

PROFESSIONAL LICENSE PORTABILITY FOR SERVICEMEMBERS AND THEIR SPOUSES

1. I have a job that required me to get a professional license. I worked hard for that license but my spouse or I just received military orders to leave the state. Do I have to start all over in the new state and get another license to practice there?

Not necessarily. A provision of the Servicemember Civil Relief Act (SCRA), a federal law, says that in certain circumstances, a servicemember (SM) or the SM spouse who holds a professional license can continue to practice on that license when they move because of military orders (50 U.S.C. 4025a). This law covers a variety of professional licenses, including, but not necessarily limited to licenses to teach, practice nursing, or to provide childcare. So, for example, if you have a professional license in state X, and then you or your spouse is ordered to move to state Y, you may be able to practice in state Y on your existing state X license.

2. OK, so what are the requirements?

The first requirement is that you or your spouse relocated due to military orders. Then you must apply to the licensing authority in the new state and provide them with a copy of those orders.

3. That seems obvious. What else is required?

The professional license involved cannot be a license to practice law. The statute specifically excludes law licenses from its coverage.

4. Interesting. What are the other requirements?

You must be a member in good standing of the profession in every jurisdiction in which you received a license to practice. For example, if you have a license to teach high school math in state X and in state Y, you need to be in good standing in both states to be able to practice in state Z when you move there.

5. That's reasonable. What else?

You need to submit to the authority of the new jurisdiction for purposes of standards of practice, discipline, and the fulfillment of continuing education requirements. In other words, you need to conduct your practice in accordance with the new state's rules. You may be disciplined for violating those rules of practice. Further, if that new jurisdiction requires members of your profession to take classes to keep current, then you need to take those classes too.

6. So far, so good. Any other requirements?

Yes. The law says that you must have actively used the license during the two years preceding the relocation to the new jurisdiction.

7. I'm not sure what that language means. Is it necessary to have used the license continuously for two years before the relocation? Or is it sufficient that I practiced my licensed profession at some point during the previous two years?

The proper interpretation of this language and this requirement was at issue in a federal case (*Hannah Portee v Texas Education Agency, et al*, 1:23-CV-00551-RP, W. Dist. TX, decided July 21, 2023). Mrs. Portee, who had a license to practice as a school counsellor, relocated to be with her husband, Air Force Captain David Portee, who received military assignment orders to Texas. Texas authorities denied Mrs. Portee's application for a counselor certificate that would allow her to work as a guidance counselor in Texas. Texas claimed that Mrs. Portee did not meet the legal requirements because she had not practiced as a school counselor *continuously* for two academic school years before the relocation. Mrs. Portee (and the United States through a Statement of Interest) argued that it was only necessary for the applicant to have used the professional license *at any point* during the preceding two years. The Court agreed with Mrs. Portee.

8. Does the ruling of that Texas court apply to other states?

Not necessarily. However, the ruling of the federal, judge, and the arguments in favor of that ruling, should be very persuasive. The United States, in its brief to the court, argued (a) that if Congress wanted to require applicants to have actively used the license continuously during the two years prior to relocation, it would have said so in the statute, (b) that most court cases interpreting the word "during" have concluded that it mean at some point during the period and not continuously during the period, (c) that when the word "during" is used elsewhere in the SCRA it clearly refers to any point during the period, (d) that Texas' interpretation of the law is inconsistent with the law's purpose, which is to protect servicemembers and their spouses, and (e) that the U.S. Supreme Court has long held that the SCRA should be interpreted liberally in favor of those it is designed to protect.

9. What if my home state has an agreement with other states about practicing my profession?

Such agreements are called Interstate Compacts. If your state of licensure allows you to practice in the state to which you relocate, the rules of practice and terms of the Interstate Compact take precedence over the SCRA. Because the SCRA itself says it does.

10. What can I do if I think the license portability provision of the SCRA is being violated?

Discuss the matter with your military legal assistance attorney or other knowledgeable legal counsel. It may be helpful to bring this article with you to that consultation, since this law is

fairly new (enacted 2023). You can also report violations to the U.S. Department of Justice at <https://civilrights.justice.gov/link/4025A> or <https://www.justice.gov/serviemembers> .

(Revised July 10, 2024; written by Major Michael Archer, USMC-Ret)

The TAKE-1 series of client handouts is a project of the North Carolina State Bar's Standing Committee on Legal Assistance for Military Personnel. For comments or corrections, contact Committee member Mark E. Sullivan at: Mark.Sullivan@ncfamilylaw.com or at 2626 Glenwood Ave. #195, Raleigh, NC 27608 [919-832-8507].