

**LAW REVIEW 14041**  
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## **New Legislation in New Mexico for Service Members**

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- 1.1.1.7—USERRA applies to state and local governments
- 1.4—USERRA enforcement
- 1.8—Relationship between USERRA and other laws/policies
- 4.2—SCRA right to terminate lease or contract
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New Mexico Governor Susana Martinez recently signed into law three new laws that will benefit the state's service members and veterans.

House Bill 180 will provide expedited processing for occupational licenses for individuals who are already qualified or certified in another state and who have recently moved to New Mexico. For example, Mary Smith recently moved from Virginia to New Mexico, accompanying her active duty husband, who was transferred from Langley Air Force Base (AFB) to Kirtland AFB. Mary has an occupational license in Virginia. This new law will help her to get a New Mexico license more quickly and practice her profession. She should not have to choose between remaining with her spouse and practicing the profession for which she has trained and has been certified.

In signing this bill into law, Governor Martinez said: "When military families and recent veterans move to New Mexico, we have to make it easier for them to support themselves and get to work. This legislation will end the burdensome process of requiring those already-licensed nurses, teachers, counselors, and other professionals to start over from the beginning when they are transferred to our state. I am pleased that we are now removing this red tape and making it easier for our troops, veterans, and military spouses to get to work right away."

The Governor also signed House Bill 175, which will allow the service member who is deployed for more than 30 days to suspend utilities, municipal services, or telecommunications services without having to pay a reconnection fee after returning home from his or her deployment. The service member must show proof that he or she has orders to deploy, that the utility service is in the member's name, that the member owns the home or has a lease, and that other family members will not be staying in the home while the service member is deployed or temporarily assigned elsewhere.

The federal Servicemembers Civil Relief Act (SCRA) gives a person entering active duty, deploying, or transferring on PCS (Permanent Change of Station) orders to terminate a lease on premises (house, apartment, office, etc.) and/or a vehicle and to terminate a cell phone contract, but the SCRA does not give the individual in these circumstances a general right to

terminate leases and contracts. The relationship between the SCRA and state law is similar to the relationship between the Uniformed Services Employment and Reemployment Rights Act (USERRA) and state law. The federal law is *a floor and not a ceiling*. The SCRA and USERRA do not override or supersede state laws that grant *greater or additional rights* to those who are serving, have served, or will serve in the armed forces.

In signing House Bill 175, Governor Martinez said: “There are more important things our returning warriors need to deal with when they come home. Many have to set up medical or mental health appointments or find a new job. These men and women have just sacrificed to serve our country. They shouldn’t have to deal with any financial burdens of re-establishing basic necessity services once they come home.”

Governor Martinez also signed into law House 247, which creates a scholarship fund for military war veterans. The fund can be used by any New Mexico veteran who has served in combat since 1990 and who has exhausted all available federal G.I. Bill Education Benefits options. Governor Martinez said: “The VA Educational Bill has a time limit for which a veteran can utilize this [federal] benefit. Sometimes, it may take longer for a veteran to pursue his or her dream of getting that degree. They may have to deal with treatment issues or simply need more time getting re-settled as a civilian. We need to take care of these goal-oriented veterans—no matter how long it takes. New Mexico will be there if they need a little extra time to achieve their post high school educational goals.”

I thank Governor Martinez for what she has accomplished and urge her to turn her attention to the enactment of legislation that will give National Guard and Reserve service members an *effective* remedy when their USERRA rights are violated by New Mexico state agencies, as employers. As I explained in Law Review 14036 (March 2014), New Mexico’s intermediate appellate court recently held that the New Mexico Legislature has not effectively waived sovereign immunity to permit these folks to sue in state court.

Because of the 11<sup>th</sup> Amendment of the United States Constitution, these folks cannot sue the State of New Mexico (as employer) in federal court. If they cannot sue in state court, they have no remedy whatsoever. A right without a remedy is of little value.

The New Mexico Legislature several years ago enacted legislation that required state and local government agencies in New Mexico to comply with USERRA, but the appellate court held that any waiver of state sovereign immunity must be clear and unmistakable and that the legislation enacted in New Mexico was not clear enough to be construed as a waiver of sovereign immunity. In a footnote, the court helpfully pointed to language enacted by the Minnesota Legislature that unmistakably gives Minnesota service members and veterans the right to sue state agencies that violate their USERRA rights. We need legislation like that in New Mexico.

**ROA departments and chapters:** We need your help in monitoring and affecting the enactment of state legislation to benefit service members, veterans, and military families. Here at ROA headquarters, we have our hands full with Congress and federal executive agencies. If

you are aware of pertinent new laws enacted in your state, or if you have time to work on these issues in your state capital, please contact me. My e-mail is [SWright@roa.org](mailto:SWright@roa.org). You can reach me by telephone at 800-809-9448, extension 730.