

# OFFICE OF THE STAFF JUDGE ADVOCATE 48<sup>TH</sup> FIGHTER WING, RAF LAKENHEATH, UK



## SERVICEMEMBERS CIVIL RELIEF ACT

### **Introduction**

President George W. Bush signed the Servicemembers Civil Relief Act (SCRA) into law (Public Law 108-189) on 19 December 2003. Codified in the United States Code, the SCRA is found at 50 U.S.C. App. §§501-596. The new statute completely supersedes the Soldiers' and Sailors' Civil Relief Act (SSCRA) of 1940. In several key areas, the SCRA strengthens the rights and protections afforded to persons in military service, and in some cases their family members, and provides essential clarification of benefits continued from the SSCRA. SCRA is intended to postpone or suspend certain civil obligations to enable service members to devote full attention to duty. The act does not apply to criminal matters. Reservists and the members of the National Guard are also protected under the SCRA while on active duty.

The protections generally begin on the date of entering active duty and terminate within 30 to 90 days after the date of discharge from active duty. Members who face problems in the areas below should visit the legal office without delay. Important note: as described in more detail below, the protections of the Act are not automatic – courts have wide discretion in deciding whether to grant a request under SCRA.

### **Rent**

The SCRA prohibits eviction, without a court order, of a service member and dependents from rented housing where the rent does not exceed \$1200.00 per month. In addition, the court may delay any eviction proceedings for up to three months.

## **Installment Contracts**

A service member who enters into an installment contract before entering active duty is protected if the member's ability to make payments is *materially effected* by military service. Here the courts will compare the service member's pre-service income and military income to determine the member's financial condition. The creditor is prevented from exercising rights of rescission, termination or repossession without a court order.

## **Maximum Rate of Interest**

Generally, this protection ranks at the top of both interest and awareness among servicemembers. However, the scope of the protection is often misunderstood.

What is the maximum interest rate and to what and for whose benefit does it apply? Any obligation or liability (credit card debt, car loans, mortgages, personal loans) incurred by a servicemember, or by a servicemember and the member's spouse jointly, before the member enters active duty shall not bear an interest rate in excess of 6% per year during the period of active duty. Significantly, the interest rate limitation, and the reduction this provision mandates, will not apply to obligations taken while on active duty. An example illustrates the distinction. If a servicemember and spouse have a joint credit card with \$1,000 charged prior to active duty and \$4,000 charged after entering active duty, only \$1,000 of the \$5,000 in credit card debt qualifies for the interest rate reduction.

What is meant by "interest" under the SCRA? The term "interest" includes the interest on the loan, service charges, renewal charges, fees, or any other valid charges. Combined, these assessments may not exceed the 6% annual rate. Of note, "interest" does NOT include insurance payments on the property made in connection with the obligation or liability.

What happens to the interest that had been charged above the 6% cap? For the period of active duty, interest in excess of the 6% cap must be forgiven. This provision prohibits creditors from shifting the interest amount over 6% to the end of the loan. The SSCRA did not address forgiveness of interest. The SCRA specifically requires forgiveness of interest, resolving any potential for confusion or eliminating room for interpretation.

Can a creditor avoid granting the 6% interest rate cap? Yes, but it will require a court order. A court may grant a creditor relief from the maximum interest rate mandated by SCRA only if the court determines that the member's ability to satisfy the obligation has not been materially affected as a result of military service. Essentially, the creditor must convince the court the member's financial status and ability to meet obligations did not suffer a material affect as a result of the entry onto, mobilization for, or recall to active duty. Referring back to the point made above recommending timely applications early on in the member's active military service, a creditor could cite a delayed application, particularly one made in the permissible 180-day period after the end of active duty, as evidence there was no material effect.

**Important exception:** The 6% annual interest rate cap does **NOT** apply to federal guaranteed student loans.

Contact the legal office for more information on the 6% - our attorneys can assist you in drafting your demand letter.

## **Stay of Proceedings**

A servicemember defendant in a **civil or administrative proceeding** who has received notice of an action or proceeding while on active duty, or receives notice within 90 days of termination of or release from active duty, may apply to the court or administrative body for a stay of the proceeding at any time before final judgment. The application for a stay **MUST** include:

1. A letter or other communication (a) setting forth facts describing the manner in which current military duty requirements **materially affect** the member's ability to appear and (b) stating a date when the member will be available to appear **and**,
2. A letter or other communication from the member's commanding officer stating (a) that the member's current military duty prevents appearance and (b) that military leave is not authorized for the member.

On receipt of a proper application, which must include the two communications noted above, the court or administrative body **must stay** the action for a period of 90 days or more. Stays were completely discretionary with the under the SSCRA. Not any longer--if the judge receives a proper application from the servicemember the stay must be approved.

Importantly, an application for a stay does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense, including a defense based upon lack of personal jurisdiction.

A defendant granted this stay may apply (at the time of the initial application or at a later time) for an **additional stay** based on continuing material affect of military duty on the ability to appear. The same information required for the initial application is required of the application for an additional stay. The court or administrative body may, on its own motion or upon such an application, stay the action for an additional period of 90 days or more.

## **Default Judgments**

This section applies to civil actions where the servicemember defendant does not make an appearance and has not received notice of the proceeding. The SCRA clarifies the measures that must be met before a court can enter a default judgment against a servicemember. The Act also lists the actions a servicemember must take to vacate a default judgment.

In cases in which the defendant has not made an appearance, the court will require the plaintiff to provide an affidavit stating whether the defendant is, or is not, in the military or, if unable to determine one way or the other, that the plaintiff is not sure if the defendant is in the military. The affidavit may be a statement, declaration, verification, or certificate - in writing - signed and sworn, certified, or declared to be true under penalty of perjury.

