SERVICEMEMBER’S CIVIL RELIEF ACT for LAWYERS

Dwain Alexander, II,
Region Legal Service Office, Mid Atlantic

The views presented are those of the speaker/author and do not necessarily represent the views of DoD or its Components

PURPOSE

To provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and To provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service
PHILOSOPHY

“The Soldiers' and Sailors' Civil Relief Act is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation.”

The SSCRA should be used as a “shield and not a sword” and to oppress the rights of other litigants and third parties.

SCOPE

• Applies to the United States; each of the States, including the political subdivisions thereof; and all territory subject to the jurisdiction of the United States
• Applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act
• Does not apply to criminal proceedings
APPLICATION

• Active Duty (full-time)
• Reserve
  – When on Active Duty >30 days
• National Guard
  – Title 10 War
  – Title 32 if > 30 days and Presidential declared emergency
• Family Members

History and Amendments

• 1812 War
• 1864 Civil War Suspension Laws
• 1918 World War I Equity protections
• 1940 World War II SSCRA
• 1996 Desert Shield/Storm
• 2003 Major Revision SCRA
• 2004 Amendments - Termination of leases
• 2008 Amendments - Child Custody
• 2009 Amendments - Spousal Tax issues
• 2010 Amendments – Private Right / Enforcement
STRUCTURE

I. General Provisions §§ 511-519
II. General Relief §§ 521-527
III. Rent, Installment Contracts, Mortgages, Liens, Assignments, Leases, §§ 531-538
IV. Life Insurance §§ 541-549
V. Taxes and Public Lands §§ 561-571
VI. Administrative Remedies §§ 581-583
VII. Further Relief §§ 591-596
VIII. Civil Liability § 597

General Provisions

• 511 Definitions
• 512 Jurisdiction and applicability of Act
• 516 Extension of rights and protections to Reserves ordered to report
• 517 Waiver of rights pursuant to written agreement
• 518 Exercise of rights under Act not to affect certain future financial transactions
General Relief

• 521 Protection of servicemembers against default judgments
• 522 Stay of proceedings when servicemember has notice
• 523 Fines and penalties under contracts
• 524 Stay or vacation of execution of judgments, attachments, and garnishments
• 526 Statute of limitations
• 527 Maximum rate of interest on debts incurred before military service

RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES

• 531 Evictions and distress
• 532 Protection under installment contracts for purchase or lease
• 533 Mortgages and trust deeds
• 535 Termination of residential or motor vehicle leases
• 535a Termination of telephone service contracts
• 537 Enforcement of storage liens
• 538 Extension of protections to dependents
517

When I rented my apartment the landlord informed me, that to protect my rights I had to sign an acknowledgement of the SCRA and a waiver. If I did not sign, I could not rent the apartment. He said, that State law is the same as the SCRA and the SCRA was not applicable in this State. When I Deployed I could not terminate my lease.

What can I do?
- A servicemember may waive any of the rights and protections provided by this Act
- Any waiver a right provided by this Act that applies to a contract, lease, or similar legal instrument must be in at least 12 point type
- Waiver must be in writing and executed as an instrument separate from the obligation or liability to which it applies if it relates to modification, termination, or cancellation of a contract or an obligation secured interest or the repossession, foreclosure, or sale of property that is security under a contract
- Waiver must be executed during or after the period of military service
- Written agreement shall specify the legal instrument to which the waiver applies
- Look to state law for requirements of a valid waiver

518

I was wounded and declared incompetent for a while. During that time I was not paid. My agent sent letters to all of my creditors explaining my situation and requesting that they suspend penalties, fines and reporting the delinquency until my pay was straightened out. Now my credit is ruined. What can I do?
Application by a servicemember for, or receipt by a servicemember of, a stay, postponement, or suspension pursuant to this Act 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:

(2) With respect to a credit transaction between a creditor and the servicemember (A) a denial, (B) a change, or (C) a refusal

(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.

(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.

