Servicemember's Civil Relief Act (SCRA) Handout

Please note that this Information Paper only provides basic information and is not intended to serve as a substitute for personal consultations with a Legal Assistance Attorney.

The Servicemembers Civil Relief Act of 2003 (SCRA) formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) is a federal law that gives all military members some important rights as they enter active duty. It covers such issues as rental agreements, security deposits, prepaid rent, eviction, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosure, civil judicial proceedings, and income tax payments. It also provides many important protections to military members while on active duty.

The SCRA protects active duty military members and reservists or members of the National Guard called to active duty (starting on the date active duty orders are received) and, in limited situations, dependents of military members (e.g., certain eviction actions).

To receive protection under some parts of the SCRA, the member must be prepared to show that military service has had a "material effect" on the legal or financial matter involved. Protection under the SCRA must be requested during the member's military duty or within 30 to 180 days after military service ends, depending on the protection being requested.

In many situations, the SCRA protections are not automatic, but require some action to invoke the Act. For example, to obtain a reduction of your pre-active duty mortgage or credit card interest rates, you should send your lender/creditor a written request and a copy of your mobilization orders.

If you think that you have rights under the SCRA that may have been violated, or that you are entitled to be shielded from a legal proceeding or financial obligation by the SCRA protections, you should discuss the matter with a legal assistance attorney or a civilian lawyer as soon as possible.

The Six Percent Rule

For example, one of the most widely known benefits under the SSCRA and now the SCRA is the ability to reduce pre-service consumer debt and mortgage interest rates to 6% under certain circumstances. How does the 6 % interest rule work?

Consider this example: Three months ago Mr. Smith and his wife bought a car for $13,000, paying $1,000 down and financing $12,000 at 9% interest. Last week, Mr. Smith was called to active duty as Staff Sergeant (SSG) Smith. Before entering active duty Mr. Smith earned $42,000 per year. As a staff sergeant he now earns almost $27,000 (a staff sergeant with over 12 years of military service from Defense Finance & Accounting Service pay scale). Because of the SCRA, SSG Smith may ask the car

financing company to lower the interest rate to 6% while he is on active duty -- military service has materially affected his ability to pay since he is earning less money on active duty than before. SSG Smith should inform the finance company of his situation in writing with a copy of the orders to active duty attached, and request immediate confirmation that they have lowered his interest rate to 6% under the SCRA. The finance company must adjust the interest down to 6% unless it goes to court. In court, the finance company, not SSG Smith, would have to prove that SSG Smith's ability to pay the loan has not been materially affected by his military service. The 3% difference is forgiven or excused, and SSG Smith need not pay that amount. SSG Smith does need to continue making the monthly payments of principal and interest (at 6%) to avoid his account being considered delinquent. Continuing payments should also avoid any adverse credit reports from the finance company. (See 50 USCS Appx. § 527)

Note: In some situations civilian employers have agreed to pay the military member the difference between the military pay and the civilian pay earned before the call to active duty. In most such situations, military service has not materially affected the member's ability to pay so it is unlikely that the SCRA 6% interest limitation applies. Of course, if the military member's expenses increased (for example, the member must pay for a second apartment at the duty station, or the member's spouse gave up her job to move with him) military service might have materially affected the member and the SCRA 6% interest limit could apply.

What if instead of buying the car before he came on active duty, SSG Smith left his car at home for his wife and purchased a used car at his duty station. To do so, he borrowed $4,000 at 9% interest. Since SSG Smith took this debt after entering active duty the SCRA 6% interest limit does not apply.

Delay of Court and Administrative Proceedings

A major change provided by the SCRA is that it permits active duty servicemembers, who are unable to appear in a court or administrative proceeding due to their military duties, to postpone the proceeding for a mandatory minimum of ninety days upon the servicemember's request. The request must be in writing and (1) explain why the current military duty materially effects the servicemembers ability to appear, (2) provide a date when the servicemember can appear, and (3) include a letter from the commander stating that the servicemember's duties preclude his or her appearance and that he is not authorized leave at the time of the hearing. This letter or request to the court will not constitute a legal appearance in court. Further delays may be granted at the discretion of the court, and if the court denies additional delays, an attorney must be appointed to represent the servicemember. (See 50 USCS Appx. § 522)

