# THE SERVICEMEMBERS CIVIL RELIEF ACT

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I. INTRODUCTION

A. This outline provides a brief summary of the key protections of the Servicemembers Civil Relief Act (SCRA). The outline addresses most of the major provisions/protections of the Act, but does not address every provision/protection. For example, the outline does not address some of the more obscure provisions of the SCRA such as rights in public lands, mining claims, mineral permits/leases and land rights. Further, the outline does not provide detailed commentary or review, and omits citations to case law or other sources related to the Act. For a detailed summary of the SCRA, to include analysis and relevant case law, see JA 260, The Servicemembers Civil Relief Act Guide, dated March 2006. JA 260 is currently being updated, and should be available by the summer of 2011. This 2011 update will include all changes since the last publication in March 2006. The current version of JA 260 does not include SCRA updates from 2008 through present. Accordingly, please use this outline only as a starting point to being your research. It should not be used as an authority.

B. Organization of the SCRA.


2. The SCRA has seven titles:
   
   Title I:   General Provisions (50 U.S.C. App. §§ 511-519);
   Title II:  General Relief (50 U.S.C. App. §§ 521-527);
   Title III: Rent Installment Contracts, Mortgages, Liens, Assignments, Leases (50 U.S.C. App. §§ 531-538);
   Title IV:  Life Insurance (50 U.S.C. App. §§ 541-549);
   Title V:   Taxes and Public Lands (50 U.S.C. App. §§ 561-571);
   Title VI:  Administrative Remedies (50 U.S.C. App. §§ 581-583)

II. GENERAL AND MISCELLANEOUS PROVISIONS


1. 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
2. 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.

B. Application and Jurisdiction

1. The SCRA is applicable in the United States, in each of the States (including all political subdivisions) and in all territories subject to the jurisdiction of the United States.

2. Applicable in all civil and administrative proceedings. Not applicable in criminal proceedings.

3. Applicable to all agencies of the federal government.

C. Who Receives the Protections

1. Applicable to members of the Armed Forces when they are on active duty. Also applies to commissioned officers of the Public Health Service, and commissioned officers of the National Oceanic and Atmospheric Administration when they are on active duty.

2. Reserves: Applicable to members of the Army, Navy, Air Force, Marine Corps, and Coast Guard Reserves when they are on active duty. Does not apply when they are on inactive duty status, such as weekend drill duty.

3. National Guard: Applicable to Guardsmen activated under federal calls to active duty. Also applicable when in a Title 32 status for more than thirty days in response to a presidential declaration of national emergency. The SCRA does not apply to Guardsmen during state activations or in most traditional, routine Title 32 periods.

4. Civilians and Contractors: Does not apply to civilian employees of the armed services, contract surgeons, and employees of government contractors.

D. Start and Termination of Protections

1. Start of Protections: SCRA’s protections commence no later than when a person enters active duty service. In addition, Reserve Component personnel are entitled to most of the Act’s “rights and protections” on the date they receive active duty orders.
2. Termination of Protections: The SCRA’s coverage normally terminates “on the date the servicemember is released from military service (i.e. active duty service) or dies while in military service.”

E. The Concept of “Material Effect”

a. The concept of material effect is embodied in many of the Act’s relief provisions. Some protections require a showing that military service has materially affected the servicemember’s rights or legal standing.

b. Key issue: Does military service prejudice the Soldier’s ability to comply with the obligation, such as appear in court, pay a creditor, pay rent, make a payment on a contract, etc.

F. Waiver of Benefits - 50 U.S.C.S. app. § 517

1. Criteria: A waiver of rights under the SCRA is effective only if in writing and executed as an instrument separate from the obligation or liability to which it applies. It must be executed during or after the servicemember’s period of military service, and must be in “12 point type.”

2. Although a servicemember might waive in writing certain benefits of the Act, s/he does not thereby waive all other rights under the Act.

G. Enforcement and Remedies

1. Enforcement by the Attorney General – 50 U.S.C.S. app. § 597. The Attorney General may commence a civil action in federal district court against any person who (1) engages in a pattern or practice of violating the SCRA, or (2) engages in a violation of the SCRA that raises an issue of significant public importance. A court may grant equitable or declaratory relief, money damages, civil penalties of up to $110,000, or any other appropriate relief.

