

National Guard and Reservists Debt Relief Act of 2008

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

9.0—Miscellaneous

On October 20, 2008, President George W. Bush signed into law the National Guard and Reservists Debt Relief Act of 2008 (NGRDRA), Public Law 110-438. This new law amended federal bankruptcy law to prohibit the bankruptcy court from dismissing or converting a chapter 7 liquidation case based upon means testing if the debtor, after Sept. 11, 2001, was called to active duty for at least 90 days, as a member of the National Guard or a Reserve Component of the Armed Forces.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 established a means test in determining eligibility for relief from debts under chapter 7 of the Bankruptcy Act. The NGRDRA exempts qualifying National Guard and Reserve members from this means test. I shudder to think that Guard and Reserve members who have been mobilized are facing

¹I invite the reader's attention to <https://www.roa.org/page/LawCenter>. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

bankruptcy as a result, but it is at least comforting that Congress has “cut them some slack” in the bankruptcy process.

The NGRDRA also directs the Government Accountability Office (GAO), the investigative arm of Congress, to study and report to Congress on whether and to what degree members of the National Guard and Reserve: (1) avail themselves of the benefits of the NGRDRA; (2) are debtors in federal bankruptcy cases substantially related to service that qualifies them for such benefits; and (3) are debtors in federal bankruptcy cases materially related to such service. GAO is now conducting the study directed by Congress, and GAO has contacted ROA as part of that study. I am studying this issue, in order to respond to GAO, on behalf of ROA.

Readers: Were you aware of the National Guard and Reservists Debt Relief Act of 2008? Have you utilized the benefits of this Act? Have you represented clients who utilized these provisions? Were these provisions helpful to you or your client? Do you have suggestions as to how these provisions should be modified? Are you willing to speak to GAO?

If you have relevant information on this new law, please e-mail me at SWright@roa.org.