Termination of Leases

Another significant change provided in the SCRA, is found in Section 305. The prior law only allowed the termination of pre-service "dwelling, professional, business, agricultural, or similar" leases. The new provision in the SCRA allows termination of leases by active duty servicemembers who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of 90 days or more. The SCRA also includes automobiles leased for personal or business use by servicemembers and their dependents. The pre-service automobile lease may be cancelled if the servicemember receives active duty orders for a period of one hundred and eighty (180) days or more. The automobile lease entered into while the servicemember is on active duty may be terminated if the servicemember receives PCS orders to a (1) location outside the continental United States or (2) deployment orders for a period of one hundred and eighty days or more. Leases must be terminated by

delivery of written notice of the termination and a copy of the servicemember's military orders to the lessor. (See 50 USCS Appx. § 535)

Eviction for Nonpayment of Rent

Although the SCRA does not excuse soldiers from paying rent, it does afford some relief if military service makes payment difficult. Military members and their dependents (in their own right) have some protection from eviction under the SCRA (See 50 USCS Appx. § 531).

The landlord must obtain a court order to evict a military member or his/her dependents. The court must find the member's failure to pay is not materially affected by his/her military service. Material effect is present where the service member does not earn sufficient income to pay the rent. Where the member is materially affected by military service, the court may stay the eviction (three months unless the court decides on a shorter or longer period in the interest of justice) when the military member or dependents request it. There is no requirement that the lease be entered into before entry on active duty, and the court could make any other "just" order under § 301 of the SCRA. The requirements of this section are:
(1) The landlord is attempting eviction during a period in which the service member is in military service or after receipt of orders to report to duty;
(2) The rented premises is used for housing by the spouse, children, or other dependents of the service member; and
(3) The agreed rent does not exceed $2,400 per month. Soldiers threatened with eviction for failure to pay rent should see a legal assistance attorney. (The amount is subject to change in future years and as of 2004 the ceiling is $2465.00)

Default Judgment Protection

If a default judgment is entered against a servicemember during his or her active duty service, or within 60 days thereafter, the SCRA allows the service member to reopen that default judgment and set it aside. In order to set aside a default judgment, the service member must show that he or she was prejudiced by not being able to appear in person, and that he or she has good and legal defenses to the claims against him/her. The servicemember must apply to the court for relief within 90 days of the termination or release from military service. (See 50 USCS Appx. § 521)

Life Insurance Protection

The SCRA also permits the servicemember to request deferment of certain commercial life insurance premiums and other payments for the period of military service and two years thereafter. If the Department of Veteran Affairs approves the request, the United States will guarantee the payments, the policy shall continue in effect, and the servicemember will have two years after the period of military service to repay all premiums and interest. The SCRA increases the amount of insurance this program will cover to the greater of $250,000.00 or the maximum limit of the Servicemembers Group Life Insurance, which is now $400,000. (See 50 USCS Appx. §§ 541 et seq)

State Taxation Clarification

The SCRA provides that a nonresident servicemember's military income and personal property are not subject to state taxation if the servicemember is present in the state only due to military orders., The state is also prohibited from using the military pay of these nonresident servicemembers to increase the

state income tax of the spouse. Under prior law, some states did not tax the nonresident servicemember directly, but did include the nonresident servicemember's income in the spouse's income, resulting in higher taxes for the spouse. (See 50 USCS Appx § 571)

Health Insurance Reinstatement

The SCRA further provides for the reinstatement of any health insurance upon termination or release from service. The insurance must have been in effect before such service commenced and terminated during the period of military service. The reinstatement of the health insurance is not subject to exclusions or a waiting period if the medical condition in question arose before or during the period of service, the exclusion or waiting period did not apply during coverage, and the medical condition has not been determined by the Secretary of the Veteran Affairs to be a disability incurred or aggravated by military service. The reinstatement of health insurance protection does not apply to a servicemember entitled to participate in employer-offered insurance (See rules regarding employer offered health insurance care in the Uniformed Services Employment and Re-employment Act). And finally, the servicemember must apply for the reinstatement of the health insurance within 120 days after termination or release from military service. As always submit such request to the insurance company in writing with a copy of the orders for active duty and release from active duty. (See 50 USCS Appx. § 593)

DefenseLINK (http://www.defenselink.mil) offers information on how to obtain Servicemembers Civil Relief Act Certificates (http://www.defenselink.mil/faq/pis/PC09SLDR.html), often required before a default judgment may be approved when suing a member of the military. Presumably these certificates are still applicable under the SCRA when signed by the Secretary concerned.

For further information or help feel free to make an appointment with a Legal Assistance Attorney, DSN 421-4152, Civ 0711-729-4152.

REVIEWED BY: 1LT Michael Watts, Chief, Client Services
DATE: 8 June 2005

References:

JAG website – www.jagcnet.army.mil/legal
Military.com – www.military.com/Resources/ResourcesContent/0,13964,31043--,00.html

50 USCS Appx. §§ 501 et seq