

To: New Jersey Law Revision Commission
From: Steven Brizek and Jayne Johnson
Re: New Jersey Soldier's and Sailor's Civil Relief Act
Date: April 8, 2013

MEMORANDUM

Introduction

In New Jersey, there are two statutes in force, one Federal and one State that are designed to offer similar protections to service men and women on active duty. The Federal statute is the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. App. 501 et seq. The New Jersey statute is the New Jersey Soldiers' and Sailors' Civil Relief Act ("NJSSCRA"), *N.J.S.* 38:23C-1 et seq. This Memorandum examines both statutes and is respectfully submitted to request Commission authorization to further investigate whether there are legal or practical issues presented by the NJSSCRA that may require amendment to insure its compatibility with the SCRA.

Overview

Federal Statute

Very generally, the SCRA (formerly called the Soldiers' and Sailors' Civil Relief Act) is a Federal law that, among other relief, protects certain military personnel from being sued while in active military service and for a limited period thereafter.

The origins of the SCRA can be traced as far back as the Civil War, when Congress passed a total moratorium on civil actions brought against Union soldiers and sailors. This meant that any legal action involving a civil matter was put on hold until after the soldier or sailor returned from the war. Congress' intent in passing the moratorium was to protect both the National interests and those of its servicemembers. Congress wanted servicemembers to be able to fight the war without having to worry about problems that might arise at home. Because most soldiers and sailors during the Civil War were not well paid, it was difficult for them to honor their pre-service debts.

Congressional concern about protecting the rights of servicemembers was raised again during World War I, when the Soldiers' and Sailors' Civil Relief Act of 1918 was passed. Like the Civil War-era moratorium, the 1918 legislation was designed to protect the rights of service members while they were serving in the war. Although the 1918 Act did not include a total moratorium on civil actions, it did protect service members from such things as repossession of property, bankruptcy, foreclosure or other such actions while on active duty. The 1918 Act remained in effect until shortly after World War I, when it expired.

The predecessor to the present-day statute, essentially a reenactment of the 1918 law, was passed in 1940 to protect the rights of the millions of service members activated for World War II. The major difference between it and the 1918 version was that there was no provision for the

Act's expiration. Thus, since 1940, service members have received uninterrupted coverage under the Act. Support for the Act has remained so strong that it has been amended more than 12 times since 1940 and has now been recast into the current SCRA, since 2003.

The stated purposes of the SCRA are as follows:

1. To provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and
2. To provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

The protections provided to accomplish these purposes are limited to servicemembers of the "uniformed services" during their "military service", as defined in 10 U.S.C. 101(a)(4) and (5) and in 50 U.S.C. 511, respectively. It would appear from these definitional provisions that the SCRA is designed to protect only full-time, active duty members of the United States Army, Navy, Air Force, Marine Corps and Coast Guard and commissioned officers of the National Oceanic and Atmospheric Administration and of the Public Health Service, and only those members of the National Guard on active duty who have been called to active service under the authority of the President or Secretary of Defense for more than 30 consecutive days for purposes of responding to a National emergency declared by the President and supported by Federal funds. The SCRA, therefore, does not extend to active duty State Militia or National Guard members called to such active service by a State Governor to respond to State or local emergencies and whose funding is provided by a source other than the Federal Government. Military service is specifically defined to also include any period during which an active duty servicemember to whom the SCRA would otherwise apply is absent from such duty because of sickness, wounds, leave or any other lawful cause.

The jurisdictional scope of the SCRA is very broad, insofar as it has been made applicable to any judicial or administrative proceeding, except criminal proceedings, commenced in any court or agency of:

1. the United States;
2. each of the States;
3. every political subdivision of each of the States; and
4. all territory subject to the jurisdiction of the United States.

