

and "intangible expenses exceed the amount of dividends received from the foreign person by the taxpayer and included in base income for the same taxable year."

### **Students now eligible for awards under the new Monetary Award Program**

#### ***Student Assistance Commission***

Effective December 1, 2006, the Illinois Student Assistance Commission (Commission) has amended 23 Ill Adm Code 2734. The Commission added new sections to the title that are designed to regulate the Monetary Award Program (MAP) and which provide information regarding applicant eligibility and program and institutional procedures. The new sections stem from Public Act 094-1056, which created the MAP.

The purpose of the new section is highlighted in section 2734.10. Subsection (a) notes that "[t]he Monetary Award Program Plus (MAP Plus) provides grant assistance when students do not receive a MAP grant and to students whose families' adjusted gross incomes are less than \$200,000 in the applicable tax year." The subsection also notes the student must be enrolled in an institution of higher learning within Illinois.

MAP eligibility is covered in section 2734.20, with subsection (a) indicating the specific requirements for an applicant, which include that the applicant must be a U.S. citizen (or an eligible noncitizen), an Illinois resident, and enrolled for an appropriate time period in an institution that is MAP eligible. However, subsection (b) limits applicants to undergraduate students.

Section 2734.30 indicates the procedures for using the MAP, and subsection (a) designates the specific steps that an applicant must complete in order to obtain the assistance. The remainder of section 2734.30 pertains to the timing of the application, the uses of the MAP funds, and the maximum amount that will be provided to each student.

Procedures on the institutional side of the MAP are contained in section 2734.40. Subsection (a) reflects that the MAP grant "must not exceed tuition and mandatory fees minus State and federal gift assistance that is restricted to paying tuition and mandatory fees." Subsection (b) indicates that the respective institution "shall submit claims for MAP Plus eligible students," and subsection (c) notes that the institution receives the grant money. Section 2734.40 also includes subsections that indicate the procedures for institutions that have an out-of-state center and the procedures for students that change their enrollment "for the following term."

### **New protected categories under the Illinois Human Rights Act**

#### ***Department of Human Rights***

The Department of Human Rights has amended 44 Ill Adm Code 750 to add sex-

ual orientation, citizenship status, and military status to the list of categories protected in employment with government contractors under the Illinois Human Rights Act (Act). This change was effective as of November 20, 2006.

Before this amendment, the Act prohibited people and businesses contracting with the government from discriminating against any individual based on the following protected categories: race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service. This amendment adds sexual orientation, citizenship status, and military status to that list of protected categories. The rules further mandate that any contractor who solicits employees will include on its advertisements and solicitations that it will afford all applicants equal opportunity to apply without facing discriminating against them based on the above categories.

### **Changes made to Department of Human Rights procedures**

#### ***Department of Human Rights***

The Department of Human Rights (department) has amended 56 Ill Adm Code 2520 to clarify and change the rules governing department procedures that follow the filing of a charge under the Illinois Human Rights Act.

Under the Human Rights Act, a party must file a verified response to charges made against him and must attend any scheduled fact-finding conference unless he can show

good cause for not doing either of these things. If a complainant fails to show good cause for not attending a fact-finding conference the complaint will be dismissed, and if a respondent fails to show good cause, a default judgment will be entered against him.

The department deleted the general definition of good cause in section 2520.10. The department had already defined good cause for failure to file a timely verified response to a charge in section 2520.405. With the amendment to section 2520.400, the department made the definition of good cause consistent with section 2520.405. These reasons include, but not are limited to, the death or serious illness of a party, the death or serious illness of a party's family member, that "the party acted with due diligence and was not deliberate or contumacious and did not unwarrantedly disregard the fact-finding conference process, as supported by affidavit or other evidence," or that there were "circumstances beyond the non-attending party's control, as supported by affidavit or other evidence."

Within section 2520.405, the department clarified when a party must file a verified response to a charge made against it. The rule said that a party must file a verified response within 60 days of a charge being filed against it. Now a party must also file a verified response within 60 days of any amendment to the charge against the party that includes any new harms, bases, or respondents.