2. Private Right of Action – 50 U.S.C.S. app. § 597a. Any person aggrieved by a violation of the SCRA may, in a civil action, (1) obtain any appropriate equitable or declaratory relief, and (2) recover all other appropriate relief, including monetary damages. A court may award costs and attorney fees.

4. Knowing violations of many sections of the SCRA carry the potential of misdemeanor criminal liability. Fines pursuant to title 18, U.S. Code, and imprisonment for up to one year are possible. Certain knowing violations of Sections 531, 532, 533, 535, 536, and 537 carry the potential for criminal liability. See United States v. McLeod, 2008 WL 114789 (W.D. Mich. Jan. 9, 2008) (landlord who improperly evicted a Soldier’s family in violation of the SCRA was sentenced to 6 months confinement and ordered to pay $15,300 restitution).

III. PROCEDURAL PROTECTIONS


1. This provision covers two issues: 1) requirements for a plaintiff to move for a default judgment; and 2) criteria a servicemember must meet in order to reopen a default judgment.

2. Moving for a Default Judgment: Before judgment in any civil action or proceeding, if there is a default of any appearance by the defendant, the plaintiff must file an affidavit stating facts showing whether the defendant is in military service, not in the military service or whether the defendant’s status cannot be determined.
   a. If the servicemember is absent, then the court must look to appoint an attorney for the absent servicemember.
   b. The requirement for the plaintiff to file an affidavit kicks in when “the defendant does not make an appearance.”

3. Criteria for a servicemember to reopen a default judgment.
   a. The servicemember has ninety days from end of the active duty service to file an application to reopen the default judgment.
   b. The default judgment must have been rendered against the defendant servicemember during his/her period of active duty service or within sixty days thereafter.
   c. The servicemember must not have made an appearance in the case.
d. The servicemember’s military service must be shown to have materially affected his or her ability to defend the suit.

e. Must have a meritorious or legal defense to the action.

B. Stays of Civil and Administrative Proceedings - 50 U.S.C. app. § 522

1. Stay Basics. A servicemember may request a stay of any civil action or administrative proceeding for not less than 90 days if:

a. He/she is on active duty or is within 90 days after release or termination from active duty.

b. He/she has received notice of the action or proceeding.

2. Stay requirements.

a. The servicemember must send “a letter or other communication” to the court/proceeding explaining how the servicemember’s military duty requirements materially affect his/her ability to appear, and stating when the servicemember will be available to appear.

b. The request must include a letter or other communication from her/his commander stating that the servicemember’s current duty prevents appearance and that military leave is not authorized.

3. Additional stays. A servicemember can ask for an additional stay by providing similar proof that led to the initial stay.
C. Protection of Persons Secondarily Liable on Servicemember’s Obligation - 50 U.S.C. app. § 513

1. Subsections 513(a) and 513(b) of the Act provide those persons who are either primarily or secondarily liable with a servicemember on an obligation or liability with the same rights to delay actions and vacate judgments available to servicemembers.

2. The court in its discretion may grant stays, postponements, or suspensions of suits or proceedings to sureties, guarantors, endorsers, accommodation makers, and others.

3. Codefendants are not covered by Section 513. See Section 525 of the Act.

D. Stay/Vacation of Execution of Judgments, Attachments - 50 U.S.C. app. § 524

1. Authorizes a court to stay execution of a judgment or order entered against a servicemember. Also authorizes a court to vacate or stay an attachment or garnishment on a servicemember’s property.

2. The same basic rules for granting stays under section 522 apply (good faith, material effect, and the suit giving rise to the judgment must have commenced prior to, during, or within 90 days after military service).

E. Tolling of the Statue of Limitations - 50 U.S.C. app. § 526

1. Tolls statutes of limitation during the period of active duty of any military plaintiff or defendant.

2. No requirement to show material effect.

3. Applies to state/municipal governments, as well as probate, bankruptcy and administrative proceedings, such as boards of correction of military records and the Merit Systems Protection Board. Inapplicable, however, to periods of limitations imposed by federal internal revenue laws.
IV. EVICTIONS, LEASES, CELL PHONE CONTRACT TERMINATION, INSTALLMENT CONTRACTS, MORTGAGES AND SIMILAR PROTECTIONS

A. Eviction and Distress - 50 U.S.C. app. § 531

1. To evict a servicemember and/or dependents, a landlord must obtain a court order. This section does not preclude eviction, but sets up the process through which that remedy must pass. As of January 2011, applies to rentals not to exceed $2,975.54. Amount changes each year based on the annual adjustment for inflation as published yearly in the Federal Register.

