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***Joe McDonnell on the Illinois Patriot Plan***

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Joe McDonnell on the Illinois Patriot Plan: Giving our Warriors Their Due. Public Act 94-635, approved August 22, 2005, as amended.

By Joseph B. McDonnell

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**SUMMARY:** Illinois Patriot Plan: a number of benefits are extended to Illinois citizens who are called to active military service. What are they? How do they relate, if at all, to federal law? Is coverage automatic? If not, what procedure must be followed to obtain the benefits? Finally, is a creditor of the service member entitled to any protection?

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**ARTICLE:** Since the advent of Operation Iraqi Freedom in March 2003, the Illinois legislature has enacted a series of statutes which provide for the protection of members of the Armed Forces on active duty. The Illinois Patriot Plan, approved and effective August 22, 2005 extends certain benefits and protections to service personnel in a variety of areas. Some of the more significant changes will be discussed in this commentary.

**Gas/electric service shut-off.** The Municipal Code and the Public Utilities Act are amended to prohibit the shutting off of gas or electricity, for nonpayment of charges, to a residence in which a service member was a primary occupant immediately before his or her deployed for active duty. The amendment to the Municipal Code covers municipalities which own and operate their own public utility under 65 ILCS 5/11-117-1; the amendment to the Public Utilities Act covers companies and electric cooperatives providing gas and electricity service pursuant to the Act. 220 ILCS 5/8-201.5. In each case, "active duty" is defined as such duty pursuant to an executive order of the President, an act of Congress, or an order of the Governor. *Sec. 11-117-12.2(a); Sec. 8-201.5(a)*. The term "service member" means a member of the armed services or reserve forces of the United States or a member of the Illinois National Guard. *Id.* (The same definitions apply in each of the statutes discussed in this commentary.)

Upon return from active duty of a residential consumer who is a service member, the provider must offer the consumer a period equal to at least the period of his deployment on active duty to pay any arrearages incurred during the period of his deployment. The provider must also inform the consumer that, if the period offered presents a hardship, the consumer may request a longer period of time to pay the arrearages; and, in the case of a public utility, may request the assistance of the Illinois Commerce Commission to obtain a longer period. 65 ILCS 5/11-117.12-2(c); 220 ILCS 5/8-201.5(d). In the latter case, no late payment fees or interest shall be charged to the consumer during the period of deployment or during the repayment period. *Id.*

To be eligible for the benefit, the service member must also provide the municipality or company with a copy of his military or gubernatorial orders calling the service member to active duty and any orders further extending his period of active duty. *Sec. 11-117-12.2(d); Sec. 8-201.5(c)*.

**Rental Property; evictions.** The Illinois Code of Civil Procedure is amended with respect to an action for possession of premises previously occupied by a tenant who has since been ordered to active duty. *735 ILCS 5/9-107.10*. (Similar protection is afforded by federal law. See Servicemembers Civil Relief Act, *50 U.S.C. App. Sec. 531*.) The statute protects a tenant of residential premises (including a mobile home park) who is a service member deployed on active duty, and any member of his/her family residing with the tenant, in an action for possession of residential premises. If the rental agreement was entered into on or after the effective date of the Act (August 22, 2005), the court may, on its own motion, and shall, upon motion made by or on behalf of the tenant, do either of the following things if the tenant's ability to pay the agreed rent is materially affected by the tenant's deployment on active duty:

(1) stay the proceedings for a period of 90 days unless, in the opinion of the court, justice and equity require a longer or shorter period of time;

(2) adjust the obligation under the rental agreement to preserve the interest of all parties to it. *Sec. 9-107.10(b)(1)(2)*.

Eligibility for this protection is conditioned on the service member or a family member furnishing to the landlord or mobile home park operator the same information specified in the Municipal Code and Public Utilities Act amendments. *Section 9-10(c)*. However, the service member must also demonstrate that his military service has a "material effect" on his ability to pay the agreed-upon rent. This requires at a minimum a demonstration that his/her income from military service is substantially less than it was before deployment and when the rental agreement was entered into.

An additional subsection allows the court, if a stay is granted, to grant the landlord or mobile home park operator "such relief as equity may require." *Sec. 9-107.10(d)*.

**Life insurance; protection from cancellation.** The Illinois Insurance Code is also amended by P.A. 94-635 to protect military personnel on active duty from lapse or cancellation of a life insurance policy. *215 ILCS 5/224.05*. The Act prohibits the lapse or forfeiture of the policy for non-payment of premiums during the military service and for two years after it ends, where the insured is a member of the Armed Services or Reserve Forces of the United States or of the Illinois National Guard. *215 ILCS 5/224.05(c)*. The life insurance policy must have been in force for at least 180 days and must have been brought within the provisions of the Servicemembers Civil Relief Act (SCRA), *50 U.S.C. App. 541, et seq. 259 ILCS 5/224.05(a)*.

