</sup>  
~~(22)~~ NOTICE OF BENEFITS UNDER THIS SECTION. The department of veterans  
12 affairs shall provide each service member a brochure explaining this section when  
13 that service member enters active state service.

14 SECTION 2. 45.53 (title) of the statutes is amended to read:

15 **45.53 (title) Soldiers' and sailors' civil relief act; federal service.**

16 SECTION 3. **Initial applicability.**

17 (1) This act first applies to service members who enter active state service on  
18 September 12, 2001.

19 (END)

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3971/lins  
RPN/PJK/RAC:cs:pg

insert 7-5:

(10) Notwithstanding ss. 138.04, 138.09 (7) (b), (bm), (bn), and (bp), 138.12 (10) (a), 218.0101 to 218.0163, 422.201 (2), (3), (9), and (10s), 422.205 (1), and 422.206 (2), no obligation or liability bearing interest at a rate in excess of 6 percent per year incurred by a service member in active state service before his or her entry into that service may, during any part of the period of active state service, bear interest in excess of 6 percent per year except by court order. If, upon application by an obligee, a court determines that the ability of the service member 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 his or her active state service, the court may make any order that is just. In this subsection, "interest" includes service charges, renewal charges, fees, or other charges, other than insurance, in respect to the obligation or liability.

**Barman, Mike**

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**From:** Kolka, Kathie  
**Sent:** Monday, October 15, 2001 1:46 PM  
**To:** LRB.Legal  
**Subject:** FW: Draft review: LRB-3971/1 Topic: Soldiers' and sailors' civil relief act for state service

It has been requested by <Kolka, Kathie> that the following draft be jacketed for the ASSEMBLY:

FW: Draft review: LRB-3971/1 Topic: Soldiers' and sailors' civil relief act for state service

# Memo

To: Rep. Musser (The Bill's Requestor)

Attached is a fiscal estimate prepared for your 2001 draft that has not yet been introduced.

LRB Number: LRB 3971

Version: " / 1 "

Entered In Computer And Copy Sent To Requestor Via E-Mail: 10 / 15 / 2001

Fiscal Estimate Prepared By: (agency abbr.) DMA

If you have questions about the attached fiscal estimate, you may contact the agency/individual who prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

\* \* \* \* \*

To: LRB – Legal Section PA's

Subject: Fiscal Estimate Received For A Un-Introduced Draft

- If this is **re-drafted** to a new version please attach this early fiscal estimate to the back of the draft's file between the old version and the new version.
- If this draft gets **introduced** ... and the version of the attached fiscal estimate is correct ... please write the drafts intro. number below and give this fiscal estimate to Mike (or Lynn) to process.

**THIS DRAFT WAS INTRODUCED AS: 2001** \_\_\_\_\_

- If this draft gets **introduced** ... and the version of the attached fiscal estimate is for a previous version ... please attach this early fiscal estimate to the back of the draft's file between the old version and the new version. Have Mike (or Lynn) get the ball rolling on getting a fiscal estimate prepared for the introduced version.

**Emery, Lynn**

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**From:** Emery, Lynn  
**Sent:** Monday, October 15, 2001 4:15 PM  
**To:** Rep.Musser  
**Subject:** LRB-3971/1 (FE by DMA - attached - for your review)



FE-3971DMA.pdf

FE-3971DMA.pdf

### Fiscal Estimate - 2001 Session

Original       Updated       Corrected       Supplemental

<b>LRB Number 01-3971/1</b>		<b>Introduction Number</b>	
<b>Subject</b> Soldiers' and sailors' civil relief act for state service			
<b>Fiscal Effect</b> <b>State:</b> <input checked="" type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs			
<b>Local:</b> <input checked="" type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs      3. <input type="checkbox"/> Increase Revenue      5. Types of Local Government Units Affected <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities 2. <input type="checkbox"/> Decrease Costs      4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts			
<b>Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS		<b>Affected Ch. 20 Appropriations</b>	
<b>Agency/Prepared By</b> DMA/ Lucinda Fritchen (608) 242-3156		<b>Authorized Signature</b> Lucinda Fritchen (608) 242-3156	<b>Date</b> 10/15/01



**Fiscal Estimate Narratives**

**DMA 10/15/01**

LRB Number <b>01-3971/1</b>	Introduction Number	Estimate Type <b>Original</b>
<b>Subject</b> Soldiers' and sailors' civil relief act for state service		

**Assumptions Used in Arriving at Fiscal Estimate**

As far as the Department of Military Affairs is able to ascertain, this bill will have no fiscal impact on this agency.

