

**An Information Pamphlet for Members of the
Maryland National Guard**



Prepared By The

Maryland State Bar Association

LEADERSHIP ACADEMY FELLOWS

Class of 2003

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INTRODUCTION

In 2002, the Maryland State Legislature enacted legislation that provides National Guard members the protections granted by the Soldiers' and Sailors' Civil Relief Act (SSCRA)¹ and the Uniformed Services Employment and Reemployment Rights Act (USERRA)² when activated to duty by the Governor of the State of Maryland.³ The rights granted under the Public Safety Article are in addition to the rights granted by Federal law.⁴ The SSCRA protections apply when the member is ordered to military duty for a period of fourteen (14) consecutive days or longer, while the protections of USERRA apply when the member is ordered to military duty for any period of time.⁵

This pamphlet is intended to educate members of the National Guard regarding their legal rights under state activation. This pamphlet is not meant to be comprehensive in nature. **NOR DOES IT CONSTITUTE**

¹ 50 U.S.C. App. §§ 501-594.

² 38 U.S.C. §§ 4301-4333.

³ Maryland Annotated Code, Article 65 (2002) was repealed in its entirety by Senate Bill 1 on April 5, 2003. Senate Bill 1 adds a new article to the Annotated Code of Maryland to be designated the "Public Safety Article" and will recodify the laws of the State of Maryland relating to public safety, including the state militia. The new Public Safety Article provides that provisions of SSCRA and USERRA shall be adopted as State law and applied to members of the National Guard. Md. Code Ann., Pub. Safety § 13-705(B). All references and citations in this guide will be to the new Public Safety Article.

⁴ Md. Code Ann., Pub. Safety § 13-705(A).

⁵ *Id.* at § 13-705(B)(1)-(2).

LEGAL ADVICE OFFERED BY THE MARYLAND STATE BAR ASSOCIATION, THE LEADERSHIP ACADEMY FELLOWS, THE MARYLAND NATIONAL GUARD, OR INDIVIDUALS ASSOCIATED WITH THEM. The pamphlet is an overview of general legal principles. We strongly recommend that you consult with your JAG officer or independent legal counsel if you undertake or are subject to any legal action.

CIVIL PROCEEDINGS

Stays

Under Maryland law, the SSCRA now provides certain protections against civil liabilities to state activated members who are either plaintiffs or defendants in civil proceedings. Specifically, the court can order a temporary stay (or delay) of the proceedings during the term of the military service or within sixty days thereafter. This stay can be imposed at any stage in any civil proceedings. It applies to any court, federal or state, in any state or territory subject to the jurisdiction of the United States. With the exception of statute of limitations, it does not appear that the SSCRA applies to administrative proceedings.⁶ Also, the SSCRA does not apply to criminal proceedings.⁷ These protections apply if the member can show that their military service “materially affects” their ability to participate in the civil proceeding.⁸

The SSCRA does not define the term “materially affected.” However, in determining whether a member’s military service so affects his ability to participate in civil proceeding, the courts often focus on factors such as whether the member’s duty station would permit his appearance, the length of time it takes a member to initiate actions to prosecute or defend an action, or whether the

⁶ *Id.* at 2-3; 50 U.S.C. App. § 521.

⁷ 50 U.S.C. App. § 510 (refers to "civil liabilities").

⁸ 50 U.S.C. App. § 521.

member could obtain leave to attend the proceeding.⁹ These protections cannot be used to delay valid proceedings.¹⁰

If the court determines that military service materially affects a member's ability to participate either as a plaintiff or defendant in a civil proceeding, a stay may be imposed in any stage of the civil proceeding. In addition, the SSCRA provides for a stay of execution of a judgment or order, and the stay of any garnishment of property, when it appears that the ability of the service member to comply with the judgment or order is materially affected.¹¹ A stay of any civil proceeding, execution, or attachment may be granted for the duration of the military service plus three months thereafter.¹²

Moreover, any time during the period of military service, or within six months thereafter, a service member may apply to the court for relief of any obligation or liability incurred by the service member prior to his/her period of military service. This also applies to any tax or assessment that is

⁹ See, e.g., Conner v. City of Palm Bay, Fla., 265 F.3d 1186 (11th Cir. 2001); Zitomerv v. Holdsworth, 449 F.2d 724 (3d Cir. 1971); Antioch Co. v. Scrapbook Borders, Inc., 210 F.R.D. 645 (D. Minn. 2002); In re Lewis, 257 B.R. 431 (D. Md. 2001).