521

When I returned from deployment and tried to rent a new apartment, I was told that my credit was bad because I had a judgment from my prior landlord. What happened?

What can I do?
(a) Defendant does not make an appearance
(b) Affidavit requirement
(b)(2) Appointment of attorney to represent servicemember.
(d) **Stay of proceedings**
(g) Vacation or setting aside of default judgments
(1) court entering the judgment shall, upon application by or on behalf of the servicemember, *reopen the judgment* for the purpose of allowing the servicemember to defend the action if it appears that:
   (A) the servicemember was materially affected by reason of that military service in making a defense to the action; and
   (B) the servicemember has a meritorious or legal defense to the action or some part of it.
• If a servicemember who is a defendant in an action covered by this section *receives actual notice* of the action, the servicemember may request a stay of proceeding under section 202

522

I hired a plumber who somehow clogged every drain in the house. I had to pay someone else to fix the damage he did. I had just filed suit when a earthquake hit a small island in the Atlantic. My ship is deploying in five (5) days for assistance and will be gone for 6 months or more. I do not want this guy to get away.

**What can I do?**
Civil action or proceeding in which the plaintiff or defendant at the time of filing an
Application:
– (1) is in military service or is within 90 days after termination of or release from military service; and
– (2) has received notice (actual) of the action or proceeding.
Process:
– (A) A letter setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.
– (B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.
Application:
A servicemember who is granted a stay of a civil action or proceeding under subsection (b) may apply for an additional stay based on continuing material affect of military duty on the servicemember's ability to appear. Such an application may be made by the servicemember at the time of the initial application under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.

While I was stationed in Japan I was sued for rent and damages. When they got the judgment, it included four (4) months of late fees and penalties.

What can I do?

I was injured while on an IA in Afghanistan. While I was hospitalized my pay was stopped and my bills were not paid. I now have 6 months of late fees.

What can I do?
When an action for compliance with the terms of a contract is stayed pursuant to this Act, a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

If a servicemember fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if:

In military service at the time the fine or penalty and ability to perform the obligation was materially affected by military service.

524

The day before I deployed my car was towed and held in storage. I was unable to get the car out during deployment. When I returned I owed $5,535.00 in storage fees. The towing company is suing me for the fees. It does not seem fair that I should have to pay that much: I was deployed.

What can I do?

I fathered a child when I was an E-2 in Guam. The Mother filed for support after the child was born. I was assigned to a ship and left after the child was born. Over the next 12 years I was assigned to various overseas commands and ships. After I made chief I was assigned to NAVSTA Norfolk. I was contacted by DCSE for a support arrearage of $72,000.00. The amount included interest at 9% for 12 years.

What can I do?
(a) Court action upon **material affect** determination
If a servicemember, in the opinion of the court, is materially affected by reason of military service in complying with a court judgment or order, the court may on its own motion and shall on application by the servicemember—

(1) stay the execution of any judgment or order entered against the servicemember; and
(2) vacate or stay an attachment or garnishment of property, money, or debts in the possession of the servicemember or a third party, whether before or after judgment.

(b) Applicability
This section applies to an action or proceeding commenced in a court against a servicemember before or during the period of the servicemember's military service or within 90 days after such service terminates.

---

526
I discovered that the second mortgage on my house from 2010 did not comply with TILA. **What can I do?**

While I was deployed I was sent a notice to verify insurance by the state. I had 60 days to respond. I was deployed for 8 months. The State suspended my license and find me. Total $650.00

**What can I do?**
The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

I purchased my home in 2006 with a variable interest rate loan. In 2009 the rate went up to 12 percent. Mid 2009 to 2013 I was mobilized and had to leave my job as an plant manager in a cheese factory. I can’t afford the payments on the house.

What can I do?
I recently re-enlisted. I had debt prior to my re-enlistment and want to reduce the interest rate on my credit card to six percent. Will the SCRA allow me to reduce the interest rate?