**Long-Range Fiscal Implications**

### Fiscal Estimate - 2001 Session

Original       Updated       Corrected       Supplemental

<b>LRB Number</b> 01-3971/1	<b>Introduction Number</b>	
<b>Subject</b> Soldiers' and sailors' civil relief act for state service		
<b>Fiscal Effect</b>		
<b>State:</b>		
<input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate		
<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
<b>Local:</b>		
<input checked="" type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate		
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<b>5. Types of Local Government Units Affected</b> <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
<b>Fund Sources Affected</b>		<b>Affected Ch. 20 Appropriations</b>
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS		
<b>Agency/Prepared By</b>	<b>Authorized Signature</b>	<b>Date</b>
DVA/ Kenneth Abrahamsen (608) 266-0117	Kenneth Abrahamsen (608) 266-0117	10/15/01

Copy sent to Rep. Musser (10-16-2001)  
 → FE is for old "1" version  
 → draft is now a "1/2"

## Fiscal Estimate Narratives

DVA 10/16/01

LRB Number 01-3971/1	Introduction Number	Estimate Type	Original
<b>Subject</b>			
Soldiers' and sailors' civil relief act for state service			

### Assumptions Used in Arriving at Fiscal Estimate

This bill would provide the same benefits of the Soldiers' and sailors' relief act under Wis. Stats. 45.53 to members of the National Guard or the state defense force call up to state service under an order of the governor. Under the provisions of the bill, interest on obligations incurred before entry into state service would be capped at 6-percent.

The Wisconsin Department of Veterans (WDVA) provides both home loans and personal loans to qualified veterans. It is possible that individuals called up to state service could have a home loan and/or a personal loan from the WDVA. If the interest rate on any such loan was greater than 6-percent, then the rate would be reduced to 6-percent. Several factors suggest that the fiscal impact from such reductions in the interest rate would be minimal. First, the interest reductions for persons called up to active service in the U.S. armed forces during the Persian Gulf War total about 120 for home loans and less than 10 for personal loans. Any call up of National Guard or state defense force personnel is likely to be significantly less in number than the number called up for the Persian Gulf War. Another factor is that more than 80 percent of the personal loans made by the WDVA are at 6-percent. Likewise, most of the home loans made by the WDVA have an interest rate of less than 8-percent. As a result of both of these factors, the savings from any interest rate reduction would be minimal. Because it is not known how many persons would be activated for state service and then how many of those individuals would have loans with the WDVA, it is not possible to provide an accurate estimate of the fiscal impact of this bill.

This bill also requires that the WDVA provide each individual who may be called up to state service with a brochure explaining the benefits provided under this bill. The cost to produce such a brochure would be minimal and could be absorbed within the departments existing budget.

### Long-Range Fiscal Implications



2001 BILL

1 AN ACT to amend 45.53 (title); and to create 21.75 of the statutes; relating to:  
2 the rights of persons who are called into state service.

active

**Analysis by the Legislative Reference Bureau**

Under current federal law, persons who are in active service in the U.S. armed forces and their dependents are given certain protections related to lawsuits, leases, obligations and contracts for the period that they are in active service. Generally, these protections are provided under federal law only if the service in the military materially affects the armed forces member's ability to meet the obligation. In most cases, the armed forces member may waive the protections afforded by the law if he or she does so in writing after entering the armed forces.

Under federal law, all interest on obligations incurred before entry into the armed forces is capped at six percent for the duration of the military service. The federal law tolls the running of all statutes of limitations during the period of active service with respect to civil and administrative proceedings involving the service member as either a plaintiff or a defendant. The federal law stays all civil actions affecting the service member, including actions to repossess property and garnishment actions. Under the federal law, if in a court action a default judgment is requested, the person requesting the default judgment must submit an affidavit regarding the military status of the opposing party, and the court is required to appoint an attorney for the other party if he or she may be in military service. That attorney may seek a stay of the proceedings under federal law. Federal law also allows the reopening of a default judgment if that judgment was entered against a service member during or with 30 days after his or her period of active service.