¹⁰ Legal Assistance Study Guide, "Soldiers, Sailors and District Court Judges" at pages 2-3 – 2-4, Presented October 26, 2001 by LCDR Keith Brau, USN (hereinafter referred to as "Study Guide").

¹¹ 50 U.S.C. App. § 523.

¹² 50 U.S.C. App. § 524.

due prior to or during the period of military service.¹³ If the court has granted a stay, no fine or penalty shall accrue during the period of the stay as long the terms and conditions of the stay are met.¹⁴

Default Judgments Against Service Members

If you do not appear for a court proceeding in which you are a party, you may lose by default. This is called a default judgment. Before a default judgment can be entered against a member defendant, the plaintiff must file an affidavit with the court stating that the defendant is not in military service or the plaintiff is unable to determine the defendant's military status.¹⁵ If an affidavit is not filed showing that the defendant is not in the military service, a judgment cannot be entered without an order of the court.¹⁶ Filing of a false affidavit by the plaintiff can result in criminal prosecution.¹⁷ If the affidavit indicates that the defendant is in military service, the court will appoint an attorney to protect the rights of the service member in the member's absence.¹⁸

¹³ *Id.* at § 590(1).

¹⁴ *Id.* at § 590(2).

¹⁵ 50 U.S.C. App. § 520; Study Guide at 2-5.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 50 U.S.C. App. § 520.

Statute of Limitations

The statute of limitations (the time period in which a civil action must be commenced before the plaintiff loses the right to bring the claim) is tolled or suspended while the service member is in active military service.¹⁹ This applies to any proceeding brought by or against the service member and/or his heirs.²⁰ Time spent in active service shall not be included in the limitation period regardless of whether the legal action occurred prior to or during military service.²¹ There is no requirement that the service member demonstrate a "material affect" when tolling the limitation period.²² This tolling also applies to administrative proceedings.²³

A plaintiff will have a longer period of time to bring a claim against a service member defendant.²⁴ This longer time period may have an adverse effect upon you since the time for filing suit against you may be extended.

¹⁹ 50 U.S.C.. App. § 525; Study Guide at 2-6.

²⁰ *Id.*

²¹ *Id.*

²² Study Guide at 2-6 *citing* Conroy v. Aniskoff, 507 U.S. 511 (1993).

²³ Study Guide at 2-5.

²⁴ *Id.* at 2-6.

EMPLOYMENT-RELATED ISSUES

Health Insurance

Maryland has adopted USERRA; therefore issues relating to health insurance from your civil job are covered under those provisions. Because you are considered, under USERRA, to be on furlough or a leave of absence while you are on military duty, you retain the same rights as any other employee of your civilian employer if they were on furlough or leave of absence.²⁵ Accordingly, if health insurance benefits are paid in whole or in part for other employees on a leave of absence, you must receive those same benefits. Check your employment manual or your organizations' Human Resources department for specific information.

Even if your civilian employer does not offer to assist with payment of health insurance benefits during leave, you may nevertheless elect to continue coverage.²⁶ The period of continued coverage is the shorter of:

- 18 months beginning on the first date of absence; or
- the day after the date on which you fail to apply or return to your former civilian employment.²⁷

²⁵ 38 U.S.C. § 4316(b)(1).

²⁶ 38 U.S.C. § 4317(a)(1).

²⁷ 38 U.S.C. § 4317(a).

If you elect to continue coverage, you “may be required to pay not more than 102 percent of the full premium under the plan;” however, if you are on active duty, either State or federal, for less than 31 days, you cannot be required to pay more than the “employee share” paid by your employer.²⁸ Availability of State-sponsored health insurance for members who are state activated is unclear under the Maryland statute. Ask your local unit commander for further information.