What can I do?
(1) Limitation to 6 percent. An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent

(2) Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.

(3) The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made.

The term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.

531

We had just moved into the apartment and I was about to deploy when the landlord informed us that my husband had a criminal record and we had to leave. He said he was evicting us and we had until the end of the week to vacate the property.

What can I do?
Except by court order, a landlord (or another person with paramount title) may not--

- **(A)** evict a servicemember, or the dependents of a servicemember, during a period of military service of the servicemember, from premises--
  - (i) that are occupied or intended to be occupied primarily as a residence; and
  - (ii) for which the monthly rent does not exceed $2,400, as adjusted under paragraph (2) for years after 2003; or
- **(B)** subject such premises to a distress during the period of military service

---

**532**

Before I joined the military I purchased a 1966 mustang as a fixer upper. I made payments for 4 months and then I was mobilized with 364 day orders. For some reason it took 5 months to start my pay. During that time I did not make payments on the mustang. My mother called and said the guy repossessed and sold my car.

**What can I do?**
(a) Protection upon breach of contract
After a servicemember enters military service, a contract by the servicemember for--

(A) the purchase of real or personal property (including a motor vehicle); or
(B) the lease or bailment of such property, **may not be rescinded or terminated for a breach** of terms of the contract occurring before or during that person's military service, **nor may the property be repossessed** for such breach **without a court order**.

This section applies only to a contract for which a deposit or installment has been paid by the servicemember before the servicemember enters military service.

Court Action

(1) may order repayment to the servicemember of all or part of the prior installments;

(2) may, on its own motion, and shall on application by a servicemember when the servicemember's ability to comply with the contract is materially affected by military service, stay the proceedings

---

**533**

Before I came in to the service, I inherited my grandfather’s house in VA. I took out a mortgage to make repairs. The next year I lost my job decided to join the military. I make a lot less now and have had difficulty paying the mortgage. The mortgage company said they are going to foreclose.

**What can I do?**
This section applies only to an obligation on real or personal property owned by a servicemember that—
(1) originated before the period of the servicemember's military service and for which the servicemember is still obligated; and
(2) is secured by a mortgage, trust deed, or other security

In an action filed during, or within 9 Months after, a servicemember's period of military service to enforce an obligation described in subsection (a), the court may after a hearing and on its own motion and shall upon application by a servicemember when the servicemember's ability to comply with the obligation is materially affected by military service—
(1) stay the proceedings for a period of time as justice and equity require, or
(2) adjust the obligation to preserve the interests of all parties.

A sale, foreclosure, or seizure of property for a breach of an obligation described in subsection (a) shall not be valid if made during, or within 9 months after, the period of the servicemember's military service except—
(1) upon a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court; or

**535**

When I PCS’d to Virginia I rented an apartment. Now I have orders to deploy on the USS Alexander and the landlord will not let me terminate my lease. **What can I do?**

I leased this really cool car in 2013. I just got orders to Italy and the leasing company says I cannot take the car with me or return it to them. **What can I do?**
A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if--

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit or as an individual in support of a military operation for a period of **not less than 90 days**.

termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered

the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of **not less than 180 days**, or

the servicemember, while in military service, executes the lease and thereafter receives military orders –
(i) for a change of permanent station –
   (I) from a location in the continental United States to a location outside the continental United States; or
   (II) from a location in a State outside the continental United States to any location outside that State; or
(ii) to deploy with a military unit or as an individual in support of a military operation for a period of not less than 180 days
535a

My cell phone provider refused to terminate my cell phone contract when I went on an IA to Iraq. What can I do?

A servicemember who receives orders to deploy outside of the continental United States for not less than 90 days or for a permanent change of duty station within the United States may request the termination or suspension of any contract for cellular telephone service entered into by the servicemember before the date of the commencement of such deployment or permanent change if the servicemember's ability to satisfy the contract or to utilize the service will be materially affected by such deployment or permanent change. The request shall include a copy of the servicemember's military orders.
I deployed 8 months ago and left my car at my apartment. While I was gone the car was towed and sold. Now I have a bill for the car and no car to drive.

