

Consumer Legal Guide

Called to Duty

**Laws Affecting National
Guard, Reservists and
their Families**



**ILLINOIS STATE
BAR ASSOCIATION**

CALLED TO DUTY

Several laws in the United States are designed to protect service people called to duty, and their families. In addition, the Internal Revenue Service and the State of Illinois have made allowances in various rules and laws to ease immediate responsibilities for servicemembers called to duty.

The goal of these provisions is to prevent financial and other hardships that might result from active duty in the United States military. This is a summary and overview of what is currently available to help service men and women through a very stressful time.

Please remember, however, that this information is intended to inform, not advise. It is always important to seek expert advice when interpreting or applying any law.

SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

Enacted at the beginning of WWII, this law provides broad protection to “those who dropped their affairs to answer their country’s call.” The Act goes into effect when service members receive their orders and ends shortly after they leave active duty military service.

SCRA applies not only to service members, but also to those who are primarily or secondarily accountable for the service member’s liabilities. For example, spouses or partners who co-signed mortgages, loan applications, or lease agreements are included. Dependents of service members may ask a court of law to extend the benefits provided by SCRA to them as well.

These protections are not automatic. They must be “triggered” by letting people and institutions know that the service member has been placed on active duty. Courts, financial companies, banks, landlords, etc., have no way of knowing the servicemember’s status without this notification. Written agreements, contracts, loan papers, etc. that are signed *after* mobilization orders are received are *not* covered.

SCRA applies in all U.S. courts, and administrative actions, but not to criminal proceedings. Many of its provisions apply only if the servicemember's income drops significantly because of the military service and, as a result, payments for loans, credit cards or mortgage payments are not possible. Many of SCRA's provisions do not apply unless it can be shown that military service has diminished the ability to meet financial obligations.

Here are some of SCRA's major provisions:

Loan Rate Reduction

Interest rates may be reduced to 6% per year on money owed to creditors (except for student loans) while the servicemember is on active duty. This benefit applies only to obligations entered into *before* the active service began. If a creditor takes a servicemember to court, the servicemember must be able to prove that the military service seriously affected the ability to pay the higher rate.

Ending a Lease

Service members or their families may end a lease they entered into before the start of active service. This lease may be a residential, business, professional, agricultural or motor vehicle lease, and must have been primarily for use by the servicemember or dependents. Termination of real property leases may be invoked if active duty servicemembers are deployed for at least 90 days or are moving due to a permanent change of stations. Termination of vehicle leases may be invoked if active duty servicemembers are deployed for at least 180 days or are moving outside the continental United States due to a permanent change of stations. Notice of termination of the lease must be given to the leaseholder in writing with a copy of the servicemember's military orders. The termination will become effective 30 days after the next payment is

due, and any prepaid money must be refunded to the servicemember. However, if there is an unpaid amount prior to the termination of the lease, that amount must be paid. In the event of termination of a vehicle lease, the motor vehicle must be returned within 15 days of delivery of the written notice of termination, and, while an early termination charge may not be imposed, charges for other obligations such as taxes, summonses, title registration fees, and other reasonable fees may be imposed.

Eviction

This section prevents eviction except by court order. The court, in turn, may disallow an eviction of a service member or dependents for up to three months. The provision is limited to residences where the rent does not exceed an amount which is adopted annually by the Department of Defense based on changes to the consumer index. For instance, the maximum rent amount for 2011 was \$2,975.54 per month.

Mortgage and Trust Deed Foreclosure Prevention

This section does not relieve servicemembers of the obligation to pay, but its provisions do provide time. To qualify, the property must have been owned and the mortgage, trust deed or other security interest must have been signed before the service member was ordered to active duty. No foreclosure can take place without a court order. Again, proof that military service affected the ability to pay the obligation is necessary. The court may delay the foreclosure or extend the length of time you have to pay the mortgage by reducing payments or stay the proceedings.

Installment Credit

Servicemembers are protected if they entered into a contract before the start of active service and have made a deposit or at least one payment. The court can then prevent the provider of the

credit from repossessing the property if it can be shown that military service is causing financial hardship.

Contract Fines and Penalties

Servicemembers do not have to pay any fines or penalties if payments are missed, or the servicemember is otherwise unable to carry out the terms of a contract due to military service. For example, this may mean that late fees would not apply if it is impossible for a servicemember to make car loan payments.

Advance Court Protection

A court may be asked to protect a servicemember from creditors even before a payment is missed or before a creditor takes action against the servicemember. The money will still be owed, but the court can extend the payment period or take some other action that will make payments easier. The servicemember must, however, apply for such protection during the military service or within 180 days after service ends.