Generally, if your health care coverage was terminated by reason of your military service, your employers may not impose an exclusion or waiting period to reinstate coverage upon reemployment.²⁹ However, if you were injured, aggravated an injury, or became ill during the course of your military duty, and such injury or illness was caused by military service, that illness or injury may not be covered under your reinstated health plan.³⁰ Check your individual health plans for details.

Workers’ Compensation

Workers’ compensation law covers injuries that happen on the job. If the Governor activates your National Guard unit for “State Active Duty”, you are covered under the

²⁸ 38 U.S.C. § 4317(a)(2).

²⁹ 38 U.S.C. § 4317(b)(1).

³⁰ 38 U.S.C. § 4317(b)(2).

protections of workers' compensation law.³¹ "State active duty" is defined as "military duty performed in service of the state by a unit or member of the militia under orders issued by the Governor under Article II, § 8 of the Maryland Constitution or § 13-702 of this title."³² You are not covered by workers' compensation during annual training, weekend drills, or federal activation. Injuries suffered under these circumstances are processed through the military disability system. Workers' compensation law is based in state law and may be found at Title 9 of the Labor and Employment Law Article, Annotated Code of Maryland. This area of law is complex and we recommend that you consult an attorney in order to be assured of receiving the maximum available compensation.

In order to be eligible for workers' compensation, or other similar benefits, you must be injured "during the course of employment," which means "while in the course of duty." In order to be covered, the injury must have been accidental, and not due to gross negligence, misconduct, or

³¹ If you are federally activated, you are eligible for analogous benefits under 10 U.S.C. § 1074(a). Maryland law may provide additional protection if you are injured during the course of federal active duty. Md. Code Ann., Pub. Safety § 13-210(A)(3)(ii) states "if a benefit provided by the federal government is less than that provided by the Maryland Workers' Compensation Act, the State and its insurer shall furnish the additional benefit necessary to make up the difference between the benefit provided by the federal government and the similar benefit required by the Maryland Workers' Compensation Act." Accordingly, if you are injured on federal duty, it is worth inquiring into whether you may be eligible for additional benefits by the State.

³² Md. Code Ann., Pub. Safety § 13-101(E)(1).

intoxication on your part. An accidental personal injury means (1) an accidental injury that arises out of and in the course of employment; (2) an injury caused by a willful or neglectful act of a third person directed against a covered employee in the course of the employment of the covered employee; or (3) a disease or infection that naturally results from an accidental injury that arises out of and in the course of employment.³³

The Adjutant General is required to obtain and secure workers' compensation insurance for each officer and enlisted individual of the organized militia while you are on state active duty.³⁴ Workers' compensation is available for injuries, illnesses, or diseases sustained on the job during a period of active duty by order of the Governor.³⁵

How are worker's compensation awards determined?

Worker's compensation awards are based upon your "average weekly wage." Your average weekly wage is the greater of either the wage provided for while on active duty or the actual wages earned by the covered employee in employment of the National Guard." The average weekly wage is computed differently for your civilian job.

³³ Md. Code Ann. Lab. & Empl. § 9-101.

³⁴ See Md. Code Ann., Pub. Safety § 13-210(A)(2); Md. Code Ann., Lab. & Empl. § 9-402(c).

³⁵ Md. Code Ann., Lab. & Empl. § 9-215(a)(2).

Benefits are dispersed based on the type of injury that you have sustained. Benefits are broken down into four categories: temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability. You may also be entitled to vocational rehabilitation benefits and medical expenses. The actual amounts paid can be fairly complex to determine, and, again, you should consult an attorney proficient in workers' compensation law in order to ensure that you receive the benefits to which you are entitled.