**BILL**

Under federal law, members of the U.S. armed forces and their dependents are protected from eviction from their dwelling if the monthly rent does not exceed \$1200. In addition, the federal law allows a service member to terminate a lease occupied as a dwelling or for professional, business, or agricultural purposes if the lease was entered into before the service member was called into active service. In this situation, the service member does not need to be materially affected to terminate the lease. The federal law allows a court to stay the enforcement of installment contracts, storage liens, and mortgage obligations.

This bill provides these same benefits to persons who are called into state service either as part of the state national guard or as part of the state militia.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 21.75 of the statutes is created to read:

2           **21.75 Soldiers' and sailors' relief act; state service.** (1) DEFINITIONS. In  
3 this section:

4           (a) "Active state service" means active service <sup>for 30 days or more</sup> in the national guard or the state  
5 defense force under an order of the governor issued under this chapter or active  
6 service <sup>for 30 days or more</sup> in the national guard under 32 USC 502 (f) or 506 that is not considered to  
7 be "service in the uniformed services," as defined in 38 USC 4303 (13).

8           (b) "Court" means a court of record.

9           (c) "Department" means the department of military affairs.

10          (d) "Service member" means a person who may be called into active state  
11 service.

12          (e) "Period of active state service" means the period beginning on the date on  
13 which the service member receives an order to enter active state service and ending  
14 on the date of the service member's release from active state service or death while  
15 in active state service.

**BILL**

1           (2) PROTECTION OF PERSONS SECONDARILY LIABLE. (a) If this section results in the  
2 stay or suspension of any obligation, liability, court action, order, writ, or judgment,  
3 the court that issued the stay or suspension may grant the same remedy to sureties,  
4 guarantors, endorsers, and others subject to the obligation, liability, court action,  
5 order, writ, or judgment.

6           (b) If a service member is the principal on a criminal bail bond and his or her  
7 active state service causes the surety upon the bond to be prevented from enforcing  
8 the attendance of the service member at court, the court shall not enforce the  
9 provisions of the bond during the service member's period of active state service and  
10 may either during or after the period of active service discharge the surety and  
11 exonerate the bail.

12           (c) A surety, guarantor, endorser, or other person subject to the obligation,  
13 liability, court action, order, writ, or judgment under par. (a) or (b) may waive in  
14 writing the rights afforded by this subsection, except that the waiver is not valid  
15 unless the waiver is executed as an instrument separate from the obligation, liability,  
16 court action, order, writ, or judgment. The waiver under this paragraph is not valid  
17 after the beginning of the period of active state service if executed by a service  
18 member who subsequently is called into active state service. The waiver under this  
19 paragraph is not valid if executed by a dependent of a service member unless the  
20 waiver is executed during the period of active state service.

21           (3) EFFECT ON RIGHTS UNDER A WRITTEN AGREEMENT. This section does not prevent  
22 the modification, termination, or cancelation of any contract, lease, bailment, or  
23 secured obligation, or the repossession, retention, foreclosure, sale, or forfeiture of  
24 property that is security for any obligation or which has been purchased or received

**BILL**

1 under a contract, lease, or bailment under a written agreement of the parties if that  
2 agreement is executed during or after the period of active state service.

3 (4) EXERCISE OF RIGHTS. No person may use the fact that a service member has  
4 applied for, or received, a stay, postponement, or suspension in the payment of a tax,  
5 fine, penalty, insurance premium, or other civil obligation or liability as the basis for  
6 doing any of the following:

7 (a) If the person is a lender, determining that the service member is unable to  
8 pay any such civil obligation or liability in accordance with the terms of the obligation  
9 or liability.

10 (b) If the person is a creditor, denying or revoking any credit extended to the  
11 service member, changing the terms of a credit agreement to which the service  
12 member is a party, or refusing to grant credit to the service member in substantially  
13 the amount or on substantially the terms requested by the service member.

14 (c) If the person is in the business of assembling or evaluating consumer credit  
15 information, making an adverse report on the creditworthiness of the service  
16 member.