The department has also added language to section 2520.430 to require a party to inform the department of any changes to its address or phone so that it may be located by the department during the investigation. ■

**S**upplanting the old Soldiers' and Sailors' Civil Relief Act ("SSCRA") in 2003, the Servicemembers Civil Relief Act ("SCRA" or "the Act") extends rights and expands protections to service members.<sup>1</sup> The SCRA's primary purpose is to enable military personnel "to devote their entire energy to the defense needs of the Nation."<sup>2</sup> Similarly, during World War II the Supreme Court of the United States described then-existing legislation as "protect[ing] those who have been obliged to drop their own affairs to take up the burdens of the nation."<sup>3</sup>

In fact, little has changed in this regard for nearly two centuries. Comparable policy underpinnings are found in the Louisiana "suspension laws" created during the War of 1812 that stayed civil proceedings "involving soldiers" as the British advanced on New Orleans.<sup>4</sup> Later, both sides of the American civil war enacted "stay laws" affording a moratorium on civil actions against soldiers and sailors.<sup>5</sup>

The SSCRA first appeared in World War I and was reenacted at the outset of World War II. Congress then amended the SSCRA 13 times and in conjunction with each subsequent major military endeavor.

By comparison to its progenitors, however, the substantive and procedural complexity of the SCRA is unparalleled. The Act affords new rights and enhances pre-existing protections.

For example, it provides a basis for the stay of judicial and administrative hearings involving servicemembers and the reopening of default judgments. It limits enforcement of civil liabilities on leases, installment contracts, mortgages and liens.

Further, the SCRA enhances a servicemember's rights in relation to life insurance, credit card interest, public land, taxes, and certain business obligations. Moreover, the Illinois legislature has supplemented the SCRA with additional provisions found in the Illinois Patriot Plan.<sup>6</sup>

Importantly, most protections are not automatic. Servicemembers must invoke their rights through some manner of action, and they can waive protections under the SCRA.

Applying in all United States jurisdictions, including federal, state, District of Columbia and territorial courts, the SCRA is wide reaching.<sup>7</sup> Congress

significantly expanded its coverage to include not only civil court actions but also adjudications before administrative agencies. The SCRA does not, however, apply to criminal cases.<sup>8</sup>

#### **Covered servicemembers and dependents**

Active-duty service is a prerequisite for coverage under the Act. Covered servicemembers include those of all service branches – Army, Navy, Air Force, Marine Corps, and Coast Guard – on active-duty pursuant to 10 USC § 101(d)(1). The act also covers reserve and guard members ordered to federal active duty.

The SCRA does not cover members of reserve or guard components while not on active duty. Similarly, guard members activated under USC title 32, a state rather than federal status, are not covered, except where activated under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by federal funds.<sup>9</sup> The Act can also apply to public health service and National Oceanic and Atmospheric Administration officers.<sup>10</sup>

The SCRA extends some benefits to dependents of servicemembers.<sup>11</sup> One of the legislative developments reflected in the SCRA is its definition of "dependent," which now includes a servicemember's spouse, children, or person receiving more than half support for at least 180 days immediately preceding application for relief.<sup>12</sup> This is commonly known as the 50 percent support rule.

#### **Liberal construction and remedies for misusing the Act**

Historically, courts have liberally construed comparable legislation. The United States Supreme Court once said of the SSCRA that "the Act must be

read with an eye friendly to those who dropped their affairs to answer their country's call,"<sup>14</sup> and Congress has now codified that policy interest expressly.<sup>15</sup> In fact, various provisions of the statute authorize fines and imprisonment for persons acting in knowing contravention of the Act.

However, the Act is not an unbreakable sword. Congress recognized the potential for misuse. For example, a person seeking undue advantage might transfer property or an ownership interest to a servicemember to thwart the enforcement of another person's lawful rights.

