

SERVICEMEMBERS' CIVIL RELIEF ACT



**Office of the Staff Judge
Advocate
Eielson AFB, Alaska**

354 FW/JA
Legal Assistance & Preventive
Law
Pamphlet Series

INTRODUCTION

The SCRA was signed into law 19 December 2003 by President Bush to replace the Soldiers' and Sailors' Civil Relief Act of 1940. It is designed to ensure that servicemembers are not disadvantaged either legally or financially when serving their country.

DEFAULT JUDGMENTS

A default judgment is like a forfeit in a lawsuit; if you are sued but fail to appear you may lose by default. If you are ever sued while on active duty, you have certain protections against losing by default. These protections include:

STAY OF PROCEEDINGS

Where military service prevents a plaintiff or defendant from asserting or protecting a legal right, the SCRA requires a delay of civil court proceedings. The SCRA affords no protection in administrative and criminal matters. Upon application by the service member to the court an automatic stay of 90-days on all civil proceedings is granted.

The member must show the military service has a material affect on your ability to prepare for and attend court. Factors used to determine material effect include geographic and economic challenges, amount of available leave, and specific duty requirements.

Before a court enters a default judgment, the plaintiff is required to inform the court, by affidavit, of the defendant's military status. Failure to file the affidavit makes any default judgment voidable. Knowingly filing a false affidavit is a crime.

The court must appoint an attorney to represent a defendant if the judge determines the defendant is in the military and has not made an appearance. The attorney is responsible to obtain a stay and make contact with the defendant. Acts of the court-appointed attorney are not binding on the military defendant.

If a default judgment is entered against a military defendant, the defendant may petition the court to reopen the case. To reopen a case, the defendant must show: (1) they were materially affected in presenting a defense; and (2) they have a meritorious defense to the lawsuit.

STATUTES OF LIMITATIONS

Once the statute of limitations, or time limitation, runs on a civil action, a once-potential plaintiff can no longer sue and the intended defendant can no longer be sued. If military service prevents filing or defending suit, the statute of limitations is stayed, or put on hold, during periods of active duty. Thus, if a military defendant successfully postpones a suit for two years, the running of the statute of limitations is also postponed during that time.

LANDLORD/TENANT

The Act also has application in real estate rental arrangements.

Eviction: If a military member is unable to pay rent due to military service, the SCRA may protect the member from eviction.

Terminating Leases: The Act permits a new military member to terminate a lease for a private dwelling if it was entered before entering military service. Written notice of the termination must be provided after entering active duty or receiving orders. The effective date of termination for month-to-month rentals is 30 days after the next rental payment is due after the notice of termination is delivered. The effective date of termination for all other leases is the last day of the month following the month the notice of termination is delivered.

INTEREST RATES

If you had interest-bearing debts *before* entering active duty, you may be able to reduce the interest rate to six percent. A pre-military creditor is required to reduce your interest rate to six percent upon receipt of written notice the debtor has entered active duty military service. To return to the previous higher interest rate, the creditor must petition the court and prove that entering active duty did not materially affect the debtor. Courts normally compare the debtor's pre-service and service income to determine material effect in this instance. If

the debtor is making equal or more money after entering active duty, the reduction to six percent interest will not likely apply.

WHAT ELSE?

The Act has too many applications to include on this fact sheet. As a general rule, if you feel your military service prevents you from enforcing or defending yourself in a civil matter, contact an attorney to determine whether the SCRA can help you. The Legal Office is here to help. 377-4114.

This pamphlet is for basic information on the Servicemembers' Civil Relief Act as it relates to military personnel stationed in Alaska. It is not intended to take the place of legal advice from a Judge Advocate. There may be important exceptions in some states to the information presented here. Please contact the 354th Fighter Wing Legal Office for questions and further information.

