

## **LAW REVIEW 14056**

**April 2014**

**Does the SCRA Protect us from Non-Renewal of our Lease?**

**By Captain Samuel F. Wright, JAGC, USN (Ret.)**

### **4.10—Protection against discrimination based on exercise of SCRA protections**

**Q: I am a Navy veteran and a current Army Reservist. My wife is a Navy Reservist. Both of us are members of ROA. My wife has received mobilization orders and will be reporting to active duty in mid-May, for deployment down range. I will remain in our rented apartment (if we can renew the lease) with our two pre-school children.**

**Our family resides in a rented apartment in a major metropolitan area, and our monthly rent is \$1,775 per month. Our current lease expires May 31, 2014. Both my wife and I signed the lease almost a year ago.**

**In early March, the leasing agent sent us a form letter and a new lease, with a monthly rent of \$1,850 per month. My wife and I responded immediately, saying that we wanted to renew and offering to come to the leasing office to sign the new lease. The leasing agent then informed us that she was revoking the offer of a new lease and ordered us to vacate the apartment by May 31. We believe that the leasing agent had become aware of my wife's impending mobilization, and that this explains her decision to revoke the offer of a new one-year lease.**

**With all the stress on my family caused by my wife's impending mobilization, I certainly did not need the additional stress of having to pack up and move myself, my two young children, and all our stuff just days after my wife deploys. Does the leasing agent's decision to revoke the offer of a new one-year lease violate the Uniformed Services Employment and Reemployment Rights Act (USERRA) or the Soldiers' and Sailors' Civil Relief Act (SSCRA)?**

**A:** USERRA applies to your wife's relationship with her civilian employer or prospective employer. The landlord is not her employer. USERRA has no application to this situation.

Congress enacted the SSCRA in 1917, shortly after the United States entered World War I. This law served our country well for almost 75 years, but by the time of the 1990 call-up of Reserve and National Guard members for Operation Desert Shield/Storm the law was showing its age.

For example, under the SSCRA it was possible to terminate a lease on premises (apartment, house, office, farm, etc.) when entering active military service, but there was no provision for terminating a *vehicle* lease. The idea of leasing a vehicle, rather than buying it, was probably not even considered in 1917. It was possible to purchase a brand new Model T Ford for as little as \$260 in 1925. See

<http://www.conceptcarz.com/vehicle/z7169/Ford-Model-T.aspx>.

During the 1990s, judge advocates of all five armed forces comprehensively studied and redrafted the SSCRA, to improve upon it and make it ready for the 21<sup>st</sup> Century. In 2003, Congress enacted their work product and called it the Servicemembers Civil Relief Act (SCRA). Like the SSCRA, the SCRA is codified in the Appendix of Title 50 of the United States Code.

Under section 305 of the SCRA, as under the corresponding section of the SSCRA, your wife has the right to terminate the apartment lease upon her entry onto active duty. 50 U.S.C. App. 535. Of course, this provision is irrelevant to your family because the existing lease is about to expire in any case and you do not want to leave the apartment.

Under section 301 of the SCRA, you and the children (as dependents of a person entering active duty in the armed forces) are protected from eviction from the apartment during your wife's active duty period. 50 U.S.C. App. 531.<sup>1</sup>

### Section 108 of the SCRA provides:

§ 518. Exercise of rights under Act not to affect certain future financial transactions

**Application by a servicemember for, or receipt by a servicemember of, a stay, postponement, or suspension pursuant to this Act [[50 USCS Appx §§ 501 et seq.](#)] in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability of that servicemember shall not itself (without regard to other considerations) provide the basis for any of the following:**

- (1) A determination by a lender or other person that the servicemember is unable to pay the civil obligation or liability in accordance with its terms.
- (2) With respect to a credit transaction between a creditor and the servicemember--
  - (A) a denial or revocation of credit by the creditor;
  - (B) a change by the creditor in the terms of an existing credit arrangement; or
  - (C) a refusal by the creditor to grant credit to the servicemember in substantially the amount or on substantially the terms requested.
- (3) An adverse report relating to the creditworthiness of the servicemember by or to a person engaged in the practice of assembling or evaluating consumer credit information.
- (4) A refusal by an insurer to insure the servicemember.
- (5) An annotation in a servicemember's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information, identifying the servicemember as a member of the National Guard or a reserve component.
- (6) A change in the terms offered or conditions required for the issuance of insurance.

#### History:

(Oct. 17, 1940, ch 888, Title I, § 108, as added Dec. 19, 2003, [P.L. 108-189](#), § 1, [117 Stat. 2840](#).)

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<sup>1</sup> The provision is based on the idea that your wife's entry on active duty is seriously detracting from the family income and making you unable to pay the rent. Here again, this is probably not your family's situation, and you will not need this protection and will be willing and able to pay the full rent while your wife is on active duty.

50 U.S.C. App. 518 (emphasis supplied).

Your wife has not applied for, nor has she received, a stay, postponement, or suspension pursuant to the SCRA. Thus, the predicate for the application of this protection has not been met. I have proposed that Congress amend this section to make it unlawful for a landlord, creditor, etc. to refuse to offer something based on the person's membership in a Reserve Component or the possibility that the person *might* exercise SCRA rights in the future. Unfortunately, no such amendment has been enacted. Your family's situation is a good illustration of the need for the amendment that I have proposed.

I have addressed this discrimination issue previously in Law Review 0943 (October 2009) and Law Review 13103 (August 2013). I invite the reader's attention to [www.servicemembers-lawcenter.org](http://www.servicemembers-lawcenter.org). You will find 1,047 articles about the SCRA, USERRA, and other laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. I initiated this column in 1997, and we add new articles each week. We added 169 new articles in 2013.