The rights and protections afforded by the SCRA are waiveable by a servicemember otherwise entitled to them. The general relief offered by the SCRA includes:

1. The protection of servicemembers against default judgments in any civil action or proceeding, including any child custody proceeding, including the ability to obtain a stay of proceedings for a minimum of 90 days, when the servicemember/defendant has not made an appearance;

2. The stay for a minimum of 90 days of any civil action or proceeding, including any child custody proceeding, of which the servicemember/defendant has notice;
3. The prohibition of penalties for failure to comply with a contract during a stay of proceedings to enforce it, granted pursuant to the SCRA, and the judicial reduction or waiver of fines or penalties arising from a servicemember's contractual breach materially attributable to his military service;
4. The stay or vacation of judgments, attachments and garnishments against a servicemember whose ability to comply with a court order or judgment is materially affected by his military service;
5. The grant of stays of an action, proceeding, attachment or execution for as much as the period of military service and 90 days thereafter;
6. The tolling of statutes of limitations during military service; and
7. The limitation of interest to 6 percent on any obligation or liability incurred by a servicemember alone or jointly with his spouse before entering military service.

Specifically with regard to matters relating to rent, installment contracts, mortgages, liens, assignments and leases, the SCRA:

1. Regulates the circumstances under which and prescribes the terms and judicial mechanism by which the eviction of a servicemember and the distress of the subject premises may take place;
2. Protects a servicemember after entering military service from a non-court ordered rescission or termination of a contract for the purchase, lease or bailment of real or personal property (including a motor vehicle), and from a non-court ordered repossession of such property, by reason of a breach of that contract by the servicemember occurring before or during his military service;
3. Allows for a court-ordered stay of proceedings to enforce, or a court-ordered adjustment of, certain defined obligations of a servicemember as to real or personal property secured by a mortgage, trust deed or other security in the nature of a mortgage;
4. Provides a mechanism for the settlement of stayed cases relating to personal property;
5. Regulates the circumstances under which and prescribes the terms and judicial mechanism by which a servicemember may terminate residential or motor vehicle leases and telephone service contracts;
6. Provides with regard to an insurance policy on the life of a servicemember, assigned before military service to secure payment of an obligation, that an assignee thereof may not exercise, during the period of such military service or within one year thereafter, any right or option thereunder, without a court order;
7. Provides that, during the period of military service and for 90 days thereafter, a person holding a lien on the property of a servicemember may not foreclose or enforce any lien on such property without a court order; and
8. Provides that, upon application to a court, a servicemember's dependent is entitled to the above-listed protections if that dependent's ability to comply with a lease, contract, bailment, or other obligation is materially affected by reason of the servicemember's military service.

The SCRA provides with regard to life insurance policies that an insurer may not decrease the amount of coverage or increase premiums for such coverage if the insured engages in military service and may not limit or restrict coverage for any activity required by military service. The Title under which this protection is afforded also sets forth in detail the terms and mechanism applicable to the attainment of this and other insurance protections afforded by the Act.

The SCRA extensively treats matters affecting taxes and public lands and includes sections dealing with:

1. Certain taxes and assessments respecting personal property, money, credits and real property due and unpaid before or during a servicemember's military service;
2. The non-forfeiture of a servicemember's rights in public lands and the provision for the temporary suspension of permits and licenses with regard thereto;
3. The non-forfeiture of a servicemember's desert-land rights;
4. The preservation of a servicemember's mining claims;
5. The suspension of operations under a servicemember's mineral permits and leases;
6. The preservation of a servicemember's ability to take action during military service for the perfection, defense or further assertion of rights authorized by law or regulations of the Department of the Interior that were initiated or acquired before entering military service;
7. The land rights of servicemembers;
8. Provisions relating to the circumstances under which a servicemember may obtain a limited deferral of the collection Federal, State and local income taxes falling due before or during military service; and
9. Provisions governing issues related to the residence or domicile of a servicemember and a servicemember's spouse for income and personal property tax purposes, following on the basic principle that a servicemember shall neither lose nor acquire a residence or domicile for tax purposes by reason of being absent from or present in any tax jurisdiction of the United States solely in compliance with military orders.