Return to Civilian Employment (Reemployment)

Normally, you must request reinstatement within 14 days after completing military duty, if the period of duty lasted from 31 to 180 days. If you were activated for more than 181 days, you have 90 days after completion of duty to request reinstatement. Generally, you must be reinstated to the position you had before your service began if you are still qualified to perform the duties of the position.³⁶ Otherwise, you must be placed in a position (for which you are qualified) of like seniority, status, or pay.³⁷

If you are injured or disabled during military duty, the period of reinstatement to your job may be extended for up to two years.³⁸ However, you must stay in contact with

³⁶ See 38 U.S.C. § 4313.

³⁷ *Id.*

³⁸ 38 U.S.C. § 4312(e).

your employer. The employer must also make reasonable accommodations for you at your job, if the disability or illness is permanent. If the disability renders you unqualified to serve in your former position, and reasonable accommodation is not available, your employer must try to find you another position equivalent in seniority, status, pay and duties of your former position, or a position that is the nearest approximation of the job you once held.³⁹ Under certain circumstances, reemployment may be impossible.⁴⁰ If this is the case, you may be eligible for vocational training, and you will be covered under the Americans With Disabilities Act in terms of most future employment.

PROPERTY INTERESTS

The SSCRA provides special protections for specific consumer transactions and agreements.

Foreclosure

Generally, a creditor cannot sell, foreclose, or seize property during your active military service, or within three months of active military service, unless approved by court order.⁴¹ If you cannot pay your mortgage, you may seek relief from the court if the following apply: you incurred

³⁹ 38 U.S.C. § 4313(a)(3).

⁴⁰ 38 U.S.C. § 4312(d).

⁴¹ 50 U.S.C. App. § 532.

the obligation prior to entering active military service; the obligation is secured by a mortgage or deed of trust; the property is owned by you or your dependent; and you can demonstrate that your active duty military service materially affected your ability to comply with the terms the obligation.⁴²

Leases

You may terminate a lease, **before you enter the property**, if you give the landlord written notice of your intent to terminate the lease agreement and a copy of your orders, and request immediate termination of the lease.⁴³

You do not have to demonstrate that your active duty military service materially affects your ability to pay.⁴⁴

You may be liable to the landlord for damages [equitable relief] if the landlord made substantial modification to the leased premises in anticipation of you occupying the premises.⁴⁵ After you take possession of the property, you may still terminate the lease by giving the landlord written notice of your intent, any time after your military service begins. If your lease provides for the payment of monthly rent, the termination would be effective 30 days after the date on which rent is next due.⁴⁶

⁴² *Id.*

⁴³ 50 U.S.C. App. § 534.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ 50 U.S.C. App. § 534(2). For example, if you deliver a termination letter on July 20 and rent is next due on August 1, the termination will be effective September 1.

Eviction

A court may stay an eviction for up to three months if you or your dependants actually occupy the premises, your rent is less than \$1200 per month, and you demonstrate that your active duty military service materially affected your ability to pay rent.⁴⁷

FAMILY LAW

Alimony & Child Support Obligations

Generally, an attempt to avoid or decrease alimony or child support obligations has had mixed success with the courts.⁴⁸

Nonetheless, a service member making significantly less while serving acting duty may be able to have a court modify the child support order.⁴⁹ Quick action is required on your part, though. While it is possible to obtain retroactive relief for modification of alimony obligations, generally the law only allows retroactive modification of child support obligations for those periods during which a

⁴⁷ 50 U.S.C. App. § 530.

⁴⁸ *Id.*; 54 ALR2d 390 (2003).

⁴⁹ *See, e.g., Rivera v. Zysk*, 766 A.2d 1049 (Md. App. 2001) (Involuntary loss of [income] is a material change in circumstances upon which a court may modify the amount of child support); *Lieberman v. Lieberman*, 569 A.2d 1157 (Md. App. 1990) (finding a material change in circumstances due to a significant change in salary).

petition has been pending with the court.⁵⁰ It is also important to remember that SSCRA protections, with the exception of the statute of limitations tolling, does not apply to any domestic matters pending before administrative proceedings.⁵¹

Divorce & Division of Military Pension

Frequently, when a couple divorces, the most valuable joint property they have, perhaps besides a residence, is the pension(s) to which the spouses are currently entitled, or will receive in the future. The same is true for military personnel. Military pensions are considered to be marital property. Accordingly, if you are enlisted or were commissioned prior to your marriage, any part of your pension you have earned prior to the marriage is not considered to be marital property. However, any pensions earned after your marriage date is considered marital property and is divisible in a divorce proceeding.

