



## The Soldiers' and Sailors' Civil Relief Act of 1940— Easing the Burden of Service

The Soldiers' and Sailors' Civil Relief Act (SSCRA) of 1940 provides certain rights and privileges for men and women entering or called to active duty in the armed forces of the United States. The purpose of the SSCRA is to postpone or suspend some of the civil obligations of military personnel to allow them to give full attention to their military duties. The underlying premise is that servicemembers should not be disadvantaged either legally or financially when called to active service.<sup>1</sup> Among the benefits granted by the SSCRA are a stay of proceedings in civil court during an individual's period of military service, an interest rate cap of 6 percent on debts incurred before entering active duty, eviction protection, termination of preservice leases, extension of benefits to dependents, and legal residency. To invoke many of the financial protections provided by the act, the servicemember must show that he or she has been materially disadvantaged by reason of military service.<sup>2</sup> These important protections cover members of the active duty military and reserve component soldiers (such as members of the Army National Guard and Army Reserve) serving on active duty under federal authority.

However, these protections are not extended to members of the National Guard serving under Title 32 authority. Under this type of mobilization, National Guard soldiers' pay and other expenses are funded by the federal government, but the soldiers remain under the control of state governors. As a result, many of the thousands of National Guard soldiers called to active duty in the wake of the 11 September 2001 terrorist attacks to guard airports and other critical infrastructure (under Title 32 status) are not protected by the provisions of the SSCRA. Many of them are now feeling the negative financial and legal impacts of extended tours of active duty far from home—impacts from which the SSCRA was intended to protect them. In response to this inequity, members in both chambers of Congress have introduced legislation to extend SSCRA benefits to National Guard members called to duty when governors respond to national emergencies. AUSA strongly supports these reform efforts.

### Origins of the SSCRA

The origins of the SSCRA can be traced back to the Civil War, when Congress passed a total moratorium on civil actions brought against Union soldiers and sailors. Congress' intent in passing the moratorium was to protect both national interests and those of servicemembers. First, Congress wanted servicemembers to be able to fight the war without having to worry about problems that might arise at home. Second, because most soldiers and sailors during the Civil War were not well paid, it was difficult for them to honor their preservice debts, such as mortgage payments or other credit.<sup>3</sup>

During World War I, Congress acted again. Although not as sweeping a measure, legislation passed in 1918 protected the rights of servicemembers while they were serving in the war. The SSCRA of 1940 is basically the same as the 1918 law, with the major exception that there is no provision for the act to expire as it did after World War I. Congressional support for the act remains strong; it has been amended more than 11 times since 1940 to keep it relevant and up to date. The most recent amendments were passed during the Persian Gulf War in 1991.<sup>4</sup> The SSCRA is the direct result of congressional efforts "to avoid the adverse effects of service."

### United States Code 32

To fully understand this problem, one must understand Title 32. United States Code 32 provides for organization, personnel, training, service, supply and procurement for the National Guard. As prescribed by the Secretary of the Army, a member of the Army National Guard may be ordered to perform training or other duty under the command and control of his or her state governor.<sup>5</sup> Title 32 is a federally recognized mission status, federally funded and covered by federal benefits and entitlements. Title 32 status differs from State Active Duty, which is state status under state-level funding, with pay, entitlements and protections provided in state law.



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## Defending the Homeland

The thousands of National Guard soldiers serving on active duty under Title 32 are conducting a wide range of missions in support of homeland security. On 27 September 2001, the President requested and authorized governors to supplement current security operations at the nation's airports with National Guard personnel. The National Guard was directed by the Secretary of Defense to perform these duties in a United States Code 32 status (State Control – Federal Funding), thereby providing a ready force under local civilian control (the governors), not hampered by laws prohibiting federal forces executing civil law. The National Guard's mission was to provide a trained, armed military security presence at airport facilities to reinforce civilian security authorities until designated security personnel were hired and transitioned to duty under the new federal Transportation Security Agency. Security-related duties were conducted in 444 airports nationwide by as many as 10,779 National Guard personnel through 31 May 2002.<sup>6</sup>

As of mid-July 2002, National Guard Weapons of Mass Destruction Civil Support Teams had performed over 630 operational missions since 11 September 2001. These missions, at the request of civil authorities, have included sampling at the World Trade Center to detect hazards resulting from the attack, deploying to sample unknown white powders (most often suspected to be anthrax), and sampling unknown liquids and suspicious pieces of mail. Thirty-two National Guard Civil Support Teams, established under U.S. Code 32, are funded to support civil authorities at domestic chemical, biological, radiological, nuclear or high-yield explosive incident sites.<sup>7</sup>

The National Guard in a Title 32 status is a significant player in military operations conducted within the United States under Operation Noble Eagle. With the approval of the Secretary of the Army, the Army National Guard provides on average more than 1,800 soldiers daily to protect critical infrastructure and to defend the United States against terrorist attacks. Noble Eagle support includes protection of nuclear

power plants, dams and power generation facilities, tunnels, bridges, rail stations, waterways and harbors.<sup>8</sup>

## Conclusion

As the nation continues to define Homeland Security, Homeland Defense and Civil Support, the National Guard will play a key role as the Department of Defense link to local communities. However, National Guardsmen mobilized under Title 32 by governors, at the President's request, to provide security at our nation's airports and other facilities are not eligible for the civil protections provided under the federal relief law. This loophole impacts thousands of soldiers and defies the intent of the SSCRA. The issue demands prompt attention.

Extending the benefits and protections of the SSCRA to members of the National Guard serving under Title 32 will allow our National Guard soldiers to fully concentrate their efforts on the task at hand. The nation owes these protections to all soldiers called upon to serve their country and defend the homeland.

## Endnotes

1. James P. Pottorff, "Soldiers' and Sailors' Civil Relief Act Protection: An Update for the War Against Terrorism," *Virginia Lawyer*, December 2001, p. 48.
2. Paul Stone, "Soldiers' and Sailors' Civil Relief Act Provides Umbrella of Protection," *American Forces Information Service*, 31 July 2001.
3. Ibid.
4. Ibid.
5. 32 United States Code, Section 502(f).
6. National Guard Bureau Office of Homeland Security, *After Action Report (AAR) / End of Mission Report (EOM) / National Guard Airport Security Mission*, 31 May 2002.
7. National Guard Bureau Office of Civil Support, *National Guard Weapons of Mass Destruction Civil Support Team Overview and Update*, 17 July 2002.
8. Unpublished Army National Guard Director's daily update, Operations Noble Eagle and Enduring Freedom, 2 February–6 August 2002.

## Key Points

- Servicemembers on active duty need the legal and financial protections provided by the SSCRA to remain focused on their military mission and not on problems back home. Long periods of time away from home can lead to legal and financial difficulties for many soldiers; the SSCRA was intended to address this problem.
- The SSCRA as it is currently written does not provide coverage to servicemembers called up under Title 32. The consequence is that thousands of National Guard soldiers called to active duty to protect critical infrastructure and perform other missions are not protected by the SSCRA.
- AUSA has testified before the House Veterans Affairs Committee in support of H.R.4017 and H.R.5111. Both pieces of legislation will update, clarify and improve the provisions of the Soldiers' and Sailors' Civil Relief Act. AUSA strongly supports these reform initiatives.