



2001 SENATE BILL 297

October 26, 2001 - Introduced by Senators MOEN, BRESKE, S. FITZGERALD, RISSER, COWLES, WIRCH, HANSEN, GROBSCHMIDT, BAUMGART, DARLING, WELCH, SCHULTZ, ROSENZWEIG and ROESSLER, cosponsored by Representatives MUSSER, POCAN, URBAN, RYBA, GRONEMUS, LADWIG, FREESE, SUDER, TURNER, LASSA, GUNDRUM, J. LEHMAN, PETROWSKI, RILEY, KREUSER, OTT, SYKORA, GROTHMAN, OWENS, NASS, COLON, GUNDERSON, MILLER, VRAKAS, LA FAVE and SERATTI. Referred to Committee on Health, Utilities, Veterans and Military Affairs.

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 active state service and providing
3 penalties.

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

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

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

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

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

13 (e) "Period of active state service" means the period beginning on the date on
14 which the service member receives an order to enter active state service and ending

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1 on the date of the service member's release from active state service or death while
2 in active state service.

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

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

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

23 **(3) EFFECT ON RIGHTS UNDER A WRITTEN AGREEMENT.** This section does not prevent
24 the modification, termination, or cancelation of any contract, lease, bailment, or
25 secured obligation, or the repossession, retention, foreclosure, sale, or forfeiture of

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1 property that is security for any obligation or which has been purchased or received
2 under a contract, lease, or bailment under a written agreement of the parties if that
3 agreement is executed during or after the period of active state service.

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

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

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

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

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

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

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

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

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

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

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

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

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1 **(6) STAY OF ACTION.** During any stage of a court action in which a service
2 member in active state service is involved as a party, or within 60 days after the end
3 of the period of active state service, the court in which the action is pending may on
4 its own motion, and shall, on application of the service member or some person acting
5 on behalf of the service member, stay the action unless the court determines that the
6 service member's ability to represent his or her interest in the action is not materially
7 affected by reason of his or her active state service.

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

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

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

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

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1 **(9) STATUTES OF LIMITATIONS.** The period of active state service may not be
2 included in computing any period for the bringing of any action or proceeding in any
3 court or before any public agency, as defined in s. 36.54 (2) (a) 2., by or against a
4 person in active state service or by or against his or her heirs, executors,
5 administrators or assigns, whether the cause of action or proceeding or the right to
6 bring the action or proceeding accrued before or during the period of active state
7 service.

8 **(10) MAXIMUM INTEREST RATE.** No obligation or liability bearing interest at a rate
9 in excess of 6 % per year incurred by a service member in active state service before
10 his or her entry into that service may, during any part of the period of active state
11 service, bear interest in excess of 6 % per year except by court order. If, upon
12 application by an obligee, a court determines that the ability of the service member
13 to pay interest upon the obligation or liability at a rate in excess of 6 % per year is
14 not materially affected by reason of his or her active state service, the court may
15 make any order that is just. In this subsection, "interest" includes service charges,
16 renewal charges, fees, or other charges, other than insurance, in respect to the
17 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

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1 determines that the ability of the tenant to pay the agreed rent is not materially
2 affected by the active state service. The court may make any other order in the
3 eviction action as it considers necessary and just. If a stay or order is issued under
4 this paragraph, the court may, upon the request of the owner of the premises, make
5 any other order as may be applicable to conserve the interests of all of the parties.

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

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

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

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

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1 (c) 1. Notwithstanding the times provided in ss. 846.10, 846.101, 846.102, and
2 846.103 for sales of real property, no foreclosure, sale, or seizure of property for
3 nonpayment of any sum due or for any other breach of terms is valid if it occurs
4 during or within 3 months after the service member's period of active state service,
5 unless the court ordered the foreclosure, sale, or seizure of property before the
6 beginning of the service member's period of active state service and approves the
7 foreclosure, sale, or seizure after it occurs.

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

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

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

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

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

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

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

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

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

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

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

20 (e) No person may knowingly seize or retain personal property belonging to a
21 service member who lawfully terminates a lease under this subsection, or in any
22 manner interfere with the removal of the service member's personal property from
23 the premises covered by the lease, for the purpose of subjecting the personal property
24 to a claim for rent accruing after the termination of the lease. Any person who

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1 violates this paragraph shall be fined not more than \$10,000 or imprisoned for not
2 more than 9 months or both.

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

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

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

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

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

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1 **(17) TRANSFERS OR ACQUISITIONS.** If a court determines that any interest,
2 property, or contract has been transferred or acquired with the intent to delay the
3 enforcement of a civil right by taking advantage of this section, the court shall enter
4 any judgment or make any order that is just, notwithstanding the provisions of this
5 section.

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

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

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

22 (c) When a service member in active state service has been reported missing
23 to the department, the service member shall be presumed to continue in active state
24 service until accounted for, and no period limited under this section which begins or

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1 ends with the death of a service member shall begin or end until the death of the
2 service member is determined by the department or by a court.

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

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

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

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1 instrument evidencing the obligation for installments paid when due. The court may
2 order other terms under this paragraph as are just.

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

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

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

24 (b) No power of attorney executed after the effective date of this subsection
25 [revisor inserts date], by a service member in active state service may be extended

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1 under par. (a) if the document creating the power of attorney clearly indicates that
2 the power granted expires on the date specified even if the service member, after the
3 date of execution of the document, is reported missing to the department.

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

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

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

24 2. For purposes of subd. 1., a claim that is based on the failure of a professional
25 to make adequate provision for the care of patients during the professional's period

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1 of active state service shall be considered to be based on an action or the failure to
2 take action before the beginning of the period during which coverage is suspended
3 under this subsection, unless professional services were provided after the date on
4 which the suspension of coverage began.

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

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

22 (d) 1. Any action or proceeding in any court or before any public agency, as
23 defined in s. 36.54 (2) (a) 2., based on the alleged professional negligence or other
24 professional liability of a service member whose professional liability insurance

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1 coverage has been suspended under par. (a) shall be stayed until the end of the period
2 of suspension if all of the following apply:

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

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

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

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

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

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

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

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