Property Taxes

If the servicemember, dependents or employees occupy real property for dwelling, professional, business or agricultural purposes at the time of entry into active service and during the time the tax or assessment remains unpaid, then the property may not be sold for back taxes. This provision applies to other forms of real property, such as vehicles. If a court orders the sale, the property can still be repossessed by the servicemember for at least 180 days after the military service ends. But, service members must be able to prove that they were unable to pay taxes because of the military service.

Income Tax

Servicemembers may defer (delay) payment of their Federal or State income taxes that becomes due before or during military service if, (1) the member is performing military service,

and (2) the member notifies the IRS that his/her ability to pay the tax has been materially affected by military service.

Servicemembers who deploy to a combat zone or qualified hazardous duty area are eligible to have some or all of their military income excluded from taxable income, and to defer filing of their tax returns for a period of time until they return from deployment.

Detailed information on these and other military-related income tax topics is available in Internal Revenue Service Publication 3 – Armed Forces' Tax Guide, available online at <http://www.irs.gov/pub/irs-pdf/p3.pdf>. For legal advice on this or any other topic, you should consult with an attorney.

Life Insurance

Servicemembers may ask the Secretary of Veteran's Affairs to pay commercial life insurance premiums during military service and for two years afterward. But, this provision is merely a loan--payments must be made up eventually and this provision applies to life insurance policies of up to \$250,000 or an amount equal to the Servicemember's Group Life Insurance maximum limit, whichever is greater, regardless of the number of policies submitted. In this case, servicemembers do not need to prove hardship. The policies must be deemed protectable as determined by the Secretary of Veteran's Affairs. Applications for protection must be made to both the insurer and the Secretary of Veteran's Affairs.

Judicial Actions

There are several provisions in SCRA that can help if servicemembers are involved in a lawsuit or some other kind of court or administrative action:

Protection Against Default Judgments for Failure to Appear When Servicemember Does Not Have Notice If a servicemember is sued in a civil court action but does not receive notice and is unable to appear because of military service, the court may then appoint

an attorney to represent the servicemember's interests. The appointed attorney, or an attorney otherwise retained by the servicemember, cannot obligate the servicemember in any way unless the attorney is specifically authorized to act on behalf of the servicemember. Servicemembers may ask for a postponement from the court under active duty circumstances. If a default judgment is entered against a servicemember during military service, the servicemember may file an application to vacate or set aside the judgment. The application must be filed no later than 90 days after the termination or release from military service, and the servicemember must show that he/she was unable to defend the action due to military service, and that he/she has a meritorious or legal defense to the action or a part of it. To be sure that a servicemember's rights are protected, it is best to consult an attorney.

Stay of Proceedings When Servicemember Has Notice If a servicemember is in military service or within 90 days after the termination or release from military service, and has received notice of a civil action or proceeding, a court may stay (postpone) the action for at least 90 days if an application is given to the court. This stay may be extended upon application to the court if the servicemember is still unable to appear due to military service.

Fines and Penalties Under Contracts If an action for compliance with the terms of a contract is stayed, there will not be a penalty for failure to comply with the terms of the contract. Also, if a servicemember fails to meet the terms of a contract, and, as a result, a penalty is incurred, a court may reduce or waive fines or penalties if the servicemember was in military service at the time the fines or penalties were incurred, and the ability to meet those obligations was materially affected by the military service.

Stay or Vacation of Judgments, Attachments and Garnishments A court decision ordering servicemembers to act in some

way (a judgment) or limiting control over certain property can be postponed by the court or upon application to the court by a servicemember. They must prove that military service materially affects the ability to carry out whatever the judgment specified. If a servicemember is a codefendant in the action, the plaintiff may still proceed against the other defendants if the court grants approval. This provision does not apply to the maximum rate of interest on debts incurred before military service or proceedings when a servicemember has notice of the action.

Statute of Limitations These are laws covering time limits on certain legal actions. SCRA provides, in effect, that time “stops” during military service as far as a legal action is concerned. The time extension is equal to the length of active service and applies whether or not the military service has affected income. This provision does not apply to the statute of limitation under federal income tax laws or for redemption of real property sold or forfeited to enforce an obligation, tax or assessment.

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

USERRA applies to those who perform duty in the “uniformed services.” It protects those who were previously employed if their absence is necessitated by reason of service in the uniformed services. These individuals will be entitled to reemployment rights and other possible benefits if:

1. written or verbal advanced notice is given to the employer;
2. the cumulative length of absences due to services does not exceed 5 years; and
3. the person submits an application for reemployment within the appropriate time frame:

If in uniformed service less than 31 days, by simply reporting to the employer on the first regularly scheduled working period.

If service was more than 30 days, but less than 181 days, an application for reemployment must be submitted to the employer not less than 14 days after completion of the period of service.

If service was more than 180 days, an application for reemployment must be submitted to the employer not later than 90 days after completion of the period of service.

If the person has a service-connected injury or illness, the reporting or application deadlines can be extended for up to two years if the person is unable to report or apply due to hospitalization or convalescing.