Courts have been expressly authorized to treat "disposable retired pay" (pensions) as marital property by the U.S. Congress in the Uniform Services Former Spouses' Protection Act.⁵² Because the definition of "disposable retired pay" is key, that definition is set forth in full:

⁵⁰ 38 U.S.C. § 4312(e).

⁵¹ Study Guide at 2-3.

⁵² 10 U.S.C. § 1408 (c).

The term "disposable retired pay" means the total monthly retired pay to which a member is entitled less amounts which—

(A) are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;

(B) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38;

(C) in the case of a member entitled to retired pay under chapter 61 of this title [10 U.S.C. §§ 1201 et seq.], are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or

(D) are deducted because of an election under chapter 73 of this title [10 U.S.C. §§ 1431 et seq.] to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is

being made pursuant to a court order under this section.⁵³

“Members” entitled to retired pay include National Guard members.⁵⁴

The most important (and most common) deduction that does not constitute “disposable retired pay” and thus is *not* divisible marital property is disability pay. Retired disability pay must be deducted before a determination on the marital portion of retired pay is made.⁵⁵ If there is some question as to whether you are entitled to disability pay as part of your pension, it is preferable that the pension award be expressed in terms of a percentage of the “disposable retired pay.” If the award is expressed in terms of a dollar amount, and disability pay is later awarded, the parties will have to go back into court in order to adjust the amount of the award accordingly.

Once the amount of “disposable retired pay” is determined, the court will then proceed to divide the military pension as it would divide any other pension. People often divorce before the spouse with the pension actually begins receiving it. In such cases, it is very important that the spouse seeking award of the pension, whether or not that pension is military, make a specific request for the division

⁵³ 10 U.S.C. § 1408(a)(4).

⁵⁴ See 10 U.S.C. § 12731; see also 10 U.S.C. § 1408 (pertains to active duty members).

⁵⁵ 10 U.S.C. § 1408 (a) (4)(c).

of pension. If it is not specifically requested, a court is not under an obligation to inquire about it, and any rights to the pension will be lost.

Generally, the formula used to determine a spouse's award to a pension is as follows:⁵⁶

$$\frac{\text{monthly pension amount} \times \text{the \# of months of service}}{\text{employment during the marriage}} \times 50\%$$

TAX ISSUES

Maryland State Taxes⁵⁷

The Revenue Administration Division, State of Maryland, gives effect to the SSCRA in administering Maryland income tax law. Military personnel and civilian spouses who are domiciled in Maryland must file estimated tax returns if their estimated Maryland taxable income, not

⁵⁶ The 50% figure is subject to change, depending on what the court decides is an equitable division of marital property. It is used as an illustration, however, because many divorces result in an equal division of marital property. There is a lengthy discussion of the division of military pensions in Collins v. Collins, 798 A.2d 1155 (Md. App. 2002). This particular case also refers to some other cases concerning division of military pension in Maryland, as well as other states, and it would be good starting point for research in this area.

⁵⁷ See Maryland Income Tax Administrative Release No. 1, Revenue Administration Division, Comptroller of Maryland, Revised July 31, 2001.

subject to withholding, results in a tax liability exceeding \$500.00. Under the SSCRA, “military personnel” who are domiciled in a state other than Maryland and who are transferred to Maryland for military duty are not subject to Maryland taxation on military pay. However, military personnel shall be taxed as a nonresident on that portion of federal adjusted gross income derived from real or personal property located in Maryland, as well as income from business, trade, and occupation in Maryland.

Members of the National Guard are included as military personnel for Maryland tax purposes.