17 (d) If the person is an insurer, refusing to insure the service member.

18 (5) DEFAULT JUDGMENTS, AFFIDAVITS, AND ATTORNEY REPRESENTATION. (a) If, in any  
19 court action, there is a default of any appearance of the defendant, the plaintiff, when  
20 requesting a default judgment, shall file with the court an affidavit setting forth facts  
21 showing that the defendant is not in active state service. If the plaintiff is unable to  
22 file such an affidavit, the plaintiff shall, when requesting a default judgment, file an  
23 affidavit setting forth that the defendant is in active state service or that the plaintiff  
24 is unable to determine if the defendant is in active state service. If an affidavit is not  
25 filed showing that the defendant is not in active state service, a default judgment

**BILL**

1 may not be entered without a court order. A court may not order the entry of a default  
2 judgment if the defendant is in active state service until the court has appointed an  
3 attorney to represent the defendant and protect the defendant's interests. Unless  
4 the court determines that the defendant is not in active state service, the court may  
5 require, as a condition of entering judgment, the plaintiff to file a bond to indemnify  
6 the defendant, if he or she is in active state service, against any loss or damage  
7 resulting from the judgment if any part of the judgment is later set aside. The court  
8 may make any other order as may be necessary to protect the interests of the  
9 defendant under this section.

10 (b) If a judgment is rendered in a court action against a service member during  
11 the period of active state service or within 30 days after the end of that period of active  
12 state service, and it appears that the service member was prejudiced in making a  
13 defense by reason of his or her active state service, the court may reopen that  
14 judgment if all of the following conditions exist:

15 1. The service member moves the court to reopen the judgment within 90 days  
16 after his or her period of active state service ends.

17 2. The service member has a meritorious or legal defense to the action.

18 (c) Vacating, setting aside, or reversing a judgment under this subsection does  
19 not impair any right or title acquired by a bona fide purchaser for value under the  
20 judgment.

21 (d) Any person who shall make or use an affidavit required under this  
22 subsection that he or knows to be false shall be fined not more than \$10,000 or  
23 imprisoned for not more than 9 months, or both.

24 (6) **STAY OF ACTION.** During any stage of a court action in which a service  
25 member in active state service is involved as a party, or within 60 days after the end



**BILL**

1 of the period of active state service, the court in which the action is pending may on  
2 its own motion, and shall, on application of the service member or some person acting  
3 on behalf of the service member, stay the action unless the court determines that the  
4 service member's ability to represent his or her interest in the action is not materially  
5 affected by reason of his or her active state service.

6 (7) STAY OR VACATION OF EXECUTIONS OR ATTACHMENTS. In any court action that  
7 is commenced against a service member before or after entering active state service,  
8 or within 60 days after the period of active state service ends, the court may on its  
9 own motion, and shall, on application of the service member or some person acting  
10 on behalf of the service member, stay the execution of any judgment or order entered  
11 against the service member, or stay or vacate any attachment or garnishment  
12 regarding the service member's property, unless the court determines that the  
13 service member's ability to comply with the judgment or order is not materially  
14 affected by reason of his or her active state service.

15 (8) DURATION AND TERMS OF STAYS. (a) Any stay of any action, attachment,  
16 execution, or garnishment under this section may be ordered for the period of the  
17 active state service and 3 months after that period has ended, or for any part of that  
18 time.

19 (b) Any stay under par. (a) may be subject to such terms as may be just,  
20 including the payment of installments in an amount and at the times that the court  
21 determines.

22 (c) If the service member is a codefendant in an action, the plaintiff may, by  
23 leave of the court, proceed against the other codefendants.

24 (9) STATUTES OF LIMITATIONS. The period of active state service may not be  
25 included in computing any period for the bringing of any action or proceeding in any

## BILL

1 court or before any public agency, as defined in s. 36.54 (2) (a) 2., by or against a  
2 person in active state service or by or against his or her heirs, executors,  
3 administrators or assigns, whether the cause of action or proceeding or the right to  
4 bring the action or proceeding accrued before or during the period of active state  
5 service.

