

THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

The Soldiers' and Sailors' Civil Relief Act (SSCRA) is a federal statute (50 U.S.C. app. §§ 500-591), that allows military personnel, and sometimes military dependents, to postpone or suspend some civil obligations so they can devote their energy and attention to the defense needs of the Nation. This article is intended to provide general information about portions of the SSCRA that many of our clients may come into contact with, but is not a substitute for seeing an attorney. If you think your situation involves a protection under the SSCRA, see an attorney for a more detailed discussion about your rights and responsibilities.

GENERAL PROVISIONS

Persons Protected

Active duty members are covered by the SSCRA. Reservists are covered while on annual training, but are *not covered* while on inactive duty training. National Guard members are covered only if in active federal service (Title 10 Status). State National Guard personnel on full-time state duty are not covered by the SSCRA, and must look to similar state statutes for protection. Military dependents are covered in certain situations (see below).

Period of Coverage

Reservists are sometimes protected as of the date they receive orders, but will most often be protected as of the date they report for duty. Ordinarily, the date of discharge terminates all coverage. Some important protections, however, extend for a limited time beyond discharge, but are directly tied to the discharge date.

PROTECTION FOR PRE-SERVICE OBLIGATIONS

There are four primary areas in which the SSCRA affords protection to military members when dealing with obligations incurred prior to entry on active duty.

Termination of Leases

A service member may terminate any lease covering premises used for dwelling, professional, business, agricultural or similar purposes if the lease was entered into prior to entry on active duty, and the military member or his/her dependents used the property for one of the designated purposes. The termination must be in writing, and must be delivered to the landlord. For a month-to-month lease, termination is effective 30 days after the first date on which rent is due after notice is given. In other cases, termination is effective on the last day of the month following the month in which notice is given.

Interest on Credit Obligations

With the exception of government student loans, any credit obligation incurred prior to entry on active duty is eligible for a statutory reduction in the interest rate to 6% per annum. The creditor must reduce the interest rate to 6% for the period of military service unless the creditor can prove in court that the member's ability to pay the higher interest rate is not "materially affected" by his/her military service.

Installment Contracts

If a military member entered into an installment contract for the purchase of real or personal property before entering active duty, and paid a deposit or installment on the contract, the creditor cannot exercise any right or option to rescind or terminate the contract or resume possession of the property because of non-payment or other breach, except by court order. In order to gain the protection of this provision, the member must prove his/her military service "materially affected" his/her ability to pay. If the member does not prove this "material affect," the contract can be terminated, however, the court may order the repayment of the member's prior deposit or installment(s).

Life-Insurance Policies

A private insurance policy on the life of a service member which is owned and held by the member may be protected against lapse or termination for nonpayment of premiums while the member is serving on active duty, and for one year thereafter. The policy must have been in effect for at least 180 days prior to the member entering active duty. The court may refuse to grant such relief to the member if in the court's opinion, the ability of the member to comply with the terms of the policy is not "materially affected" by reason of military service.

PROTECTIONS FOR GENERAL OBLIGATIONS

There are four primary areas in which the SSCRA affords protection to military members regardless of whether the obligation was incurred prior to, or after entry on active duty.

Default Judgments

No plaintiff can obtain a default judgment (a judgment for plaintiff based upon defendant's failing to answer or appear) without first filing an affidavit asserting facts showing that defendant is not in the military service. If such facts cannot be shown, or if the defendant is in the military service, the court will appoint an attorney to protect the member's rights. If a default judgment is granted against a military member while on active duty, or within 30 days after leaving active duty, the court may reopen the case if the member can show he/she has a meritorious defense to the action. The member must file an application to reopen the proceeding no later than 90 days

after leaving active duty.

Stays of Court Proceedings

At any stage of a court proceeding involving a military member as either plaintiff or defendant during the member's service on active duty or 60 days thereafter, the member can seek to stay the proceedings. The court will stay the proceedings unless, in the opinion of the court, the member's ability to prosecute or defend the action is not "materially affected" by reason of military service.

Statute of Limitations

The statute of limitations for bringing a civil action is suspended while on active duty. For example, if an individual normally has two years from the date of an accident to sue for an injury, a military member injured during service on active duty would have two years to sue from the date he/she leaves the service. On the flip side, if the military member causes an injury, the injured party will also have the statute of limitations suspended, giving that person more time to sue the military member. If a military member is injured or causes an injury before entering active duty, the statute of limitations stops on the day he/she enters the service, and starts again on the day he/she leaves the service.

Protection from Eviction

A landlord may not evict a military member and/or his/her family or dependents without approval of a court. This protection covers any residence chiefly occupied by the member and/or his/her family or dependents if the rent does not exceed \$1,200.00 per month. The court will grant a three month stay in any eviction proceeding unless it determines that the member's ability to pay is not "materially affected" by virtue of military service.

MATERIAL AFFECT

The SSCRA often refers to "material affect." This requires a showing that military service has put the member at some disadvantage making him/her unable to address the situation adequately. "Material affect" will usually be geographic or financial. For example, the "material affect" of military service may be that the member makes less money than before entry into service, and can therefore not afford the same level of debt as before his/her service. Or, it may be that the member cannot make court appearances at a remote jurisdiction due to stationing and/or deployment.

The following is information about the SSCRA in FAQ format.

What is the Soldiers' and Sailors' Civil Relief Act and who does it protect?

The Soldiers' and Sailors' Civil Relief Act (SSCRA) is a federal law that gives all service persons some important rights as they enter active duty.