USERRA is designed to prohibit discrimination against those who serve, and to prohibit employers from denying benefits of employment based on a person's service.

The U.S. Department of Labor's Veterans' Employment and Training Service provides valuable information about USERRA, and can assist in answering questions. <http://www.dol.gov/vets/>. Contact the U.S. Department of Labor at 1-866-4-USA-DOL.

This is a particularly complex matter. If servicemembers have difficulties with reemployment, it would be advisable to contact the Department of Labor, a JAG officer, or a private attorney who concentrates his or her practice in employment matters.

OTHER LAWS AND PROVISIONS

Driver's License and License Plate Renewal Military personnel on active duty outside the United States have up to 45 days after their return to renew their Illinois driver's licenses. Renewals may also be done by mail. License plate renewal forms are mailed approximately 60 days prior to expiration. Return the renewal form with an armed forces reserve affidavit form and a note explaining that the service member is on active duty. The affidavit form, also called "certificate of military service," can be obtained from the secretary of the appropri-

ate service by writing to that service at the Pentagon, Washington, DC 20350. For more information about either driver's license or license plate renewal, call 1-800-252-8980 (toll free in Illinois). Or for driver's license renewal, call 1-217-782-6901; for license plate renewal, call 1-217-782-2470.

<http://www.sos.state.il.us>

Filing Income Tax Forms with the IRS

Free help is available from IRS tax assisters by calling 1-800-829-1040. A publication with detailed information may be ordered by calling 1-800-829-3676.

<http://www.irs.gov>

Filing Illinois State Income Tax Returns For information, call 1-800-732-8866 or 217-782-3336.

<http://www.revenue.state.il.us>

Wills and Living Wills--Making a will not only protects families, but insures that property is left to those selected by the servicemember, in the event of his or her death. It is important that servicemembers consult with an attorney who will be able to advise on naming an executor who will administer the estate and distribute property according to specific wishes of the deceased. An attorney also may be able to provide an "advance medical directive" or a "living will" that provides instructions for the use of extraordinary life-sustaining measures if a servicemember becomes seriously ill or injured.

Power of Attorney--The power of attorney is a written document authorizing a particular person to use an individual's signature and make certain financial and property decisions in the servicemember's absence. The person designated as holding the power of attorney may be a spouse, parent, relative or close friend. It should be someone who will act on behalf of the servicemember's best interests during his or her absence. A lawyer should as-

sist in drawing up the formal power-of-attorney document.

Fair Credit Reporting Act (FCRA)--All consumers, regardless of military status, are protected under the provisions of the Fair Credit Reporting Act. The right to the information in a credit file and the right to challenge the accuracy or completeness of the data is protected by this law. Any circumstances that may cause financial problems, such as being called to duty, should be reported to the credit bureau for inclusion in a person's credit file.

Student Loans--Under federal law, student loans may be eligible for forbearance or deferment based on active duty status. Check with the U.S. Department of Education or your private lender for information.

<http://www.dlserVICer.ed.gov> or <http://www.ed.gov/finaid.html> 1-800-4FED-AID.

Illinois State Bar Association Waiver of Dues--If you are a lawyer and a member of the Illinois State Bar Association serving in the U.S. Armed Forces, your dues may be waived. Members may receive a dues waiver for up to four years spent in military service. Contact the Illinois State Bar Association, 1-800-252-8908, or 217/525-1760.

WHERE TO GET HELP

- Lawyer Referral Service--If you have a legal problem, assistance in finding attorneys is available through the Illinois State Bar Association's IllinoisLawyerFinder Service. **Call 800-922-8757 or visit <http://www.IllinoisLawyerFinder.com>.** Through this lawyer referral service, you will be given the name of an attorney in your area. For the initial half-hour consultation the lawyer will not charge more than \$25. After the first half-hour, regular fees will apply.
- Judge Advocate General's (JAG) Office--Any area military base can provide assistance to servicemembers and their families

through the Legal Assistance Office. To locate the Illinois JAG office nearest you, call:

Air Force - 1-703-614-3021

Army - 1-703-588-6799

Navy/Marines - 1-847-688-4753

Coast Guard – 1-504-589-6188

Illinois National Guard – 1-217-761-3510

- Veteran's Employment and Training Service, Department of Labor, 1-866-4-USA-DOL.

This pamphlet is prepared and published by the Illinois State Bar Association as a public service. Every effort has been made to provide accurate information at the time of publication.

For the most current information, please consult your lawyer. If you need a lawyer and do not have one, call IllinoisLawyerFinder at 800-922-8757 or visit **www.IllinoisLawyerFinder.com**.

The Illinois State Bar Association is a 35,000 member voluntary organization of lawyers, judges and other legal professionals with offices in Springfield and Chicago. Established in 1877, its purpose is to educate and serve the legal profession and the public.

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