6 <sup>(C5)</sup>  
*Maximum Interest Rate*  
7 (10) Notwithstanding ss. 138.04, 138.09 (7) (b), (bm), (bn), and (bp), 138.12 (10)  
8 (a), 218.0101 to 218.0163, 422.201 (2), (3), (9), and (10s), 422.205 (1), and 422.206 (2),  
9 no obligation or liability bearing interest at a rate in excess of 6 percent per year  
10 incurred by a service member in active state service before his or her entry into that  
11 service may, during any part of the period of active state service, bear interest in  
12 excess of 6 percent per year except by court order. If, upon application by an obligee,  
13 a court determines that the ability of the service member to pay interest upon the  
14 obligation or liability at a rate in excess of 6 percent per year is not materially affected  
15 by reason of his or her active state service, the court may make any order that is just.  
16 In this subsection, "interest" includes service charges, renewal charges, fees, or other  
17 charges, other than insurance, in respect to the obligation or liability.

18 (11) EVICTION STAY. (a) No eviction may be made during the period of active  
19 state service in respect to any premises for which the agreed rent does not exceed  
20 \$1,200 per month, occupied chiefly for dwelling purposes by the spouse, children, or  
21 other dependents of a service member who is in active state service, except upon  
22 order of a court in an action affecting the right of possession.

23 (b) In an action for eviction under par. (a), the court may on its own motion, and  
24 shall, on application of the service member or some person acting on behalf of the  
25 service member, stay the proceedings for not longer than 3 months unless the court  
determines that the ability of the tenant to pay the agreed rent is not materially

**BILL**

1 affected by the active state service. The court may make any other order in the  
2 eviction action as it considers necessary and just. If a stay or order is issued under  
3 this paragraph, the court may, upon the request of the owner of the premises, make  
4 any other order as may be applicable to conserve the interests of all of the parties.

5 (c) Any person who knowingly takes part in any eviction prohibited under par.  
6 (a) except as provided in this subsection, or attempts to do so, shall be fined not more  
7 than \$10,000 or imprisoned not more than 9 months, or both.

8 **(12) ACTION TO ENFORCE OBLIGATION SECURED BY MORTGAGE.** (a) In this  
9 subsection, “obligation” means an obligation of a service member in active state  
10 service that was incurred before the service member’s period of active state service  
11 began and that is secured by a mortgage, deed of trust, or other security in the nature  
12 of a mortgage on real or personal property that is owned by the service member.

13 (b) If a court action against a service member is commenced during the service  
14 member’s period of active state service to enforce an obligation for nonpayment of  
15 any sum due or for any other breach of terms occurring before or during the service  
16 member’s period of active state service, the court shall hold a hearing on the matter.  
17 Unless the court determines that the service member’s ability to comply with the  
18 terms of the obligation is not materially affected by reason of his or her active state  
19 service, the court on its own motion may, or upon application of the service member  
20 or another person on his or her behalf shall, do any of the following:

- 21 1. Stay the action as provided in this section.
- 22 2. Make such other disposition of the case as the court determines is equitable  
23 to the interests of all parties.

24 (c) 1. Notwithstanding the times provided in ss. 846.10, 846.101, 846.102, and  
25 846.103 for sales of real property, no foreclosure, sale, or seizure of property for

**BILL**

1 nonpayment of any sum due or for any other breach of terms is valid if it occurs  
2 during or within 3 months after the service member's period of active state service,  
3 unless the court ordered the foreclosure, sale, or seizure of property before the  
4 beginning of the service member's period of active state service and approves the  
5 foreclosure, sale, or seizure after it occurs.

6 2. Any person who knowingly causes a foreclosure, sale, or seizure of property  
7 that is invalid under subd. 1. shall be fined not more than \$10,000 or imprisoned for  
8 not more than 9 months, or both.

9 **(13) PERSONAL PROPERTY CONTRACTS.** When an action to resume possession of  
10 personal property, or to rescind or terminate a contract for the purchase of personal  
11 property, has been stayed under this section, the court may appoint 3 disinterested  
12 persons to appraise the property. Based upon the report of the appraisers, and unless  
13 undue hardship would result to the dependents of the service member in active state  
14 service, the court may order that a sum be paid to the service member as a condition  
15 of resuming possession of the property or rescinding or terminating the contract.

