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Servicemembers' Civil Relief Act

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On 19 December 2003, President Bush signed into law the Servicemembers' Civil Relief Act (SCRA). The act took effect upon the president's signature for all cases that had not reached final judgment. This law is a complete revision of the statute known as The Soldiers' and Sailors' Civil Relief Act (SSCRA).

Up until the passage of the SCRA, the basic protections of the SSCRA for the service member included:

- 1.** Postponement of civil court hearings when military duties materially affected the ability of a service member to prepare for or be present for civil litigation;
- 2.** Reducing the interest rate to 6 percent on pre-service loans and obligations;
- 3.** Barring eviction of a service member's family for nonpayment of rent without a court order for monthly rent of \$1,200 or less;
- 4.** Termination of a pre-service residential lease; and
- 5.** Allowing service members to maintain their state of residence for tax purposes despite military reassignment to other states.

The SSCRA, enacted in 1940 and updated after the Gulf War in 1991, was still largely unchanged as of 2003. The SCRA was written to clarify the language of the SSCRA, to incorporate many years of judicial interpretation of the SSCRA, and to update the SSCRA to reflect new developments in American life since 1940. Here's an overview of what the SCRA does:

General Relief Provisions

The SCRA expands the application of a service member's right to stay court hearings to include administrative hearings. Previously, only civil courts were included, and this caused problems in cases involving administrative child-support determinations, as well as other agency determinations that affected servicemembers. Criminal matters are still excluded.

Section 109 of the SCRA defines a "legal representative" of the service member as either "[a]n attorney acting on the behalf of a servicemember" or "[a]n individual possessing a power of attorney." Under the SCRA, a service member's legal representative can take the same actions as a service member.

The former statute referred to "dependents" and provided several protections that extended to them, but it never defined the term. Section 101(4) of the SCRA now contains a definition of the term "dependent." This includes anyone for whom the service member has provided more than half of his or her support during the 180

days before an application for relief under the SCRA. This is intended to include dependent parents and disabled adult children.

There are several provisions regarding the ability of a court or administrative agency to enter an order staying, or delaying, proceedings. This is one of the main provisions of the original SSCRA—and now the SCRA. The issue is when the tribunal will grant a continuance that halts legal proceedings.

In a case where the service member lacks notice of the proceedings, the SCRA requires a court or administrative agency to grant a stay (or continuance) of at least 90 days when certain conditions are met. The first condition is that the defendant is in military service. The second is either that the court or agency decides that there may be a defense to the action, and such defense cannot be presented in the defendant's absence, or that (with the exercise of due diligence) counsel has been unable to contact the defendant (or otherwise determine if a meritorious defense exists).

In a situation where the military member has notice of the proceeding, a similar mandatory 90-day stay (minimum) of proceedings applies upon the request of the service member, so long as the application for a stay includes two items. The first is a letter or other communication that states the manner in which current military duty requirements materially affect the service member's ability to appear, and gives a date when the service member will be available to appear. The second is a letter or other communication from the service member's commanding officer stating that the service member's current military duty prevents appearance, and that military leave is not authorized for the service member at the time of the letter.

As an aside, please note that this leaves many unanswered questions that will occur upon mobilization of a Guard or Reserve member. For example, how does this provision affect an action for custody by the non-custodial father when the mother, who has custody, gets mobilization orders and takes off for Afghanistan, leaving the child with her parents in Florida? Must a request by the father for a change of custody to him be stayed by the judge pending the mother's return from overseas? How does this provision affect the custodial father who suddenly stops receiving child support when his ex-wife is called up to active duty from the Guard or Reserve, leaving behind her "day job" and the monthly wage garnishment for support of their children? As of January 2004, there were about 180,000 Guard/Reserve service members who had been placed on orders for active duty. The new SCRA provides no answers to these problems.

An application for an additional stay may be made at the time of the original request or later. If the court refuses to grant an additional stay, then the court must appoint counsel to represent the service member in the action or proceeding.

As a further aside, this opens up even more problems and offers no solutions. For example, what is the appointed attorney supposed to do in this situation? Is he supposed to tackle the entire representation of the service member, whom he has never met, who is currently absent from the courtroom, and who is likely

unavailable for even a phone call or a consultation if he or she is on some distant shore in harm's way? And, by the way, who pays for this? There are no answers in the new SCRA.