When does the SSCRA protect me?

Most SSCRA protection commences on the day you receive your orders to active duty. As a practical matter, you should be ready, and expect to present a copy of those orders to whomever you ask for some right or benefit under the Act.

When you present the orders to your creditor (or other person with whom you are asserting rights under the SSCRA), it is strongly advised that you present a copy of the orders along with a letter of notification (a sample can be obtained at the Legal Services Branch), and send the letter and orders by U.S. Certified Mail, Return Receipt Requested, so that you can prove later, if necessary, receipt of the letter of notification and orders by the creditor.

I have heard that the interest rates on my loans are reduced to 6% by the SSCRA. How do I get my creditors to change my interest rates?

You may be entitled to have the interest rate on some of your loans reduced to 6% for the time you are on active duty. There are a number of special requirements. You need to talk to a Legal Assistance Attorney to ensure you are eligible. You may be eligible if you and your loan meet the following conditions:

- a) You took out the loan during a time when you were **not** on any form of **active duty** in any branch of the military.
- b) The interest rate is currently above 6% per year.
- c) Your military service affects your ability to pay the loan at the regular (pre-service) interest rate. Generally this requirement means that you make less money in the military than you made as a civilian. There are some special legal issues here - you should be ready to talk to your Legal Assistance Attorney about your entire financial situation.
- d) You notified the lender and provided them with a copy of your orders to active duty.

What kinds of loans qualify for the interest rate reductions?

If the loan is otherwise eligible for relief (that is, it was incurred as discussed above and the material affect provision of the SSCRA is satisfied), any loans incurred by the service member

BEFORE his or her entry onto active duty qualify for the SSCRA interest rate relief (except for Government guaranteed student loans), including:

home mortgages;

credit card accounts;

personal loans from banks or credit unions;

department store accounts; and

business loans for which the service member is personally liable as a result of having either signed the promissory note individually or having personally guaranteed the business' debt.

What about the lease on my apartment? I live alone and I will not be there. I want to let my apartment go and put my furniture in storage. Can I get out of my lease?

Generally - **yes**. If you have a lease for a house, apartment, or even a business location, you may be able to get out of the lease when you come on active duty. Here are the requirements:

a) You originally signed your lease when you were not on any form of active duty. You do not have to have a military clause in the lease.

b) You have received your orders to active duty.

c) You gave written notice to your landlord that you want to terminate your lease. You will still have to pay rent for a short while. Your landlord can charge you rent for 30 days after the date your next rent is due, after the date you give your written notice. Example: You give notice on 15 December. Your next rent is normally due 1 January. The landlord can make you pay rent until 31 January. The key is to get the written notice into the landlord's hands as soon as possible.

d) If you attempt to terminate a **business lease**, there are some special considerations that you need to look at. Talk to a Legal Assistance Attorney first.

I have to go to court on a lawsuit that came up over an auto accident last year. How can I get the lawsuit delayed?

If you are a party (one of the people suing or being sued) in a civil case (not a criminal case), your commander can ask the judge to stay or temporarily delay the proceedings until you can appear. Generally, your commander will have to show that military duty is keeping you from going to court. This is a tricky legal area - we recommend you have your civilian lawyer contact a military Legal Assistance Attorney to discuss the best way to proceed in your case.

I am self-employed and I have health coverage that is pretty expensive. Can I stop my health coverage? What will happen when I get off of active duty and I try to start it again -- will I still be covered?

As long as you are on active duty, your health care needs are covered by the military's medical facilities. In addition, your family members will become eligible for coverage. You may want to suspend your civilian coverage. If you do this, the SSCRA will require your civilian insurance company to reinstate your coverage when you get off of active duty. They have to write you a policy. They cannot refuse to cover most "pre-existing conditions." This SSCRA protection applies only to non-employer sponsored health plans (private health insurance). If you are covered by an employer-sponsored health plan, when you return to your civilian job, your reinstatement rights are covered by a different federal law (the Uniformed Services Employment and Reemployment Rights Act --USERRA).

Will I have to pay state income taxes on my pay while I am on active duty?

If your home state taxes military pay, you will have to pay those taxes. If you get assigned to another state, you will still legally be a "domiciliary" of your home state. The state to which the military assigns you cannot tax your military pay. If you moonlight, they can tax that pay - just your military pay is exempt.

I am a doctor or other health care professional and have professional liability insurance in place at the time I am called to active duty. Do I have to *keep* paying the premiums on the policy?

If you make a written request to your malpractice insurance carrier to suspend your coverage for the duration of your service, the carrier must suspend the policy and charge no premiums for the period of the suspension.

Your policy must thereafter be reinstated, but only if within 30 days of your release from active duty, you notify the insurer in writing that you have been released from active duty and wish reinstatement of the policy.

If you have claims-made malpractice coverage, you may not want to terminate all your coverage but negotiate for a reduced payment. You may want to discuss this with your insurance carrier and a Legal Assistance Attorney.

The issues covered in this information sheet are sometimes very complex and you should consult a Judge Advocate or Legal Assistance Attorney for guidance. The Legal Services Branch is located in Building 677 on Wilson Avenue (behind the bowling alley). The office can be reached

at 732-532-4371 for an appointment, or during walk-in hours from 0900 to 1130 on Monday mornings. We look forward to meeting your legal services needs.

The Point of Contact for this subject in the CECOM Legal Office is Ms. Pamela McArthur, (732) 532-4760, DSN 992-4760.

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