16 **(14) TERMINATION OF LEASES BY LESSEES.** (a) This subsection applies to a lease  
17 to which all of the following apply:

18 1. The lease was executed by or on behalf of a service member who entered  
19 active state service after the lease was executed.

20 2. The lease covers premises that are occupied for dwelling, professional,  
21 business, agricultural, or similar purposes by the service member, or the service  
22 member and his or her dependents.

23 (b) A lease to which this subsection applies may be terminated by the service  
24 member at any time after the beginning of the service member's period of active state  
25 service by giving notice in writing by personal delivery or first class mail to the

**BILL**

1 landlord or the person who has been receiving rent or managing the property as the  
2 landlord's agent.

3 (c) If the lease provides for monthly payment of rent, termination shall be  
4 effective 30 days after the first date on which the next rental payment is due and  
5 payable after the date on which the notice is delivered or mailed. In any other case,  
6 all of the following apply:

7 1. Termination shall be effective on the last day of the month after the month  
8 in which the notice was delivered or mailed.

9 2. Any unpaid rent for the period preceding termination shall be computed on  
10 a prorated basis.

11 3. The landlord or the landlord's agent shall refund to the service member any  
12 rent paid in advance that applies to the period after termination.

13 (d) Upon application of a landlord after receiving notice under this subsection  
14 and before the lease termination date provided for in this subsection, a court may  
15 make such modifications to or restrictions on the relief granted in this subsection as  
16 the court determines are appropriate under the circumstances.

17 (e) No person may knowingly seize or retain personal property belonging to a  
18 service member who lawfully terminates a lease under this subsection, or in any  
19 manner interfere with the removal of the service member's personal property from  
20 the premises covered by the lease, for the purpose of subjecting the personal property  
21 to a claim for rent accruing after the termination of the lease. Any person who  
22 violates this paragraph shall be fined not more than \$10,000 or imprisoned for not  
23 more than 9 months, or both.

24 (f) Section 704.29 does not apply to the termination of a lease as provided in this  
25 subsection.

**BILL**

1           **(15) STORAGE LIENS.** (a) Notwithstanding ss. 704.05 (5) and 704.90, no person  
2           may enforce a lien for storage of any household goods, furniture, or personal effects  
3           of a service member during the period in which the service member is in military  
4           service and for 90 days after the member's completion of military service, except as  
5           permitted by a court order under sub. (2).

6           (b) No person may exercise any right to foreclose or enforce a lien for the storage  
7           of household goods, furniture, or personal effects of a service member during the  
8           service member's period of active state service and for 3 months after that period  
9           ends except upon an order of the court. In an action under this paragraph, the court,  
10          after a hearing, may on its own motion, and shall, on application of the service  
11          member or some person acting on behalf of the service member, stay the proceeding  
12          or make such other order as may be equitable to conserve the interests of all parties,  
13          unless the court determines that the ability of the service member to pay storage  
14          charges due is not materially affected by his or her active state service.

15          (c) Any person who violates par. (a) may be fined not more than \$10,000 or  
16          imprisoned for not more than 9 months, or both.

17          **(16) DEPENDENT BENEFITS.** Upon application to the court, a dependent of a  
18          service member is entitled to the same benefits given to a service member while in  
19          active state service, unless the court determines that the ability of the dependent to  
20          comply with the terms of an obligation, contract, lease, or bailment is not materially  
21          impaired by reason of the service member's active state service.

22          **(17) TRANSFERS OR ACQUISITIONS.** If a court determines that any interest,  
23          property, or contract has been transferred or acquired with the intent to delay the  
24          enforcement of a civil right by taking advantage of this section, the court shall enter

**BILL**

1 any judgment or make any order that is just, notwithstanding the provisions of this  
2 section.

3 (18) CERTIFICATE OF SERVICE; PERSON REPORTED MISSING. (a) In any action or  
4 proceeding under this section, a certificate signed by the adjutant general or a person  
5 designated by the adjutant general as to the period of active service of a service  
6 member shall be prima facie evidence as to any of the following facts:

7 1. That the service member named has been in active state service.

8 2. The period of the active state service, including the date the service member  
9 was ordered into active state service.

