

Legal Relief for Military Service Members

STATE UTILITY DISCONNECTION LAWS

A number of states have enacted laws or adapted rules of negotiations that prevent or delay disconnection of utility service due to nonpayment during the period of time in which a consumer serving on active duty military service. See, e.g., Ohio Rev. Code 49:4933.121(E) (electricity) and 49:4933.12(F) (natural gas); Minn. Stat. 325E.028 (entitled "Utility Payment Arrangements for Military Service Personnel"); Mich. Pub. Serv. Comm'n Rule 460.150; La. Rev. Stat. 29:317 and 318 (entitled "Natural gas consumer agreements" and "Electric power consumer agreements"); 220 Ill. Comp. Stat. 5/8-201.5 (entitled "Military personnel in military service; no stoppage of gas or electricity; arrearage"). These laws do not forgive the balances due, but rather typically provide that any incurred arrearages may be satisfied upon the servicemember's return from active duty or within a period of time equal to that of the consumer's active duty service. Further, these laws often provide that the utility shall not charge the consumer late payment fees or interest during the period of deployment or the repayment period. Fortunately for utilities, most laws require the servicemember to establish eligibility by providing the utility with a copy of the military orders calling the consumer to military service.

FEDERAL LAWS

SCRA and the Supremacy Clause

The protection of the Service Members Civil Relief Act (SCRA) "applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act." 50 App. U.S.C. 512(b) (emphasis added). This law tucked in the appendix at the end of the United States Code has a far-reaching impact by operation of the Supremacy Clause of the United States Constitution, article VI, paragraph 2. The language of the SCRA defines the term "court" to specifically include "any political subdivision of a State," which would include a county, municipality, city, town, township, or other special district created pursuant to State law. 50 App. U.S.C. 511(5).

Affidavit of Military Service

Before any default may be taken, the SCRA requires the plaintiff to sign and file an affidavit with the court or agency stating whether or not defendant is in active duty military service, or whether plaintiff is unable to determine the military status of defendant. 50 App. U.S.C. 521(b). To facilitate SCRA searches, the Department of Defense's Defense Manpower Data Center has developed a secure public internet access system through which any requester can quickly determine whether an individual is currently in the Armed Forces – <https://www.dmdc.osd.mil/appj/scra/scraHome.do>

The report generated via this website serves as the basis for an affidavit of military service. It is recommended that the generated report be included as an attachment to the affidavit of military service. Compliance with the affidavit requirement is important because a default judgment rendered without SCRA compliance is voidable.

Military Service Affecting Statutes of Limitation

The SCRA provides that the period of a person's military service cannot be counted against the servicemember in computing the period of limitations for the bringing of any civil legal action or proceeding. 50 App. U.S.C. 526. This is a two-way street, as the period of active duty military service is excluded in computing the period of limitations provided for the bringing of any civil legal action or proceeding either by or against a member of the armed forces.

SCRA Judgment Enforcement – Misconception Debunked

Does the SCRA prevent the enforcement of prior orders? NO. The SCRA has very limited effect on the enforcement of prior orders; however, a servicemember can seek relief from prior orders, 50 App. U.S.C. 524, but it is the servicemember's duty to do so and show entitlement to relief.



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