2. Stay provision: Upon the servicemember’s or family member’s request and upon a showing that there is material effect, the court must stay the proceeding for roughly ninety days.

B. Residential Lease Terminations - 50 U.S.C. app. § 535

1. Servicemembers may terminate residential leases (as well as professional, business, agricultural and similar leases) under the following conditions:
   a. The lease was executed prior to active duty service, or
   b. While on active duty, the servicemember executes a lease and thereafter receives PCS orders, or
   c. While on active duty the servicemember executes a lease and thereafter receives orders to deploy for 90 days or more.

2. Joint leases with dependents: Termination of a lease pursuant to the SCRA shall terminate any obligation a dependent may have under the lease.

3. The lessor may not impose an early termination charge, but any taxes, summonses, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, that are due and unpaid at the time of termination of the lease shall be paid to the lessee.

C. Automobile Lease Terminations - 50 U.S.C. app. § 535

1. May terminate an auto lease under the following conditions:
a. Lease was executed prior to active duty service and thereafter the servicemember entered military service under an order to active duty specifying a period of not less than 180 days, or

b. While on active duty, the servicemember executes a lease and thereafter receives orders to PCS from either (1) a location in the continental United States to a location outside the continental United States, or (2) from Alaska or Hawaii to anywhere, or

c. While on active duty the servicemember executes a lease and thereafter receives orders to deploy for 180 days or more.

2. The lessor may not impose an early termination charge, but any taxes, summonses, title and registration fees, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear or use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

D. Cellular Telephone Contract Termination - 50 U.S.C. app. § 535a

1. Servicemembers may terminate or suspend cellular telephone contracts if the servicemember receives orders to relocate for a period of not less than 90 days to a location that does not support the contract.

2. Notice. The servicemember must provide written or electronic notice of the termination and a copy of the servicemember’s orders. The provider must then provide the servicemember with written or electronic notice of the servicemember’s cellular telephone rights under the SCRA.

3. To be eligible for termination, the servicemember must have entered into the contract prior to receiving relocation orders

4. Prohibits early termination charges or reactivation fees.

5. “Family Plans.” If a servicemember is eligible to terminate a cell phone contract, “any individual” who entered into a cell phone contract in which a servicemember was the beneficiary can terminate the contract:

a. With respect to the servicemember if the servicemember is eligible to terminate the contract;

b. With respect to all of the designated beneficiaries of such contract if all such beneficiaries accompany the servicemember during the servicemember’s period of relocation.
E. Installment Contracts - 50 U.S.C. app. § 532

1. Applicability. Applies only to a contract for which a deposit or installment has been paid by the servicemember before entering active duty.

2. Court order required to rescind/terminate installment contracts: A contract for the purchase of real or personal property (including a motor vehicle) or 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 active duty service, without a court order.

3. Court order required to repossess: Real or personal property (including a motor vehicle) purchased under a contract may not be repossessed for breach of contract without a court order.

4. Stay protection: This section also contains a provision calling for a stay in a proceeding involving an installment contract. A court can grant this relief on its own motion, but it must take action at the request of a servicemember following a showing of material effect. The court may also make other disposition as is equitable to preserve the interests of all parties.

F. Mortgage Protections - 50 U.S.C. app. § 533

1. Applicability: Applies to purchases of real or personal property that a servicemember makes prior to entry on active duty that are secured by a mortgage or trust deed.

2. Court order required for foreclosure: If a servicemember breaches the obligation, a sale, foreclosure, or repossession action is not valid unless there is a court order or a waiver from the servicemember.

3. Protection extends for nine months beyond the period of active duty. The additional nine months beyond the period of active duty protection is in effect until 31 December 2012.