10 3. The monthly pay received by the service member in active state service at  
11 the time the certificate was issued.

12 4. If the service member died while in active state service, the date and the  
13 place where he or she died.

14 (b) The adjutant general shall provide the certificate under par. (a) upon  
15 request of the service member or of a person acting on behalf of the service member  
16 or his or her estate, and any certificate so provided shall be prima facie evidence of  
17 the facts stated in the certificate and of the authority of the signer to issue the  
18 certificate.

19 (c) When a service member in active state service has been reported missing  
20 to the department, the service member shall be presumed to continue in active state  
21 service until accounted for, and no period limited under this section which begins or  
22 ends with the death of a service member shall begin or end until the death of the  
23 service member is determined by the department or by a court.

**BILL**

1           **(19) INTERLOCUTORY ORDERS.** A court may revoke, modify, or extend any  
2 interlocutory order made by the court under this section, upon the court's own motion  
3 or on the motion of a party, upon such notice to the parties as the court may require.

4           **(20) STAY OF ENFORCEMENT OF OBLIGATIONS OR LIABILITIES.** (a) A service member  
5 may, at any time during his or her period of active state service, or within 6 months  
6 after that service ends, apply to a court for relief with respect to any obligation or  
7 liability incurred by the service member before his or her period of active state  
8 service. The court, after appropriate notice and hearing, may grant the following  
9 relief unless the court determines that the ability of the service member to comply  
10 with the terms of the obligation or liability has not been materially affected by his  
11 or her state active service:

12           1. In the case of an obligation payable in installments under a contract for the  
13 purchase of real estate, or secured by a mortgage upon real estate, a stay of the  
14 enforcement of the obligation during the period of active state service and, from the  
15 date of the end of the period of active state service or from the date of requesting the  
16 relief if made after the service is ended, for a period equal to the period of the  
17 remaining life of the installment contract or instrument evidencing the obligation  
18 plus a period of time equal to the period of active state service, or any part of that  
19 combined period. The court may issue a stay under this paragraph if the service  
20 member makes payments of the balance of the principal and accumulated interest  
21 due and unpaid at the date of the end of the period of active state service or from the  
22 date of requesting the relief, whichever is appropriate, in equal installments during  
23 the combined period and at the rate of interest as is prescribed in the contract or  
24 instrument evidencing the obligation for installments paid when due. The court may  
25 order other terms under this paragraph as are just.



**BILL**

1           2. In the case of any other obligation or liability, a stay of the enforcement of  
2 that obligation or liability during the service member's period of active state service  
3 and, from the date of the end of the period of active state service or from the date of  
4 requesting the relief if made after the service is ended, for a period equal to the period  
5 of active state service or any part of that period. The court may issue a stay under  
6 this paragraph if the service member makes payments of the balance of the principal  
7 and accumulated interest due and unpaid at the date of the end of the period of active  
8 state service or from the date of requesting the relief, whichever is appropriate, in  
9 equal installments during the extended period and at the rate of interest as is  
10 prescribed for the obligation or liability when due. The court may order other terms  
11 under this paragraph as are just.

12           (b) When a court has granted a stay under this subsection, no penalty may  
13 accrue during the period that the terms and conditions of the stay are complied with  
14 by reason of the failure to comply with the terms or conditions of the obligation or  
15 liability in respect to which the stay was granted.

16           **(21) POWER OF ATTORNEY EXTENSION FOR MISSING SERVICE MEMBER.** (a) A power  
17 of attorney that was duly executed by a service member that is reported missing to  
18 the department and that designates the service member's spouse, parent or named  
19 relative as his or her attorney-in-fact for specified, or all, purposes, and that expires  
20 after the service member is reported missing, is extended for the period that the  
21 service member is missing.

22           (b) No power of attorney executed after the effective date of this subsection ....  
23 [revisor inserts date], by a service member in active state service may be extended  
24 under par. (a) if the document creating the power of attorney clearly indicates that

**BILL**

1 the power granted expires on the date specified even if the service member, after the  
2 date of execution of the document, is reported missing to the department.

