

INFORMATION PAPER

SUBJECT: Soldiers' rights under the newly enacted Servicemember's Civil Relief Act (SCRA) (formerly The Soldiers' and Sailors' Civil Relief Act (SSCRA)).

1. Purpose. To provide information to soldiers regarding their rights under the newly enacted Servicemember's Civil Relief Act (SCRA) (formerly The Soldiers' and Sailors' Civil Relief Act (SSCRA)).
2. The SCRA is a federal law providing servicemembers' relief in certain situations when their military duties materially affect their ability to comply with their obligations. The Act provides for temporary suspension of judicial and administrative proceedings that may adversely affect a servicemember's civil rights during their military service, therefore enabling servicemembers to devote their entire energy to the defense needs of the nation.
3. Who can avail themselves of the protections of the SCRA?
 - (1) Active duty servicemembers.
 - (2) Reserve component servicemembers ordered to report for active military service.
 - (3) Persons ordered to report for induction into the military service under the Selective Service Act.
4. Protections the SCRA provides (not an exhaustive list):
 - a. **Delay of administrative and judicial proceedings** - Servicemembers may delay (stay) proceedings in administrative and civil court proceedings. The decision to delay the case, however, is in the discretion of the judge handling the case. To qualify for a delay under the Act the following criteria must be met:
 - (1) A soldier must be an **active duty** service member.
 - (2) The soldier is involved in a **civil or administrative** (not criminal) proceeding as either the one bringing the action (plaintiff) or the one defending the action (defendant).
 - (3) The soldier has shown that the soldier's military service has **materially affected** his/her ability to participate in the proceedings. To prove this the soldier must show the following:
 - (a) The soldier attempted to take leave and the request was denied. The soldier should obtain a letter from his/her Commander that leave has been denied due to military duties.
 - (b) The soldier will be harmed (materially affected) in the administrative or court proceeding if he/she does not appear at the proceeding. The soldier's letter forwarding his/her Commander's letter should state that he/she will need to be at the proceeding in person to provide legal defense or prosecution of their case. The soldier should also indicate that his/her testimony at the proceeding would be crucial to the case.
 - (c) Although courts may consider geographic distance a reason to grant a delay, the soldier must still show he/she is materially affected by the soldier's military service. The Welfare Reform Act of 1996 complicates the argument of a soldier that he/she cannot take leave. This act directs the military services to write regulations that make it easier for servicemembers to take leave to appear in court paternity and child support proceedings. DoD Directive 1327.5, "Leave and Liberty", states that leave will be granted in cases where the servicemember needs to attend hearings to determine paternity or child support. Leave, however, may be denied under this directive where: "a. the member is serving in or with a unit deployed in a contingency operation or b. exigencies of the military service require a denial of such request."

b. **Delay in enforcement of court order or judgment** – If a soldier is materially affected by reason of military service in complying with a court judgment or order, and the soldier requests a delay (stay) in its enforcement, the court must delay the enforcement of such judgment or order. The court may select the duration of the delay (stay) and may set the terms and amounts for any installment payments the court deems appropriate.

c. **Tolling of any Statute of Limitations** - The period of a soldier's active military service shall not be included in computing any applicable statute of limitations for the filing of a civil court action by or against a soldier.

d. **Six percent interest rate limit on debts incurred before military service** - Any debt or loan (to include credit card debit) incurred by a soldier before the soldier entered active military service shall not bear interest at a rate in excess of 6 percent per year.

(1) The amount of any periodic (monthly) payment shall be reduced by the amount of the interest forgiven.

(2) In order for a debt or loan to be subject to this 6 percent interest rate limitation, the soldier must provide the creditor with written notice and a copy of the military orders calling the soldier to active military service.

e. **Evictions** – A landlord may not evict a soldier or the soldier's dependents from their residence without a court order. This rule applies to all leases not in excess of \$2,400 in monthly rent. If a soldier's ability to pay the agreed rent is materially affected by the soldier's military service, the court must, upon request by the soldier, either: (1) delay (stay) the eviction or (2) adjust the rental obligation under the lease.

f. **Termination of Residential Leases** - A soldier may terminate a residential lease prior to the end of the lease period at any time after if the soldier receives either: (1) PCS orders or (2) orders to deploy for a period of at least **90 days**.

(1) To properly terminate a residential lease, the soldier must provide his landlord with written notice of the termination and a copy of his military orders.

(2) A **military clause is no longer required** in a lease in order for a soldier to terminate a lease under the newly revised Act. It is advisable, however, to have a military clause and provide for termination of the lease in the event the servicemember moves onto post.

(3) Termination of a residential lease is effective on the last day of the month following the month in which the notice is delivered. For example, if a soldier gives notice to terminate his/her lease on March 10th the lease will terminate on April 30th.

g. **Termination of Motor Vehicle Leases** - A soldier may terminate a motor vehicle lease prior to the end of the lease period if the soldier receives either: (1) PCS orders outside of the continental United States or (2) orders to deploy for a period of at least **180 days**.

(1) To properly terminate a motor vehicle lease, the soldier must provide the lessor with written notice of the termination and a copy of his military orders.

(2) Additionally, the soldier must return the vehicle to the lessor no later than **15 days** after providing written notice of termination of the lease.

(3) Termination of a motor vehicle lease is effective on the day in which the above requirements are met.

h. **Income Taxes** - A servicemember who is deployed shall not be required to file federal or state income taxes during the period of such deployment or for an additional 180 days from the date the soldier returns from deployment. Recommendation: If a soldier knows that he/she will be getting a refund on his/her taxes then the soldier should file their taxes as soon as possible.