The SCRA specifically prohibits and provides a remedy to address any attempt to take advantage of it by way of the transfer or acquisition of any interest, property or contract with the intent to delay the just enforcement of a civil right.

The SCRA provides that a certification signed in the name of the Secretary of Defense is prima facie evidence of certain information contained therein obtained from available records of a servicemember that may be relevant to any proceeding pursuant to the Act.

The SCRA provides for further relief which includes:

1. Anticipatory relief whereby a servicemember may, during military service or within 180 days thereafter, apply to a court for relief from any obligation or liability incurred before his military service or from a tax or assessment falling due before or during such service. Such relief may include a stay, but, as to any such stay, a fine or

- penalty shall not accrue on the obligation, liability, tax or assessment for the period of compliance with the terms and conditions of the stay;
2. The terms and conditions for the extension of a servicemember's power of attorney;
 3. Health care, legal and other professional liability protection for such services rendered by the servicemember;
 4. Reinstatement of health insurance upon termination of military service that was in effect before such service and was terminated during such service;
 5. The guarantee that, for voting purposes on the Federal, State or local level, a residence or domicile of a servicemember and accompanying spouse is neither lost nor acquired by reason of their presence or absence from a particular jurisdiction in compliance with military orders;
 6. The unavailability of the personal assets of a servicemember during military service to satisfy an obligation or liability of the servicemember's trade or business for which the servicemember is personally liable, if those personal assets are not held in connection with that trade or business;
 7. Enforcement of the SCRA by the Attorney General through the commencement of an appropriate civil action against any person who engages in a pattern or practice of violating the SCRA or who violates it under circumstances raising an issue of significant public importance, to obtain equitable or declaratory relief, money damages and the assessment of a civil penalty; and
 8. Provision for a private right of action by a person aggrieved by a violation of the SCRA and the award of equitable or declaratory relief, money damages, costs and attorney's fees, as well as consequential and punitive damages.

New Jersey Statute

The NJSSCRA was enacted in 1962 and extended in 1979. The stated purpose of the NJSSCRA is to protect the civil rights of person serving in the active military service of the United States or the state of New Jersey. Preliminary research of the NJSSCRA's legislative history reveals that while almost identical Federal legislation had been in effect since World War I, the New Jersey legislature was compelled to create supplemental legislation that protected "members of the organized militia" who were "active duty in the military service of the State pursuant to an order of the Governor" and "members of a reserve component of the Armed Forces of the United States."

Like the SCRA, there is no provision for the NJSSCRA to expire. The NJSSCRA:

1. Protects military personnel against default judgments in any civil action or proceeding, when the servicemember has not made an appearance. Under the NJSSCRA, in any action or proceeding in which a servicemember is a party but does not personally appear or is not represented by an authorized attorney, the court may appoint an attorney to represent the servicemember. In contrast, the language in the SCRA is mandatory: The court "shall" appoint an attorney on the servicemember's behalf;