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 as to lack of personal jurisdiction). Previously, the recommended practice was to avoid having the military attorney or the service member request a stay out of concern that the court might consider the stay request as a general appearance. Section 202(c) of the SCRA eliminates this concern. This new provision makes it clear that a stay request "does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense."

Section 201 of the SCRA clarifies how to proceed in a case where the other side seeks a default judgment (that is, one in which the service member has been served but has not entered an appearance by filing an answer or otherwise) if the tribunal cannot determine if the defendant is in military service.

The Act clarifies the rules on the 6 percent interest rate cap on pre-service loans and obligations by specifying that interest in excess of 6 percent per year must be forgiven. The absence of such language in the SSCRA had allowed some lenders to argue that interest in excess of 6 percent is merely deferred. It also specifies that a service member must request this reduction in writing and include a copy of his/her military orders. When 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 forgive any interest in excess of the 6 percent, with a resulting decrease in the amount of periodic payment that the service member is required to make. The creditor may challenge the rate reduction if it can be shown that the service member's military service has not materially affected his or her ability to pay.

Rent, Installment Contracts, Mortgages, Liens and Leases

The SSCRA provided that, absent a court order, a landlord may not evict a service member or the dependents of a service member from a residential lease when the monthly rent is \$1,200 or less. Section 301 of the SCRA modifies the eviction protection section by barring evictions from premises occupied by service members for which the monthly rent does not exceed \$2,400 for the year 2003. The Act also provides a formula to calculate the rent ceiling for future years. Using this formula, the 2004 monthly rent ceiling is \$2,465.

A substantial change is found in Section 305 of the Act. Previously, the statute allowed a service member to terminate a pre-service "dwelling, professional, business, agricultural, or similar" lease executed by or for the service member and occupied for those purposes by the service member or his dependents. Under the old SSCRA, a lease covering property used for dwelling, professional, business, agricultural or similar purposes could be terminated by a service member if two conditions were met. The first requirement was that the lease/rental agreement was signed before the member entered active duty. The second was that the leased

premises had been occupied for the above purposes by the member or his or her dependents. It did not provide help for the service member on active duty who is required to move due to military orders. Section 305 remedies these problems.

The section still applies to leases entered into before entry on active duty. It adds a new provision, however, extending coverage to leases entered into by Active Duty service members who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of 90 days or more.

It also adds a new provision allowing the termination of automobile leases (for business or personal use) 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 the service member is on active duty may be terminated if he or she receives PCS orders to a location outside the continental United States or deployment orders for a period of 180 days or more.

Life Insurance

Article IV of the SSCRA permitted a service member to request deferments of certain commercial life insurance premiums for the period of military service and two years thereafter. If the Department of Veterans Affairs approved the request, then the U.S. government guaranteed the payments and the policy continued in effect. The service member had two years after the period of military service to repay all premiums and interest. There was a \$10,000 limit for the total amount of life insurance that this program could cover. The SCRA, Section 402, increases this total amount to \$250,000, or the maximum limit of the Servicemembers Group Life Insurance.

Taxes

The SCRA adds a provision that would prevent states from increasing the tax bracket of a nonmilitary spouse who earned income in the state by adding in the service member's military income for the limited purpose of determining the nonmilitary spouse's tax bracket. This practice has had the effect of increasing the military family's tax burden.

Further Relief

The new Act adds legal services as a professional service specifically named under the provision that provides for suspension and subsequent reinstatement of existing professional liability (malpractice) insurance coverage for designated professionals serving on active duty. The SSCRA specifically named only health-care services for protection in the 1991 amendment. The insurance provider would be responsible for any claims brought as a result of actions prior to the suspension. The carrier would not charge premiums during the period of suspension, and must reinstate the policy upon the request of the professional. Legal services have been covered since 3 May 1999 by secretary of Defense designations. The SSCRA permitted such a secretarial designation, but Section 592 of the SCRA clarifies this area.

Historically, the SSCRA applied to members of the National Guard only if they were serving in a Title 10 status. Effective 6 December 2002, the SSCRA protections were extended to members of the National Guard called to active duty for 30 days or more pursuant to a contingency mission specified by the president or the secretary of Defense. This continues in the SCRA.

The best source of information on the SSCRA, until this publication is updated to reflect the changes brought by the SCRA, is the Army JAG School's SSCRA Guide. This can be found at the school's Web site, www.jagcnet.army.mil/tjagsa. Click on Publications, then scroll down to Legal Assistance, and then look for JA 270, which is the SSCRA Guide. ROA

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