



FORT SAM HOUSTON LEGAL ASSISTANCE OFFICE **SERVICEMEMBERS CIVIL RELIEF ACT** **(Formerly the Soldiers and Sailors Civil Relief Act)**

The very nature of military service often compromises the ability of service members to fulfill their financial obligations and to assert many of their legal rights. Congress and the state legislatures have long recognized the need for protective legislation. During the Civil War, the United States Congress enacted an absolute moratorium on civil actions brought against Federal soldiers and sailors, and various southern states enacted similar legislation. During World War I, Congress passed the Soldiers' and Sailors' Civil Relief Act of 1918. The Soldiers' and Sailors' Civil Relief Act (SSCRA) of 1940 was essentially a reenactment of the 1918 statute. Experience during World War II and subsequent armed conflicts required that changes in the statute be made. The first of these amendments became law in 1942. In amending the Act, Congress was motivated, in part, by the desire to override court decisions that, in some instances, had led to restrictive interpretations of the Act. Other amendments followed in 1991 as a result of Desert Shield/Storm. In an effort to completely revise the previous acts, Congress passed the latest version in 2003, renaming the act the Servicemembers Civil Relief Act (SCRA).

The SCRA's main purpose is twofold: *(1) to enable service members to devote their entire energy to the defense of our nation; and (2) to provide for the temporary suspension of judicial and administrative proceedings that may adversely affect the civil rights of service members during their military service.* Below is a discussion of the most popular aspects of the SCRA.

Terminations & Evictions From Leased Housing (See Sections 301, 305 SCRA)

Previously, service members could only terminate pre-service "dwelling, professional, business, agricultural, or similar" leases. However, a change in the law now provides service members the right to terminate residential leases. An active duty servicemember who has received permanent change-of-station orders or who is being deployed for ninety (90) days or more may terminate a housing lease with 30 days' written notice. A servicemember who executed a lease before entering active duty still has the right to terminate that pre-service lease. It is important to give notice to your landlord as soon as possible since the SCRA does not allow you to end the lease on the day you receive orders. For example, if you provide notice to your landlord in the middle of a month, you may still be responsible for the remainder of that month plus the following month. Review your lease carefully since almost all leases have a military release clause.

Additionally, under Section 517(a), a servicemember may waive any of his rights under the act. This waiver is effective if made pursuant to a written agreement by the parties executed

during or after the servicemember's period of military service. Therefore, service members must pay close attention to the proposed lease contract. Lack of attention to detail can result in forfeiture of this significant benefit. Accordingly, Soldiers should have a legal assistance attorney review their lease before signing.

Servicemembers now have greater rights protecting them from eviction for non-payment of rent. If a servicemember enters a lease where the rent is less than \$2,465/month (current max. rent amount), the servicemember and/or dependants cannot be evicted without a court order. Per Section 301 of the SCRA, the maximum rent amount undergoes an inflation adjustment each year (in 2003, it stood at \$2,400 a month). The lease must be for premises that are to be occupied primarily as a residence by the service member or his dependents. If the landlord makes an application to the court to evict a servicemember, the servicemember or someone acting on behalf of the servicemember can request the court to stay the proceedings for 90 days, unless in the opinion of the court, justice and equity require a longer or shorter period of time. The servicemember will have to show that his ability to pay the agreed rent is "materially affected" by military service.

Generally, "material affect" as used in this context is present when the servicemember does not earn sufficient income to pay the agreed rent and sustain himself and any dependents at his current income from his military service. Where the member is materially affected by military service, the court *must* stay the eviction (maximum of 90 days) 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 § 530 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 \$2,465 per month (previously \$1,200 per month).*

The service member/dependent, who has received notice of an eviction, must submit a request to the court for protection under the SCRA. Your legal assistance attorney can provide guidance if you are threatened with eviction.

6% Interest Rate (See Section 207, SCRA)

The SCRA addresses interest rate protections and entitlements for servicemembers coming on active duty. Although this provision was contained in the SSCRA, ambiguities resulted in inconsistent interpretations regarding the application of the interest rate cap. Previously, servicemembers were only able to reduce their interest rate obligation to a maximum of 6 percent if their military service materially affected their ability to pay the higher interest rate. However, the SCRA revision eliminates the need to show material affect. Under the SCRA, if a servicemember has a debt or liability (including any debt or liability held jointly with his spouse) that carries an interest rate above 6 percent (such as a credit card) and that debt was incurred before the servicemember enters active duty, any interest amount in excess of 6 percent is forgiven and the preservice debt is capped at 6 percent interest.

It is important to remember that the 6 percent interest rate cap for servicemembers' debts and liabilities is applicable only to those debts and liabilities incurred prior to entry on active duty; any debt or liability incurred after a servicemember comes on active duty is not subject to the 6 percent cap. The servicemember must also provide the creditor written notice with a copy

of his military orders, by no later than 180 days after the date of the servicemember's termination or release from military service. The 6 percent cap is effective as of the date the servicemember is called to active duty. However, this provision does not apply to federally guaranteed student loans. Furthermore, the interest rate cap also includes a provision that prevents creditors from accelerating the term of the loan. Therefore, a creditor cannot reduce the term of your loan (e.g. 60 month loan reduced to 48 months). For example, if you have a loan for \$400/60 months @18% interest, the creditor cannot reduce the loan term and keep the payment at \$400. Doing so defeats the purpose of the SCRA and is prohibited by the provisions of the SCRA.

