

SERVICE MEMBER CIVIL RELIEF ACT



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50 App. U.S.C. § 501

INTRODUCTION

The Servicemembers' Civil Relief Act ("SCRA") provides a wide range of protections for active duty military personnel. The Act applies in civil matters only, not criminal. It does not relieve military personnel from paying their debts or other civil obligations. However, the Act may suspend civil legal actions against military personnel during their service. The following is a list of the key provisions in the Act:

CIVIL ACTIONS

The SCRA provides for an automatic, non-discretionary 90-day stay of civil proceedings upon application by the service member. However, stays are at the court's discretion. The court will look to see if being in the military has *materially affected* the military member's ability to take part in the proceedings. Thus, if a member can obtain leave, the member may get little relief.

SUSPENDED ENFORCEMENT

Courts may also postpone attachments of property and garnishments of military personnel when the military member's ability to take part in the proceedings has been *materially affected* by military service.

INTEREST RATES

If a military member obtained a loan *prior* to entering active duty at an interest rate in excess of six percent, the SCRA sets a cap of six percent which provides for a reduction of monthly payments while on active duty. The six percent cap is mandatory and any

interest amounts in excess of six percent are forgiven. However, a court may grant a creditor relief from the limitation of the ability of the service member to pay interest in excess of six percent the members ability to pay is not *materially affected* by military service.

LIFE INSURANCE

Insurers may not decrease the amount of coverage or require payment of an additional amount as premiums if the insured engages in military service. The insurer also may not limit or restrict coverage for any activity required by military service.

RESIDENCY AND INCOME TAX

A military member does not lose his residency ("home state") because of transfer due to military orders nor does his military income become subject to state income tax in the state to which he is transferred. For example, if you are a Kansas resident and are transferred to a base in Nebraska you do not lose your Kansas residency nor do you have to pay Nebraska income tax on your military pay. You still have to pay Kansas's income tax on your military income. Military income can only be taxed by a member's home state. Non-military income and income earned by dependents may be taxed by the state where it is earned and by the home state, although most states will allow a credit for tax paid to another state to prevent double-taxation.

INCOME TAX PROTECTION

Collection of income tax of a service member falling due before or during military service will be deferred for a period not more than 180 days after termination of or release from military service if the service member's ability to pay is *materially affected* by

military service. No interest and penalty will accrue for the period of deferment. The service member must notify the IRS and/or state tax authority of inability to pay income tax as a result of military service.

PROTECTION AGAINST EVICTION

The act prohibits eviction of a service member or the member's dependents during a period of military service. A service member who entered into a lease prior to military service, for \$2400 or less per month cannot be evicted without a court order. If the member's ability to pay has been *materially affected*, the court shall stay the proceedings for 90 days unless, in the opinion of the court, justice and equity require a longer or shorter period of time.

PERSONAL PROPERTY TAXES

The Act protects military personnel who are absent from their state of legal residence because of military orders from having any of their personal property taxed by another state. For example, a Kansas resident assigned to Offutt is relieved from paying Nebraska property taxes on the automobiles that he either brings with him to Nebraska or purchases while in Nebraska. This provision does not apply to leased vehicles, however, because the leasing company -- not the military member -- is the owner of the vehicle. Consequently, military members who lease a vehicle while stationed at Offutt must pay Nebraska personal property taxes on the leased vehicle.

REPOSSESSION

The Act provides protection against repossession of real and personal property purchased *prior* to entry into the military. The seller cannot rescind the contract and repossess the property for any reason without a court order.

RESIDENTIAL LEASES

Leases entered into prior to military service, by a services member who has received permanent change of station orders or is being deployed for not less than 90 days, may be terminated with a 30 day written notice. If the rent is paid monthly, the termination is effective 30 days after the first date on which the next rental payment is due subsequent to the date when notice is delivered. For example, if the rent is due on the 5th of each month and notice is given on April 15th, the termination is effective on June 5th.

AUTOMOBILE LEASES

Leases entered into prior to military service, by a services member who has received permanent change of station orders or is being deployed for not less than 180 days, may be terminated with a written notice. The vehicle must be returned to the lessee within 15 days of the written notice.

DRIVERS LICENSES

Military members can keep their drivers license from their home state or obtain a new license from the state in which they are residing. Nebraska offers dependents the same choice, but many states require dependents to obtain a new license from the host state. There is also the possibility of a three state situation: a member from Colorado stationed at Offutt and living in Iowa can keep his Colorado license or obtain an Iowa license, but cannot get a Nebraska license. Military members can renew their home state license by writing the agency in charge of drivers licenses in their home state. Some states allow dependents the same option.

AUTOMOBILE REGISTRATION

Military members can register their automobiles in their home state or in the state in which they are now residing. This is true even if both the military member and the spouse jointly own the automobile. If you chose to register your vehicle in Nebraska, make sure you register as a military non-resident to avoid paying Nebraska personal property taxes on the vehicle. Once again, this provision does not apply to leased vehicles. If you lease a vehicle and live in Nebraska, you must register the vehicle in Nebraska and pay Nebraska personal property taxes.

STATUTE OF LIMITATIONS

The period of a person's military service is excluded in computing any period of limitations within which actions or proceeding must be brought. This benefits the member if he is bringing the lawsuit, but works against him if he is a defendant.

***The information in this handout is general in nature. It is not to be used as a substitute for legal advice from an attorney regarding individual situations.**