When it appears the defendant is on active duty, the court or administrative body may not enter judgment against the defendant until it has appointed an attorney to represent the member.

If, based on the affidavits filed, the court or administrative body cannot determine whether the member is on active duty, the court or administrative body may require the plaintiff to file a bond to indemnify the defendant against any damages that may result in the event the default judgment is later set aside in whole or in part.

If a default judgment is entered against a member on active duty (or within 60 days after termination of or release from active duty), Section 521(g) allows an application to be made within 90 days of release from or termination of active duty to the court by the servicemember or on behalf of the member requesting the court or administrative body set aside or vacate the default judgment.

Upon such application, the court or administrative body must reopen the judgment for the purpose of allowing the member to defend the action if it appears that: (1) the member was materially affected by reason of the military service in making a defense to the action; and (2) the member has a meritorious or legal defense to the action.

## **Insurance**

Title IV ensures servicemembers' private, individual insurance policies will not lapse or otherwise terminate, nor forfeit due to nonpayment of premiums, while they are on active duty. The extent of this protection may not exceed \$250,000 or the maximum amount of coverage available through Servicemembers' Group Life Insurance (SGLI), whichever is greater. As noted above, the provisions in Title IV of the SCRA do not apply to SGLI. The maximum amount of SGLI coverage is used only as a measuring mechanism to set the scope of protection of life insurance coverage provided under the SCRA.

A servicemember insured under a covered individual life insurance policy must apply in writing to the Department of Veterans Affairs (VA) for protection under Title IV of the SCRA. Of note, an insured servicemember's legal representative or the insured servicemember's beneficiary, if the insured is "outside a State," may apply for this protection as well. The protection applies from the date the written application is received by the VA.

## **Taxation**

No property owned by a member, or jointly by a member and the member's dependants can be sold to enforce the collection of a tax which became due before or during the member's active military service without a court order *and* a determination by the court that military service does not materially affect the member's ability to pay the tax. Additionally, a court may stay a proceeding to enforce collection of a covered tax or assessment, or for the sale of covered property, during the member's military service and for up to 180 days after the end of that service.

An income tax obligation - federal, state, county, parish, city, and other political subdivisions of a state - that arises either before or during military service may be deferred for the duration of that service plus up to 180 days thereafter if the member's ability to pay is materially affected by military service. In order to take advantage of this benefit, the member must provide "notice", in writing, to the IRS, state revenue or taxation department, or local taxing authority. Although the statute does not specify the form or content of the notice, the requirement on the member is apparent: inform of the entry into active military service and demonstrate how that service has materially affected the ability to pay the tax owed. Section 570 of the SCRA should be specifically cited.

Spouses and dependents of military personnel do NOT get the benefit of this protection. Generally, they will meet the state's standards of residence for income tax purposes. Therefore, a working spouse of a military member will pay income taxation to the state in which the couple resides, even though the spouse is only there because of the assignment. A spouse who maintains domicile in a state other than the one in which the couple resides may be subject to double taxation - by the state of legal residence (or domicile) and the state in which the spouse resides, having become a resident for tax purposes. A military spouse commuting to another state for work may face triple taxation--by the state of legal residence, the state in which he or she is a resident for tax purposes, and the state in which he or she is actually working and earning the income. Not all is bleak, however. State income taxes paid are deductible from the federal income tax return. Additionally, states often allow credits for taxes paid to other jurisdictions.

**Use of Non-Resident Military Income to Increase of Tax Liability Prohibited!** One of the most significant benefits afforded to military families under the SCRA is the elimination of the so-called "Kansas Rule" or "California Method" in state income taxation. Previously, states could, and some 25 of them did, increase the tax rate on the non-military income of a non-resident servicemember or the income of a spouse or other dependent of the member by considering the servicemember's military income. The military income was not actually taxed--both the SSCRA and SCRA preclude that--but it was added to the non-military income or the income of the spouse or other dependent solely to increase the tax rate assessed against the income that the state could tax. As a result, the state tax liability increased.

### **Termination of Motor Vehicle Leases**

The ability to terminate leases on motor vehicles represents one of the most significant improvements of the SCRA over the SSCRA. The new Act provides for the termination of motor vehicle leases by servicemembers called to active duty for 180 days or more **AND** by active duty members receiving permanent change of station (PCS) orders outside of the U.S. or deploying with a military unit for 180 days or more.

What types of leases are covered? Covered leases consist of those for motor vehicles actually used, or intended to be used, by a servicemember or the servicemember's dependents for personal or business transportation if:

1. The lease is executed by or on behalf of a person who subsequently, and during the lease term, enters military service under a call or order specifying a period of not less than 180 days; or

2. The lease is executed by or on behalf of a person who subsequently enters military service under a call or order specifying a period of less than 180 days and who, without a break in service, receives orders extending that service to a period covering not less than 180 days; or
3. The active duty servicemember executes the lease while on active duty and subsequently receives PCS orders **outside the continental United States** or orders to deploy for a period of not less than 180 days.

What procedures must a member follow to take advantage of this benefit? The member must deliver to the lessor, or the lessor's agent or grantee, a written termination notice and a copy of the appropriate military orders. Additionally, the member must return the vehicle to the lessor, or the lessor's agent or grantee, not later than 15 days after delivery of the written termination notice.

With motor vehicle leases, various fees present an additional area of concern. The Act **expressly prohibits the imposition by the lessor of an early termination charge**. However, the member remains liable for any outstanding taxes or title and registration fees that may be owed under the terms of the lease.

Please see a legal assistance attorney for help with drafting the letter to terminate your automobile lease.