4. Stay protection: This section also contains a provision calling for a stay in a proceeding to foreclose or to enforce a mortgage obligation. A court can grant this relief on its own motion, but it must take action at the request of a servicemember following a showing of material effect. The court may also make an equitable adjustment.
G. Appraisals Following Foreclosure and Repossession - 50 U.S.C. app. § 534

1. This section is designed to provide supplemental relief for all parties when an installment contract or other obligation for purchase of personal property has been stayed under other sections of the SCRA. In such a case, the court may appoint three disinterested parties to appraise the property.

2. Based on the appraised value, the court may order whatever sum, if any, it believes is representative of the servicemember’s equity to be paid to the servicemember or the servicemember’s dependent. This payment may be made a condition precedent to foreclosing the mortgage, terminating the contract, or permitting the vendor to resume possession of the chattel.

H. Storage Liens - 50 U.S.C. app. § 537

1. Court order required for foreclosure or enforcement. A person holding a lien on the property or effects of a servicemember may not, during any period of active duty 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.

2. Applicability: Pertains to the foreclosure of liens for storage of household goods or other personal property. The term “lien” includes a lien for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason.

3. Stay protection: This section also contains a provision calling for a stay in a proceeding to foreclose or enforce a lien. A court can grant relief on its own motion, but it must take action following a showing of material effect. The court may also make an equitable adjustment.

I. Anticipatory Relief - 50 U.S.C. app. § 591

1. A court may suspend enforcement of all or any portion of any obligation or liability that arose prior to entry on active duty, or any tax or assessment falling due either before or during service. This section provides a means by which a person in military service may orderly liquidate obligations and liabilities affected by that service. It permits the servicemember to initiate the action instead of waiting for the creditor to commence proceedings. The section is divided into two categories.

   a. Obligations incurred “for the purchase of real estate or secured by a mortgage or other instrument in the nature of a mortgage upon real estate,” and
b. Any other obligation, liability, tax, or assessment.

2. The servicemember must apply to the court during his/her active duty service, or within six months thereafter, and must show material effect.

V. TAXATION AND VOTING RIGHTS


1. Military income is deemed earned in the state of domicile (home state), even though servicemember is assigned for duty in another state. Only the state of domicile may tax military income.

2. Personal property (such as a motor vehicle) is deemed located in the state of domicile (home state) rather than in the host state where the servicemember is actually stationed. Thus, ad valorem personal property taxes imposed by the host state, whether on motor vehicles or other personal property, are prohibited by the SCRA.

3. Spousal income is deemed earned in the state of domicile IF the spouse is in the duty state solely to be with the servicemember AND the spouse’s domicile is the same as the servicemember’s domicile. Thus, if the above prerequisites are met, the spouse does not have to pay income taxes for income earned in the duty state.

4. Spousal personal property is deemed located in the state of domicile (as in para 2 above, IF the spouse is in the duty state solely to be with the servicemember AND the spouse’s domicile is the same as the servicemember’s domicile. Thus, if the above prerequisites are met, personal property taxes on the spouse are subject to the same rule as para 2 above.


1. This section defers collection of any income tax, federal or state, on military or nonmilitary income, falling due either before or during active duty service. Note: This section grants relief from tax collection but not from filing returns.

2. The servicemember must show material effect.

3. This section may have utility for servicemembers deployed to non-combat zones and at such times when it may be difficult for them to file tax returns.
C. Non-Income Personal and Real Property Taxes - 50 U.S.C. app. § 561

1. A servicemember’s real or personal property may not be sold to enforce the collection of a tax or assessment except by court order.

2. If the court orders a sale, it must find that military service does not materially affect the servicemember’s ability to pay the unpaid tax.

3. In cases where the property may be lawfully sold to satisfy taxes or assessments, section 561(c) gives the servicemember time in which to redeem the property. Redemption action must begin within 180 days after termination of or release from military service, or a later date if a greater redemption period is authorized by the laws of the state or territory.


1. Servicemembers:
   a. For voting purposes, a servicemember neither acquires nor loses residence or domicile solely by residing in a given state pursuant to military orders.
   b. Unless the servicemember takes affirmative steps to register to vote in the host state, the servicemember’s home state registration remains valid.

2. Spouses: For voting purposes, spouses neither acquire nor lose residence or domicile solely by residing in a given state for the purposes of accompanying a servicemember spouse who is absent FROM THE SAME STATE in compliance with military orders. Thus, if the spouse is domiciled in the same state as the servicemember, the spouse may continue to vote in that state although living in another state with the servicemember on military orders.