The reference to the SCRA is important. Qualification of a life policy under the Illinois statute is expressly conditioned upon a determination by the Secretary of Veterans Affairs (per SCRA) that the policy is entitled to protection under federal law. *SCRA, 50 U.S.C. App. Sec. 544*. If qualified, protection under SCRA (which includes a guarantee of payment of premiums and interest by the United States) is available for up to \$250,000 in coverage. *50 U.S.C. App. Sec. 542(c)*.

The Act does not apply to any policy that had been canceled or which had lapsed for non-payment of premiums prior to commencement of the insured's period of military service. *215 ILCS 5/224.05(b)*.

The same requirements for information to be furnished by the service member apply. *Sec. 224.05(d)*.

Interestingly, the Illinois Act does not limit a life insurance company's enforcement of provisions in the policy relating to naval or military service in time of war. *Sec. 224.05(d)*.

It is suggested that his provision is of doubtful validity, inasmuch as a qualifying condition for approval of a policy

under SCRA is that the insurer may not limit or restrict coverage for any activity required by military service. *50 U.S.C. App. Sec. 541(1)(A)(ii)*.

**Interest Rate Cap.** The Interest Act is amended by adding a section which limits the interest rate that may be charged to military personnel on active duty. *815 ILCS 205/4.05*. The Act applies to any obligation on a retail installment sales contract or other contract for the purchase of goods or services, or a bond, bill, note, or other written instrument for the payment of money arising out of a contract or other transaction for the purchase of goods or services. *815 ILCS 205/4.05(a)*. The statute, which is expressly subject to the SCRA, applies to contracts entered into after the Act's effective date (August 22, 2005) and prior to the service member's deployment on active duty. The creditor may not charge or collect from the service member or his spouse interest or finance charges exceeding 6% per annum. *Sec. 205/4.05(b)*. Amounts in excess are "forgiven" (*Sec. 205/4.05(c)*) and the amounts of any periodic payments must be re-calculated to take into account the "forgiven" amounts. *Sec. 205/4.05(d)*.

As in other cases, the service member or his spouse is required to furnish documentation of his status to the creditor. This must be done within 180 days after termination of or release from active duty. *Sec. 205/4.05(e)*. Upon receipt of the service member's notice and a copy of the orders referred to in subsection (e), the creditor shall treat the obligation in accordance with subsection (b), effective as of the date on which the service member is deployed to active duty.

This statute is comparable to and apparently patterned after a provision of the Servicemembers Civil Relief Act, *50 U.S.C. App. Sec. 527*, as added Dec. 19, 2003. It contains the same caveat that the court is authorized, in the event of a finding that the ability of the service member or his spouse to pay interest in excess of the 6% limitation is not materially affected by his military service, to grant relief to the creditor from the interest rate limitation. This requirement is found in other sections of the SCRA and is a necessary condition under that Act for staying civil proceedings and obtaining relief from default judgments. *See, e.g., 50 U.S.C. App. Sec. 522(b)*. Neither the federal nor the Illinois law define "material effect" nor does either statute indicate whose burden it is to demonstrate whether the service members' ability to pay is or is not "materially affected" by his/her military service. The best practice would suggest that the service member, for whose benefit the provision is intended, should initially state those facts relative to his/her military service which demonstrate that his/her ability to pay more than 6% is materially affected by military service. This would include a statement, with documentation, of the service member's pay while on active duty as compared to his/her earnings prior to deployment.

**Lease of Motor Vehicle.** The Motor Vehicle Leasing Act (815 ILCS 636) is amended by adding Section 37. The service member or his spouse, deployed on active duty for a period not less than 180 days, may terminate any vehicle lease entered into on or after the effective date of the Act and which was executed by or on behalf of the service member. *815 ILCS 636/37(b)*.

The service member must give notice of his intention to terminate the lease together with a copy of the military or gubernatorial orders calling the service member to active duty and any further orders extending the service member's period of active duty; and the motor vehicle subject to the lease must be returned to the custody or control of the lessor not later than 15 days after delivery of the written notice of termination. *Sec. 37(c)(1)(2)*. Lease amounts unpaid for the period preceding the effective date of the termination are to be paid on a *pro rata* basis. No early termination charge may be made, but any taxes, costs of summons and title or registration fees and any other obligations and liability of the lessee, including reasonable charges for excess wear, use and mileage, which are due and unpaid at the time of the termination, must be paid by the lessee. *Sec. 37(d)*. Any excess amounts which have been paid in advance for a period after the effective date of the termination must be refunded by the lessor to lessee within 30 days after the termination. *Sec. 37(e)*.

Again, upon application by the lessor to a court before the effective date of termination, relief granted by this section may be modified "as justice and equity require." *Sec. 37(e)*.

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