3 (22) PROFESSIONAL LIABILITY PROTECTION. (a) 1. If a service member who is called  
4 into active state service has coverage under a professional liability insurance policy  
5 that does not cover claims filed with respect to the service member during the period  
6 of active state service unless the premiums are paid for the coverage for that period,  
7 the insurer that provides the coverage shall suspend the service member's coverage  
8 under the policy upon receipt of a written request from the service member to do so.  
9 The insurer may not require that premiums be paid for the suspended coverage. The  
10 insurer shall refund any premium amount already paid for coverage of the service  
11 member for the period after the coverage is suspended or shall, at the option of the  
12 service member, apply such amount to payment of any premium that becomes due  
13 upon reinstatement of the coverage.

14 2. Subdivision 1. does not require the suspension of coverage for any other  
15 person who has coverage under the policy and who is not a service member called into  
16 active state service or relieve any person of the obligation to pay premiums for  
17 coverage that is not required to be suspended under subd. 1.

18 (b) 1. Subject to subd. 2., an insurer that suspends coverage under par. (a) is  
19 not liable with respect to any claim that is based on the professional conduct,  
20 including the failure to take an action in a professional capacity, of the service  
21 member that occurs while the service member's professional liability coverage is  
22 suspended under this subsection.

23 2. For purposes of subd. 1., a claim that is based on the failure of a professional  
24 to make adequate provision for the care of patients during the professional's period  
25 of active state service shall be considered to be based on an action or the failure to

**BILL**

1 take action before the beginning of the period during which coverage is suspended  
2 under this subsection, unless professional services were provided after the date on  
3 which the suspension of coverage began.

4 (c) 1. If a service member whose professional liability insurance coverage is  
5 suspended under par. (a) transmits to the insurer, within 30 days after the date on  
6 which the service member is released from active state service, a written request for  
7 reinstatement of his or her professional liability insurance coverage, the insurer  
8 must reinstate the coverage as of the date on which the insurer receives the written  
9 request. The period for which the coverage must be reinstated may not be less than  
10 the balance of the period for which the coverage would have continued under the  
11 policy had the coverage not been suspended.

12 2. Upon receipt of the written request under subd. 1., the insurer shall notify  
13 the service member of the due date for paying the premium for the insurance, and  
14 the service member shall pay the premium within 30 days after receiving the notice.  
15 For the minimum period of reinstatement required under subd. 1., the insurer may  
16 not increase the amount of the premium over the amount that was chargeable before  
17 the suspension of the coverage for that period, except to the extent of any general  
18 increase in premiums charged by the insurer for the same professional liability  
19 coverage for persons similarly covered by such insurance during the period of the  
20 suspension.

21 (d) 1. Any action or proceeding in any court or before any public agency, as  
22 defined in s. 36.54 (2) (a) 2., based on the alleged professional negligence or other  
23 professional liability of a service member whose professional liability insurance  
24 coverage has been suspended under par. (a) shall be stayed until the end of the period  
25 of suspension if all of the following apply:

**BILL**

- 1           a. The action or proceeding was commenced during the period of suspension.
- 2           b. The action or proceeding is based on an act or omission that occurred before  
3 the date on which the period of suspension began.
- 4           c. The professional liability insurance policy would, except for the suspension,  
5 on its face cover the alleged professional negligence or other professional liability of  
6 the service member.
- 7           2. Whenever an action or proceeding is stayed under subd. 1., the action or  
8 proceeding shall be considered to have been filed on the date on which the service  
9 member's coverage is reinstated under par. (c) 1.
- 10          3. In any action or proceeding in which a stay may be granted under subd. 1.,  
11 the period during which the professional liability insurance coverage is suspended  
12 may not be included in computing any limitations period for commencing the action  
13 or proceeding.
- 14          (e) If a service member whose professional liability insurance coverage is  
15 suspended under par. (a) dies during the period of suspension, all of the following  
16 apply:
- 17           1. The requirement to stay any action or proceeding under par. (d) 1. terminates  
18 on the date of the service member's death.
- 19           2. The insurer that suspended the coverage is liable for any claim for damages  
20 for the professional negligence or other professional liability of the deceased service  
21 member in the same manner and to the same extent as the insurer would be liable  
22 if the service member had died while covered by the insurance but before the claim  
23 was filed.

