

Friendly To Those Who Answer Their Country's Call

The Soldiers' and Sailors' Civil Relief Act was first enacted in 1940, updated after the Gulf War in 1991, and was still largely unchanged as of 2003 when President George W. Bush signed into law the "Servicemembers Civil Relief Act" (SCRA).

Of all the statutes enacted that directly affect members of the Armed Forces, the Servicemember's Civil Relief Act, is probably the most widely recognized.

The SCRA actually covers many legal issues facing both active duty, and members of the National Guard and Reserves, regardless of rank, who are called to active federal service. The SCRA protections are extended to the National Guard when they are called to active duty for 30 days or more under "contingency missions" as specified by the President or the Secretary of Defense.

Most relief is in one of these major areas: stay of civil court proceedings, exemption from multiple taxation, reduction of interest rates, and early termination of leases.

STAY OF CIVIL COURT PROCEEDINGS

One of the greatest impacts the law has is to allow service members to temporarily delay certain civil liabilities and civil court actions. The SCRA does not exempt service members from legal obligations. If you are sued in court, the SCRA may only temporarily delay the hearing so you can defend yourself. Additionally, the SCRA does not apply to criminal charges (including traffic tickets). While a soldier can always ask that a criminal proceeding be delayed, the court is not required to do so under the SCRA.

A "stay," or a delay of the court hearing, can be granted by a court in situations where a soldier has been sued or other type of administrative hearing, and because of military service, the soldier is not available to appear in court or obtain proper legal representation. Judges do not have to grant stays, but usually will if military service is materially affecting a service member's ability to meet his obligations. If a service member is stationed or deployed overseas, obviously they will have difficulty appearing in court. If a service member is stationed in a nearby state, then it is reasonable that the soldier can take leave to appear in court.

REDUCTION OF INTEREST RATES

Perhaps the greatest financial benefit to the soldier under the SCRA comes from the act's provisions that limit the interest rate creditors may charge on pre-service debts.

If the soldier incurred the debt prior to entering active duty, the SCRA provides that a creditor can charge no more than six percent interest annually. The soldier must only show that his or her ability to pay the debt has been "materially affected" by military service. This can be done simply by stating in a letter to the creditor. To get the reduction, a written request must be made to the creditor, along with providing a copy of military orders. Debts falling under this rule include mortgages, credit cards, personal loans, and other commercial loans, but not student loans. In addition, if the service member and another family member hold a debt jointly, both are entitled to the reduction in the interest rate.

Once the creditor receives notice, the creditor must grant the relief effective as of the date the service member is called to active

duty. The creditor must also forgive, not merely defer, any interest in excess of the six percent with a resulting decrease in the amount of periodic payment that the service member is required to make.

EXEMPTION FROM MULTIPLE TAXATION

The SCRA protects your residency of your home state. This protection allows you to continue to vote in your "home" state, as well as not be subjected to state taxes of another state simply because you are living there under military orders. More than one state cannot tax your military income. Your pay can only be taxed by the state of which you are a resident. Your state of residence can be different from where you are stationed and your home of record. This protection does not extend to spouses. In addition, if the service member works outside the military, that income can be taxed by the state where it was earned.

LEASES

The SCRA also assists soldiers in terminating pre-service leases and rental agreements. A soldier must deliver written notice to the landlord any time after entry on active duty or receipt of active duty orders. When a service member terminates a lease under this act, the effective date of termination is 30 days from the date written notice was given. The landlord cannot impose a penalty or keep a security deposit solely because the soldier has terminated the lease in order to be called to active duty. For this provision to apply, the service member need only show the lease was entered into prior to entry into military service; the lease was executed by or on behalf of the service member; the leased premises were occupied for dwelling, professional, business, or similar purposes by the service member, including dependents; and the service member is currently in military service.

In addition, the new provisions extend coverage to leases entered into by active duty service members who subsequently receive orders for a permanent change of station (PCS) orders or a deployment for a period of 90 days or more.

Furthermore, the SCRA now allows the termination of automobile leases by service members and their dependents. Pre-service automobile leases may be canceled if the service member receives orders to active duty for a period of 180 days or more. Automobile leases entered into while on active duty may also be terminated if the service member receives PCS orders to a location outside the continental United States or deployment orders for 180 days or more.

The purpose of the SCRA is to ensure that service members are not at a disadvantage either legally or financially while serving their country. As the United States Supreme Court emphasized over 50 years ago, this act should be read "with an eye friendly to those who dropped their affairs to answer their country's call."



Major Robert Don Gifford is an Army Reserve Judge Advocate with the 22nd Legal Support Organization (U.S. Army Trial Defense Service), and is a federal prosecutor in Reno, Nev. The views stated are of the author and not the Departments of Defense or Justice.