

BACKGROUND PAPER ON THE SERVICEMEMBERS CIVIL RELIEF ACT

PURPOSE

To provide a summary of the most significant changes to the Soldiers' and Sailors' Civil Relief Act provided by the Servicemembers Civil Relief Act.

BACKGROUND

On 19 December 2003, the President signed into law the Servicemembers Civil Relief Act (SCRA). The SCRA is a comprehensive restatement of the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA). The SCRA clarifies and strengthens the rights and protections it provides to persons in the military service. The SCRA's coverage includes servicemembers' financial obligations and liabilities, such as rent, installment contracts and leases, civil (but not criminal) legal proceedings, life insurance, and taxes.

DISCUSSION

The most significant changes include the following:

Automatic Stay of Proceedings. The SCRA provides for an automatic, non-discretionary 90-day stay of civil proceedings upon application of the servicemember. The application does not constitute an appearance. To obtain the automatic stay, a servicemember must demonstrate that there is a material affect and provide the court a date when he or she will be available. The servicemember must also submit a letter from his or her commander stating that duty prevents the member from appearing in court and that military leave is not authorized. Additional stays are permitted if the above requirements are met; however, these additional stays are at the court's discretion. Previously, all stays were discretionary with the courts.

6% Interest Cap. The 6% interest rate cap for obligations and liabilities of servicemembers incurred before military service results in a reduction of monthly payments. Any interest in excess of the 6% cap is forgiven. This is consistent with the SCRA's objective of reducing monthly obligations for mobilized National Guard or Reserve members who may have a reduced income. Although this provision was contained in the SSCRA, ambiguities resulted in inconsistent interpretations regarding the application of the interest cap. The new language clarifies that the 6% cap is mandatory and that any interest amounts in excess of 6% are forgiven.

Protection Against Eviction. A service member who enters a lease for \$2,400 or less a month cannot be evicted without court order. Upon application by a landlord for an eviction order, the court shall, if a request is made by or on behalf of a servicemember whose ability to pay the agreed rent is materially affected by military service, stay the proceedings for 90 days unless, in the opinion of the court, justice and equity require a longer or shorter period of time. Previously, the maximum rent for eviction protection was \$1,200 a month.

Right to Terminate Residential Leases. Any active duty servicemember who has received permanent change of station orders or who is being deployed for not less than 90 days may terminate a housing lease with 30 days written notice. Previously, a servicemember could be obligated to pay rent for housing he or she is unable to occupy because of a government-required move.

Right to Terminate Automobile Leases. Any active duty servicemember who has received permanent change of station orders or who is being deployed for not less than 180 days may terminate an automobile lease. The member must provide written notice of termination to the lessee and return the vehicle within 15 days of the written notice. Previously, there was no right to terminate automobile leases.

Installment Contract Protection. Motor vehicles fall within the umbrella of installment contract protections. If a military member falls behind on car payments, the lessor must obtain a court order before repossessing the car. Previously, no court order was required to repossess an automobile.

Life Insurance. The level of coverage of life insurance for protection against the lapse of life insurance policies when an individual enters military service or deploys is increased from \$10,000 to \$250,000 or the Servicemembers' Group Life Insurance (SGLI) maximum, whichever is greater.

Residence for Tax Purposes. 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 jurisdiction. Previously, multiple jurisdictions attempted to tax military pay.

Income Tax Protection. The collection of income 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 if a servicemember's ability to pay such income tax is materially affected by military service. No interest or penalty shall accrue for the period of deferment by reason of nonpayment on any amount of deferred tax. The service-member must notify the IRS and/or the tax authority of the State that he or she is unable to pay the income tax as a result of military service.

Notification Requirements. The Secretary concerned shall ensure that notice of the benefits accorded by this Act is provided in writing to persons in military service and to persons entering military service.

CONCLUSION

The SCRA takes significant steps to broaden and clarify the civil protections afforded to military members by suspending enforcement of certain civil liabilities. The notification requirements ensure that servicemembers are aware of their protections and the methods to exercise these protections.