Court Proceedings (See Section 202, SCRA)

The most important section of the SCRA relating to court proceedings is the automatic stay provision. Under the prior act, stays were discretionary with the courts. In order for the servicemember to obtain a stay of proceedings, the burden was on the member to show that military service materially affected his ability to appear in court. However, under the SCRA, if a servicemember is being sued in a civil action, the act provides for an automatic 90-day stay of the proceedings upon application of the servicemember at any time before the final judgment.

In order to obtain the automatic stay, a servicemember must submit a letter to the court setting forth facts why his current military duty materially affects his ability to appear in court and stating when the servicemember will be able to appear. The servicemember will also need to submit a letter from his commander stating that military duty prevents the servicemember from appearing in court and that military leave is not authorized. The court can also grant a stay on its own motion, however, do not leave this to chance. Be proactive and take the necessary steps to protect yourself.

Additional stays are permitted based on continuing material affect; however, any additional stays are at the court's discretion. It should be noted that, if the servicemember is a co-defendant with others who are not entitled to the protections of the SCRA, the plaintiff can still proceed against the other defendants. The request for a stay can be submitted at any stage before a final judgment is rendered.

In order to apply for these protections the servicemember must actually be a party to the suit. The provision only applies to civil actions and administrative hearings. The provision does not apply to:

- criminal proceedings
- proceedings in which the servicemember is merely a material witness to the lawsuit, but not an actual party or
- servicemember has leave available and has made no attempt to use his/her leave to attend the proceedings
- temporary order hearings *may proceed* without the servicemember present (e.g. temporary custody orders, temporary child support payment orders)

A servicemember should have his/her commander write a letter to the court and the opposing party's attorney stating that the servicemember is unable to attend the proceedings. Your legal assistance attorney can provide an electronic template of a commander's letter to your commander at their request.

Default Judgment Protection (See Section 201, SCRA)

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 the servicemember was prejudiced by not being able to appear in person, and that the servicemember has legitimate legal defenses to the claims. The servicemember must apply to the court for relief within 90 days of the termination or release from military service.

Auto Leases (See Section 305, SCRA)

Another new provision deals with the right to terminate automobile leases. Any active duty servicemember who has received permanent change of station orders outside the continental United States or who is being called to duty for more than 180 days (regardless of location) may terminate an automobile lease. The member must provide written notice of termination to the lessor with a copy of his orders and return the vehicle within 15 days of the written notice. Previously, a servicemember had no right to terminate an automobile lease. This SCRA provision also includes automobiles leased for personal or business use by servicemembers and their dependents.

Enforcement of Obligations, Liabilities, Taxes (See Section 511, SCRA)

The revision also addresses various tax issues and how military income may be taxed. Under the revision, a tax jurisdiction may not use the military compensation of a non-resident servicemember to increase the tax liability imposed on other income earned by the non-resident servicemember or spouse subject to tax by the taxing jurisdiction. Previously, multiple jurisdictions used this means to increase the income tax on a servicemember's non-military income and income of the member's spouse. Also, there are new income tax protection laws. If a servicemember's ability to pay income tax is materially affected by military service, upon notice to the IRS and/or the tax authority of the state, the collection of tax on the income of a servicemember falling due before or during military service shall be deferred for a period not more than 180 days after termination of or release from military service. No interest or penalty shall accrue for the period of deferment by reason of nonpayment on any amount of deferred tax.

Reemployment Rights

Contrary to what many people believe, there are no provisions for reemployment rights as part of the Servicemembers' Civil Relief Act. Reemployment rights are a completely separate legislation, the **Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)**.

Health Insurance Reinstatement (See Section 704, SCRA)

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.

Life Insurance Protection (See Section 401, SCRA)

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 to the maximum limit of the Servicemembers Group Life Insurance, which now stands at \$400,000.

Legal Advice Available

If you think that your rights under the SCRA may have been violated or that you are entitled to certain SCRA protections, you should discuss the matter with a legal assistance attorney or a civilian lawyer as soon as possible. You can reach the Fort Sam Houston Legal Assistance Office at (210)221-2282/2353.

[SAMPLE LETTER]

Your Name
Street Address
City, State Zip Code

Name of Credit Company
Street Address
City, State Zip Code

Re: Your Rank and Name
Client Account Number: XXXXXXXXX

Dear Sir or Madam:

I am [Your Rank and Name] and I am requesting relief with regards to my debt under the Servicemembers' Civil Relief Act (SCRA). I am writing to you today regarding the SCRA and its application. I have been activated to active duty service in the U.S. Army on [Date of activation]. Enclosed is a copy of my activation orders verifying my active duty status.

Pursuant to 50 U.S.C. app. § 526 of the SCRA, I request that interest on my [Credit Card Name or Loan Name] be reduced to 6% and that my account be credited for excess interest payments made since I began active duty. I entered into active duty on [Date] and since that time, my military service has materially affected my ability to meet this obligation. I am presently on active duty assigned to [Unit,] Fort Sam Houston, Texas.

I incurred this debt prior to my entry into the Armed Forces. The SCRA (50 U.S.C. App. § 526) sets a 6% per annum ceiling on interest charges (including service charges, renewal charges, and fees) during the period of a service member's military service for obligations made before entry onto active duty. For the past [years or months], I have been charged an annual percentage rate of [current interest rate]. Please credit my account for the excess interest payments that I have made. Additionally, the balance of my obligation may not have interest charged at a rate greater than 6% per annum. Please ensure that your records reflect this statutory ceiling and that any and all excess charge is withdrawn.

I thank you in advance for your attention to this matter. Should there be any questions, please feel free to contact me at the address above.

Sincerely,

Your Name
Your Rank, US Army

Enclosure*

* This document was edited Feb. 2006.