VI. FINANCIAL PROTECTIONS

A. Six Percent Interest Cap - 50 U.S.C. app. § 527

1. Allows a servicemember to reduce interest on debts that existed prior to entry on active duty to 6 percent.
a. For obligations or liabilities other than mortgages, the protection remains for the period the servicemember is on active duty. For mortgages, the protection remains for the period of active duty AND for one year thereafter.

b. Forgiveness of Interest. Interest at a rate in excess of 6 percent per year is forgiven, not deferred.

c. Prevention of acceleration of principal. The amount of any periodic payment due under the terms of the obligation or liability must be reduced by the amount of the interest forgiven.

2. Written Notice and orders: The servicemember must provide to the creditor written notice and a copy of the military orders calling the servicemember to active duty not later than 180 days after the date of the servicemember’s termination or release from military service.

3. Creditor protection. A court may grant a creditor relief from the 6 percent provision if the court finds that the servicemember’s ability to meet the obligation is not materially affected by military service.

4. As of August 15, 2008, federally-insured student loans are covered by the 6 percent interest rate cap.

B. Fines and Penalties on Contracts - 50 U.S.C. app. § 523

1. When compliance with the terms of a contract is stayed pursuant to the SCRA, no fine or penalty shall accrue by reason of failure to comply during the period of the stay.

2. When no stay exists and a fine or penalty is imposed for nonperformance, the court can relieve enforcement if the person was on active duty when the penalty was incurred and his ability to pay or perform was materially impaired.

3. Examples: This section can be applicable to late charges on an installment contract, early termination penalties for an automobile lease with an option to purchase clause, or to a delinquency fine on a promissory note. In these cases, the court must conclude that the maker’s active duty service impaired the ability to pay.

1. This protection precludes negative fallout from a servicemember’s resort to the Act’s other benefits and protections. Use of the protections of the SCRA shall not itself (without regard to other considerations) provide the basis for any of the following:

   a. A denial or revocation of credit by the creditor;

   b. A change by the creditor in the terms of an existing credit arrangement;

   c. A refusal by the creditor to grant credit to the servicemember in substantially the amount or on substantially the terms requested;

   d. 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;

   e. A refusal by an insurer to insure the servicemember;

   f. 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;

   g. A change in the terms offered or conditions required for the issuance of insurance.

2. A basic protection would prevent a creditor, for example, from making an adverse entry on a servicemember’s credit report because of the reduction in interest on a servicemember’s debts to six percent.


1. If the trade or business of a servicemember has an obligation/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/liability during active duty service.

2. The servicemember’s non-trade or business assets are protected while the servicemember is on active duty regardless of whether the military service has materially affected the servicemember’s ability to meet the obligation.
VII. INSURANCE

A. Life Insurance - 50 U.S.C. app. § 541-549

1. Life Insurance in General. The SCRA’s life insurance provisions are designed to provide a means by which any person entering active duty may apply for continued protection by commercial life insurance. Upon proper application, a servicemember may have the premiums and interest for certain types of commercial life insurance guaranteed for his/her “period of military service and for two years thereafter.” Prerequisites:

   a. The servicemember must have taken out the policy and paid one premium not less than 180 days before the date the insured entered active duty.

   b. The total amount of life insurance coverage protection may not exceed $250,000, or an amount equal to the Servicemember’s Group Life Insurance maximum limit, whichever is greater, regardless of the number of policies submitted.

   c. The insured servicemember must repay the unpaid premiums and interest no later than two years after the expiration of his/her term of active duty.

2. This protection does not require a showing of material effect.

B. Health Insurance Reinstatement - 50 U.S.C. app. § 594

1. Servicemembers are entitled to have their civilian health insurance reinstated when they return to civilian life following periods of active duty.

2. This protection is very similar to the protections found under the Uniformed Services Employment and Reemployment Rights Act (USERRA). In fact, USERRA is the governing provision for servicemembers participating in employer-offered health plans.

C. Professional Liability Protection - 50 U.S.C. app. § 593

1. Provides that professional liability insurance can be suspended during a period of active duty service for certain professions.

2. Applies to servicemembers engaged in health care (such as doctors and nurses) or legal services (such as attorneys) and to other professions determined by the Secretary of Defense to be professional services.