Thus, Congress invited redress stating, "[i]f a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred or acquired with the intent to delay the just enforcement of right by taking advantage of this Act, the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition."<sup>16</sup> The Act authorizes criminal penalties for filing a knowingly false affidavit.<sup>17</sup>

#### **Stays**

A stay of a pending judicial or administrative action is available when a servicemember is on active-duty or has been released from active-duty during the previous 90 days.<sup>18</sup> In order to make an application for a stay, the servicemember must submit to the hearing body:

A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear; and]

A letter or other communication from the

1. 50 App USC §§ 501-596 (2003).
2. 50 App USC § 502.
3. *Boone v. Lightner*, 319 US 561, 575 (1943).
4. HR Rep No 108-81, 108th Cong 1st Sess. (2003), 2003 USCCAN 2367, 2377.
5. Act of June 11, 1864, ch 118, 13 Stat 123 (1864).
6. Public Act 094-0635.
7. 50 App USC § 513.
8. 50 App USC § 511-512.
9. 50 App USC § 512(b).
10. 50 App USC § 511(2)(A)(ii).
11. 50 App USC §§ 514-516.
12. 50 App USC § 538.
13. 50 App USC § 511(4).
14. *Le Ministre v. Leffers*, 333 US 1, 6 (1948).
15. See 50 App USC § 502.
16. 50 App USC § 581.
17. 50 App USC § 521(c).
18. 50 App USC § 521.

the SCRA if he or she is materially affected by the member's military service.

**Premises leases.** For many years, servicemembers have sought the inclusion of the so-called "military clause" into premises leases covering the need for early termination. Essentially, Congress has afforded the inclusion of what might be called a statutory military clause. A servicemember may terminate a lease at will for premises occupied as a residence or for business purposes based on receipt of permanent change of station orders or deployment orders of at least 90 days.

Termination of a monthly lease for premises is effective 30 days after the first date on which the next rental payment is due after delivery of the notice of termination. Termination of all other leases is effective on the last day of the month following the month in which the notice is delivered. The member is responsible to remit all lease payments due to the date of termination on a prorated basis. The landlord must refund any prepaid rent.

**Motor vehicle leases.** The SCRA's motor vehicle lease coverage is entirely new. A servicemember may terminate a motor vehicle lease based on permanent change of station orders to a location outside the continental United States or deployment orders of at least 180 days.

Termination is effective on the day the notice is delivered or the vehicle is returned to the lessor, whichever is later. The member must return the motor vehicle not later than 15 days after delivery of the written notice. Importantly, the lessor cannot impose an early termination charge, but the member must pay all other charges under the terms of the lease.

### **Eviction rights**

A landlord cannot evict an active-duty servicemember or his or her dependents from premises occupied for dwelling purposes for which the rent does not exceed \$2,400 per month (adjusted for inflation in subsequent years) – or subject the residence to a distress – except by court order.<sup>27</sup> The SCRA substantially increases previous monthly rental limits. This rule applies regardless of whether quarters were rented before or after entry onto active duty.

When a landlord applies for an eviction or distress order, the court may act sua sponte and, if a request is made by or on behalf of a member showing

that the ability to pay the agreed rent is materially affected by military service, the court must stay the proceedings for an equitable period or adjust the obligation under the lease. When a stay is granted, the court may grant appropriate equitable relief to the landlord. The Defense Finance and Accounting Service must make an allotment from the member's pay to satisfy applicable terms of the order.

### **Insurance protections**

Generally, an insurance carrier cannot refuse to insure a servicemember based on a claim of right under the SCRA. The SCRA contains rules for the mandatory reinstatement of lapsed health<sup>28</sup> and life<sup>29</sup> insurance.

Furthermore, if an insurance policy on the servicemember's life is assigned to secure payment of an obligation before the member goes on active duty, the assignee may not exercise any right or option obtained on the assignment while the member is on active duty and within a year of his or her release without a court order.

### **Tax protections**

**Income taxes.** The SCRA provides

for a deferral of income tax liability for not more than six months after the termination of military service if the servicemember's ability to pay is materially impaired by his or her service.<sup>30</sup> This provision applies whether the taxes are due prior to or during military service. No interest or penalties accrue on any amount

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of tax during the period of deferment by reason of nonpayment.

There are limits to the deferral available, however. The servicemember cannot receive a deferral for federal social security and medicare taxes.

Furthermore, a member neither loses nor acquires a residence or domicile for voting or tax purposes based on absence or presence in a tax jurisdiction pursu-

27. 50 App USC § 531.

28. 50 App USC § 594.

29. 50 App USC §§ 541-547.

30. 50 App USC § 570.