

110TH CONGRESS
2^D SESSION

S. 3197

AN ACT

A bill to amend title 11, United States Code, to exempt for a limited period, from the application of the means-test presumption of abuse under chapter 7, qualifying members of reserve components of the Armed Forces and members of the National Guard who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 90 days.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Guard and
5 Reservists Debt Relief Act of 2008”.

6 **SEC. 2. AMENDMENTS.**

7 Section 707(b)(2)(D) of title 11, United States Code,
8 is amended—

9 (1) in clauses (i) and (ii)—

10 (A) by indenting the left margin of such
11 clauses 2 ems to the right, and

12 (B) by redesignating such clauses as sub-
13 clauses (I) and (II), respectively,

14 (2) by striking “testing, if the debtor is a dis-
15 abled veteran” and inserting the following:

16 “testing—

17 “(i) if the debtor is a disabled veteran”,

18 (3) by striking the period at the end and insert-
19 ing “; or”, and

20 (4) by adding at the end the following:

21 “(ii) with respect to the debtor, while the debtor
22 is—

23 “(I) on, and during the 540-day period be-
24 ginning immediately after the debtor is released
25 from, a period of active duty (as defined in sec-

1 tion 101(d)(1) of title 10) of not less than 90
2 days; or

3 “(II) performing, and during the 540-day
4 period beginning immediately after the debtor is
5 no longer performing, a homeland defense activ-
6 ity (as defined in section 901(1) of title 32)
7 performed for a period of not less than 90 days;
8 if after September 11, 2001, the debtor while a
9 member of a reserve component of the Armed
10 Forces or a member of the National Guard, was
11 called to such active duty or performed such home-
12 land defense activity.”.

13 **SEC. 3. GAO STUDY.**

14 (a) **COMPTROLLER GENERAL STUDY.**—Not later
15 than 2 years after the effective date of this Act, the Comp-
16 troller General shall complete and transmit to the Speaker
17 of the House of Representatives and the President pro
18 tempore of the Senate, a study of the use and the effects
19 of the provisions of law amended (and as amended) by
20 this Act. Such study shall address, at a minimum—

21 (1) whether and to what degree members of re-
22 serve components of the Armed Forces and members
23 of the National Guard avail themselves of the bene-
24 fits of such provisions,

1 (2) whether and to what degree such members
2 are debtors in cases under title 11 of the United
3 States Code that are substantially related to service
4 that qualifies such members for the benefits of such
5 provisions,

6 (3) whether and to what degree such members
7 are debtors in cases under such title that are materi-
8 ally related to such service, and

9 (4) the effects that the use by such members of
10 section 707(b)(2)(D) of such title, as amended by
11 this Act, has on the bankruptcy system, creditors,
12 and the debt-incurrence practices of such members.

13 (b) FACTORS.—For purposes of subsection (a)—

14 (1) a case shall be considered to be substan-
15 tially related to the service of a member of a reserve
16 component of the Armed Forces or a member of the
17 National Guard that qualifies such member for the
18 benefits of the provisions of law amended (and as
19 amended) by this Act if more than 33 percent of the
20 aggregate amount of the debts in such case is in-
21 curred as a direct or indirect result of such service,

22 (2) a case shall be considered to be materially
23 related to the service of a member of a reserve com-
24 ponent of the Armed Forces or a member of the Na-
25 tional Guard that qualifies such member for the ben-

1 efits of such provisions if more than 10 percent of
2 the aggregate amount of the debts in such case is
3 incurred as a direct or indirect result of such serv-
4 ice, and

5 (3) the term “effects” means—

6 (A) with respect to the bankruptcy system
7 and creditors—

8 (i) the number of cases under title 11
9 of the United States Code in which mem-
10 bers of reserve components of the Armed
11 Forces and members of the National
12 Guard avail themselves of the benefits of
13 such provisions,

14 (ii) the aggregate amount of debt in
15 such cases,

16 (iii) the aggregate amount of debt of
17 such members discharged in cases under
18 chapter 7 of such title,

19 (iv) the aggregate amount of debt of
20 such members in cases under chapter 7 of
21 such title as of the time such cases are
22 converted to cases under chapter 13 of
23 such title,

24 (v) the amount of resources expended
25 by the bankruptcy courts and by the bank-

1 ruptcy trustees, stated separately, in cases
2 under title 11 of the United States Code in
3 which such members avail themselves of
4 the benefits of such provisions, and

5 (vi) whether and to what extent there
6 is any indicia of abuse or potential abuse
7 of such provisions, and

8 (B) with respect to debt-incurrence prac-
9 tices—

10 (i) any increase in the average levels
11 of debt incurred by such members before,
12 during, or after such service,

13 (ii) any indicia of changes in debt-in-
14 currence practices adopted by such mem-
15 bers in anticipation of benefitting from
16 such provisions in any potential case under
17 such title; and

18 (iii) any indicia of abuse or potential
19 abuse of such provisions reflected in the
20 debt-incurrence of such members.

21 **SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

22 (a) **EFFECTIVE DATE.**—Except as provided in sub-
23 section (b), this Act and the amendments made by this
24 Act shall take effect 60 days after the date of enactment
25 of this Act.

1 (b) APPLICATION OF AMENDMENTS.—The amend-
2 ments made by this Act shall apply only with respect to
3 cases commenced under title 11 of the United States Code
4 in the 3-year period beginning on the effective date of this
5 Act.

Passed the Senate September 30 (legislative day,
September 17), 2008.

Attest:

Secretary.

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