2. Provides for a stay of proceedings of any civil action or proceeding. The stay of the proceedings is ordered for the period of service and 3 months thereafter. Under the NJSSCRA, a stay of proceedings remains in the court's discretion. Similarly, under the NJSSCRA, the court may exercise discretion when vacating or setting aside a judgment or decree against a service member. In contrast, under the SCRA, after the requisite terms are satisfied, the stay is enforceable;
3. Provides relief from fines and penalties for the period of the stay or for fines or penalties that accrue during the period of military service;
4. Prohibits eviction or distress during the period of military service for any premises or dwelling occupied by the servicemember, spouse, children, or other dependents. The provision applies to premises where the agreed rent is limited by the 1979 standards of \$150;
5. Provides for the termination of a lease covering personal property, or premises occupied for dwelling, professional, business, agricultural, or similar purposes, that was executed by or on behalf of a person who, after the execution of the lease, entered military service;
6. Provides for the termination of contracts, including installment contracts, and leases involving motor vehicles and other personal property, due to military service;
7. Establishes the circumstances and conditions for military personnel to stay a foreclosure proceeding involving real or personal property secured by a mortgage, trust, deed, or other security in the nature of a mortgage;
8. Provides limited deferral of State and local taxes and assessments, including income taxes falling due before or during military service;
9. Defers collection of certain taxes and assessments respecting personal property, money, credits and real property due and unpaid before or during a servicemember's military service;
10. Regulates reemployment of servicemembers after completion of military service¹;
11. Prohibits any attempt to take advantage of the NJSSCRA by the transfer or acquisition of any interest, property or contract with the intent to delay the just enforcement of a civil right.
12. Provides that a certification executed by an officer of the applicable branch of the United States Armed Forces or by an officer of the applicable force of the organized militia is prima facie evidence of the facts therein certified and of the authority of the signer to issue the same;
13. Provides that when a person in the military has been reported missing, the servicemember shall be presumed to continue in service until accounted for, and no period described by the act to begin or end with the death of the service member shall begin or end until the death of the servicemember is in fact reported to or proved by the applicable force of the Armed Forces of the United States or of the organized militia, or until such death is proved by a court of competent jurisdiction; and

¹ Federal law provides veteran protections in the Veterans Reemployment Rights Act of 1974 which was later expanded by the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994, 38 U.S.C. 4301, et seq.

14. Offers anticipatory relief whereby military personnel may, during military service or within 6 months thereafter, apply to a court for relief from any obligation or liability incurred before his military service or in respect of any tax or assessment, whether falling due prior to or during such service.

While the NJSSCRA mirrors the SCRA in many respects, the noted conflicts between the NJSSCRA and the SCRA might challenge consistent application to servicemembers in New Jersey. Legal practitioners have identified issues that arise when representing servicemembers in New Jersey courts. This is so particularly with regard to a court's ability under the NJSSCRA to exercise discretion when determining whether to stay a proceeding, to vacate or set aside a judgment or decree against a servicemember or to appoint an attorney to represent the servicemember. The NJSSCRA provides the initial reference point for the New Jersey courts when faced with matters touching upon the relief provided by both the NJSSCRA and the SCRA. Consequently, the potentially unavoidable result might be the resolution of such matters by those courts in a manner not entirely consistent with the SCRA's prescriptions.

Legislation was proposed in the New Jersey General Assembly to repeal the NJSSCRA in its current form and to replace it with a modernized New Jersey Servicemembers Civil Relief Act. The proposed legislation² harmonized New Jersey's provisions with the SCRA, while continuing to afford the protection to members of the State National Guard and Reserve members of the United States Armed Forces not provided by the SCRA. The previously introduced legislation was not enacted.

There is no bill currently pending that proposes repealing or replacing the NJSSCRA. The following bills *are* pending in the current legislative session:

1. A1894 Allows certain National Guard and United States Reserve members on federal active duty to receive temporary suspension of payment of interest on mortgage loan (See also S541);
2. A2477 - Authorizes property tax deferment for deployed military personnel (See also S1657);
3. A2374 - Permits a child whose parent or guardian is ordered into active military service to remain enrolled in the school district where the child's parent or guardian resided prior to active military service;
4. A2436 - Provides free tuition at public institutions of higher education for surviving spouses and dependent children of military personnel killed in performance of duties;
5. A2082 - Creates housing purchase matching grant program for members of United States Armed Forces and New Jersey National Guard who have served in certain military operations; and
6. A2371 - Exempts from realty transfer fees, sales of homes of certain New Jersey members of the military.

² A2139 introduced in 2010, sponsored by Assemblymen Herb Conaway, Jr. and Jack Conners; A771 introduced in 2008, sponsored by the following Assemblymen: Jack Conners, Herb Conaway, Jr., and John Wisniewski.

Further research is needed to determine whether the NJSSCRA continues to present problems for legal practitioners and, if so, to evaluate the extent to which it may be practicable to propose changes to remediate them. Therefore, Staff seeks approval to commence that research and to consult with practitioners and other interested parties to advance that determination.