Tax Credits

Two important tax credits are noteworthy which, in effect, reduce the amount of your taxable income. First, you may be eligible for a subtraction of up to \$15,000 of military pay received while in the active service of any branch of the armed services and which is attributable to service outside the boundaries of the United States or its possessions. If your total military pay exceeds \$30,000, you do not qualify for the subtraction.⁵⁸

Second, you may be eligible for a subtraction of up to \$2,500 of military retirement income received during the taxable year. To qualify, you must be at least 55 years old on the last day of the taxable year and you must have been

⁵⁸ See

<http://inviduals.marylandtaxes.com/incometax/military/oversears.asp>.

an enlisted member of the military at the time of retirement. If your federally adjusted gross income exceeds \$22,500, you do not qualify for the subtraction.⁵⁹

Federal Taxes⁶⁰

For federal tax purposes, members of the United States Armed Forces (including commissioned officers and enlisted personnel in all regular and reserve units under the control of the Secretaries of Defense, Army, Navy, Air Force and Coast Guard), must also file federal tax returns by April 15th of each year to report all taxable income from all sources, including military pay. Members of the Armed Forces receive many different types of pay and allowances. Some are included, while others are excluded from gross income. Excluded items are not subject to tax, but may have to be reported on your tax return. Included items are subject to tax and must be reported on your tax return.

Gross income includes the following types of pay unless the pay is earned in “combat zone service:”

1. Basic pay (e.g., active duty, drills, reserve training and training duty);
2. Special pay (e.g., foreign duty, hazardous duty, and medical and dental officers);

⁵⁹ See

<http://individuals.marylandtaxes.com/incometax/military/retirement.asp>.

⁶⁰ See Internal Revenue Service, Armed Forces Tax Guide, Publication Number 3 for 2002 Returns, <http://www.irs.gov/pub/irs-pdf/p3.pdf>.

3. Bonuses; and
4. Miscellaneous payments (e.g., accrued leave, student loan repayment when year's service requirement is not attributable to a combat zone).

Gross income excludes the following types of pay:

1. Compensation for active service while in a combat zone and/or qualified hazardous duty areas;⁶¹
2. Living allowances (e.g., basic allowance for subsistence and housing);
3. Family allowances;
4. Death allowances;
5. Moving allowances;
6. Travel allowances;
7. Other payments (e.g., disability, uniform allowances); and
8. In kind military benefits.

Filing Extensions

Everyone is entitled to an “automatic 4-month extension,” if requested timely. You are eligible for an extension if you file Form 4868 by the tax deadline and pay part or all of the

⁶¹ Combat Zone is defined as any area the President of the United States designates by Executive Order as an area in which the U.S. Armed Forces are engaging or have engaged in combat. You can exclude active duty pay earned in any month you served in a combat zone from your income.

tax you expect to owe. If you are in a combat zone/qualified hazardous duty area, all IRS actions are automatically extended. Your extension is 180 days after the later of:

1. the last day you are in a combat zone or hazardous duty area; or
2. the last day of any continuous qualified hospitalization for injury from service in a combat zone or hazardous duty area.

In addition to the 180 days, your deadline is also extended by the number of days that were left for you to take action with the IRS when you entered the combat zone or hazardous duty area. For example, if you entered the combat zone/hazardous duty area on 01/01/2003 and your filing date was 04/15/2003, three and one-half months (3 ½) will be added to the 180 days when determining your deadline for filing 2002 taxes.

Payment of Taxes

Reservists called to active duty or regular military members may qualify to defer the payment of back taxes. To qualify, you must be serving your initial period of service and you must show that your ability to pay the back taxes has been materially impaired (be able to show that your income dropped as a result of going into military service).

Signing Returns

Generally, you must sign your own return. However, you may grant a Power of Attorney to an agent to file and sign on your behalf. File Form 2848, or utilize your own form, which must contain the information contained in Form 2848.

If a third party signs or files your return on your behalf while you are in a Combat Zone/Qualified Hazardous Duty Area, the IRS will accept a general Power of Attorney or other statement signed by you that authorizes third party to act on your behalf. A copy must be attached to the return.