What can I do?

A person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement.
My spouse is on active duty and deployed. His pay has been messed up since his transfer. We are behind on our bills and being sued. Both our names are on the contracts.

What can I do?

Upon application to a court, a dependent of a servicemember is entitled to the protections of this title if the dependent's ability to comply with a lease, contract, bailment, or other obligation is materially affected by reason of the servicemember's military service.
When my wife and I purchased our vehicle in Virginia we placed the title in both our names. You never know, right! Now, Virginia says we have to pay personal property tax.

**What can I do?**

My wife and I both have the same domicile in Texas. I am currently stationed in VA. She lives here with me and works at Walmart. Virginia is taking out income tax.

**What can I do?**

(2) A spouse of a servicemember shall **neither lose nor acquire** a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders **if the residence or domicile, as the case may be, is the same for the servicemember and the spouse**.

(c) Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States **if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned** because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.

(1) The personal property of a servicemember **or the spouse of a servicemember** shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.
In any proceeding under this Act sections 501 to 596 of this Appendix, a certificate signed by the Secretary concerned is prima facie evidence as to any of the following facts stated in the certificate:

(1) **That a person named is, is not**, has been, or has not been in military service.

The Secretary concerned shall furnish a certificate under subsection (a) upon receipt of an application for such a certificate. A certificate appearing to be signed by the Secretary concerned is prima facie evidence of its contents and of the signer's authority to issue it. [www.dmdc.osd.mil/scra/owa/home](http://www.dmdc.osd.mil/scra/owa/home)
I am a Reservist and an entrepreneur I have several businesses that have been financed with security taken on my personal assets. When I was mobilized I was no longer able to manage my businesses and the banks now want to take my home and property.

What can I do?

(a) Application for relief
A servicemember may, during military service or within 180 days of termination of or release from military service, apply to a court for relief--
(1) from any obligation or liability incurred by the servicemember before the servicemember's military service; or
(2) from a tax or assessment falling due before or during the servicemember's military service.

(A) In the case of any other obligation, liability, tax, or assessment, the court may grant a stay of enforcement--
(i) during the servicemember's military service;
(B) Any stay under this paragraph shall be--
(i) for a period of time equal to the period of the servicemember's military service or any part of such period; and
(ii) subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination or release from military service, or the date of application, in equal periodic installments during this extended period at the rate of interest as may be prescribed for this obligation, liability, tax, or assessment, if paid when due, and subject to other terms as may be equitable.
While not in a drill status I started a web design and IT consultation business. I structured the business as a LLC and obtained loans to finance operations. I secured some with the business assets (servers, computers) other loans I secured with my home. I was later mobilized and not able to run the business, generate a profit, or pay the bills. Now the one of the banks want to foreclose on my house.

What can I do?

(a) Availability of non-business assets to satisfy obligations:

If the trade or business (without regard to the form in which such trade or business is carried out) of a servicemember has an obligation or liability for which the servicemember is personally liable, the assets of the servicemember not held in connection with the trade or business may not be available for satisfaction of the obligation or liability during the servicemember's military service.
597a

I know my rights under the SCRA were violated, but I am just an E-2 and do not know what to do. I cannot afford an attorney. It's not fair and I need help.

What can I do?

Any person aggrieved by a violation of this Act [50 U.S.C. App. §§501 et seq.] may in a civil action –

(1) obtain any appropriate equitable or declaratory relief with respect to the violation; and

(2) recover all other appropriate relief, including monetary damages.

(b) Costs and attorneys fees. The court may award to a person aggrieved by a violation of this Act who prevails in an action brought under subsection (a) the costs of the action, including a reasonable attorney fee.
Questions

• Dwain Alexander, II
dwain.alexander@cox.net

The views presented are those of the speaker/author and do not necessarily represent the views of DoD or its Components