Your spouse may file or sign your return on your behalf while you are in a Combat Zone/Qualified Hazardous Duty Area if your spouse provides a written statement that you are serving in Combat Zone/Qualified Hazardous Duty Area. Your spouse must sign a statement and attach it to the signed return.

If you sign your own tax return, you may check the “Third party designee” box to authorize the IRS to discuss your return with the named person, if questions arise.

SPECIAL BENEFITS

Scholarship Death Benefit/Edward T. Conroy Memorial Scholarship

Under Maryland law, a scholarship program has been designed and implemented to award educational scholarships to the children or surviving spouse of various military employees and, state or local employees, who died or were disabled, as a result of a military service or while in the line of duty.⁶² The law specifically states that children or surviving spouses of state or local public safety employees are eligible for the scholarships. “State or local public safety employee” includes a person who is a member of the Maryland National Guard who was a resident of the State of Maryland at the time of death. The award is not based on financial need.

Your child or surviving spouse may apply for the scholarship if he or she is a resident of Maryland and is accepted for admission or enrolled at an eligible institution or is enrolled in a 2-year terminal certificate program in which the course work is acceptable for transfer credit for an accredited baccalaureate program in an eligible institution. Your child must be at least 16 years old to take advantage of this scholarship. Additionally, a surviving spouse or child (who is at least 16 years old) of a victim of

⁶² Md. Code Ann., Educ. § 18-601.

the September 11, 2001 tragedies is also eligible for the Edward T. Conroy Memorial Scholarship Program.

Residents of Maryland who attend a Maryland postsecondary institution are eligible for the scholarship award. The amount of the scholarship will be equal to tuition and mandatory fees, but cannot exceed \$7,200 for academic year 2003-2004.

The scholarship is renewable and the student must reapply each year. The recipient may hold the award for 5 years, if a full-time student, or 8 years if a part-time student. The scholarship will be extended to no more than 15 recipients annually.

The total dollar amount of all State scholarships may not exceed the student's cost of attendance or \$15,700, whichever is less. Awards to sons, daughters or spouses of victims of the September 11, 2001 terrorist attacks may not exceed \$15,700 when combined with any other scholarships received by a student based on the student's status as a child or spouse of a victim of the September 11, 2001 terrorist attacks.

Contact the Maryland Higher Education Commission at 800-735-2258 or visit its website: www.mhec.state.md.us for additional information.

Death Benefits

Under Maryland law, a \$100,000 death benefit is paid to the survivor of a member of the National Guard who was killed in the line of duty while serving on State active duty.⁶³ Originally, a member of the National Guard did not have the benefit of the \$100,000 or any federal benefit if killed while on State orders. The terrorism acts of September 11, 2001, emphasized its unfairness and as a result the State of Maryland sought to address the matter by enacting this law in 2002. The objective was to level the field for Maryland National Guard members who could be killed while in the line of duty just as other state law enforcement officers whose survivors received a death benefit. Although the bill became law in the year of 2002, the governor ordered that it be applied retroactively to those members who died in the line of duty on or after September 11, 2001.

The death benefit will not be paid to your survivor if you die as a result of your own negligence. Also, your survivors will not receive the benefit if you are killed in the line of duty and are eligible to receive dependency and indemnity compensation under the rules of the U.S. Department of Veterans Affairs.

⁶³ Md. Code Ann., State Pers. &Pens. § 10-404(b)(3). *See, also* Senate Bill 238, Maryland National Guard Readiness Act.

Payment of the death benefit is to be made to the surviving spouse, or if there is no surviving spouse, to the surviving children ⁶⁴ If there is more than one surviving child, the death benefit shall be divided equally among them. If there are no surviving spouse or children, the death benefit will be paid to the surviving parent(s), if the parent was a dependent pursuant to the IRS.

Dependency and Indemnity Compensation

There is a “dependency and indemnity compensation” payment made to your spouse if you die while on federal active duty. It is payable for life or until your spouse remarries. Compensation is about \$800.00/month plus approximately \$250.00 per child.

⁶⁴ Your surviving child only includes a child 18 years old and under or over or a child over 18 years old if he or she is incapable of self-support because of a physical or mental disability.

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