

SERVICEMEMBERS CIVIL RELIEF ACT

Passed in December of 2003, and found at 50 U.S.C. App Section 501-596, the Servicemembers Civil Relief Act (SCRA) completely restates and renames the old act: the Soldiers' and Sailors' Relief Act of 1940 (SSCRA). The act protects Active military members (including reservists, National Guardsmen, commissioned officers of the Public Health Service and of the National Oceanic and Atmospheric Administration who are in active federal service). Family members of these individuals are also eligible for some of the benefits of the Act.

Up until the passage of the SCRA, the basic protections of the SSCRA for the servicemember (SM) included:

1. Postponement of civil court hearings when military duties materially affected the ability of a SM to prepare for or be present for civil litigation;
2. Reducing the interest rate to 6% on pre-service loans and obligations;
3. Barring eviction of a SM's family for nonpayment of rent without a court order for monthly rent of \$1,200 or less;
4. Termination of a pre-service residential lease; and
5. Allowing SMs to maintain their state of residence for tax purposes despite military reassignment to other states.

The SSCRA, enacted in 1940 and updated after the Gulf War in 1991, was still largely unchanged as of 2003. The SCRA was written to clarify the language of the SSCRA, to incorporate many years of judicial interpretation of the SSCRA and to update the SSCRA to reflect new developments in American life since 1940. Here's an overview of what the SCRA does:

GENERAL RELIEF PROVISIONS, CIVIL SUITS

1. The SCRA expands the application of a SM's right to stay court hearings to include administrative hearings. Previously only civil courts were included, and this caused problems in cases involving administrative child support determinations as well as other agency determinations which impacted servicemembers. Criminal matters are still excluded.
2. Section 109 of the SCRA defines a "legal representative" of the SM as either "[a]n attorney acting on the behalf of a servicemember" or "[a]n individual possessing a power of attorney." Under the SCRA a servicemember's legal representative can take the same actions as a servicemember.

3. The former statute referred to "dependents" and provided several protections that extended to them, but it never defined the term. Section 101(4) of the SCRA now contains a definition of the term "dependent." This includes anyone for whom the SM has provided more than half of his or her support during the 180 days before an application for relief under the SCRA. This is intended to include dependent parents and disabled adult children.

4. There are several provisions regarding the ability of a court or administrative agency to enter an order staying, or delaying, proceedings. This is one of the central points in the SSCRA and now in the SCRA --- the granting of a continuance which halts legal proceedings.

5. In a case where the SM lacks notice of the proceedings, the SCRA requires a court or administrative agency to grant a stay (or continuance) of at least 90 days when the defendant is in military service and --

a. the court or agency decides that there may be a defense to the action, and such defense cannot be presented in the defendant's absence, or

b. with the exercise of due diligence, counsel has been unable to contact the defendant (or otherwise determine if a meritorious defense exists).

6. In a situation where the military member has notice of the proceeding, a similar mandatory 90-day stay (minimum) of proceedings applies upon the request of the SM, so long as the application for a stay includes --

a. a letter or other communication that: i. states the manner in which current military duty requirements materially affect the SM's ability to appear, and ii. gives a date when the SM will be available to appear, and

b. a letter or other communication from the SM's commanding officer stating that:

1. the SM's current military duty prevents appearance, and

2. that military leave is not authorized for the SM at the time of the letter.

7. An application for an additional stay may be made at the time of the original request or later. If the court refuses to grant an additional stay, then the court must appoint counsel to represent the SM in the action or proceeding.

8. An application for a stay does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense as to lack of personal jurisdiction). Previously the recommended practice was to avoid having the military attorney or the SM request a stay out of concern that the court might consider the stay request as a general appearance. Section 202(c) of the SCRA eliminates this concern. This new provision makes it clear that a stay request "does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense."

9. Section 201 of the SCRA clarifies how to proceed in a case where the other side seeks a default judgment (that is, one in which the SM has been served but has not entered an appearance by filing an answer or otherwise) if the tribunal cannot determine if the defendant is in military service.

10. The Act clarifies the rules on the 6% interest rate cap on pre-service loans and obligations by specifying that interest in excess of 6% per year must be forgiven. The absence of such language in the SSCRA had allowed some lenders to argue that interest in excess of 6% is merely deferred. It also specifies that a SM must request this reduction in writing and include a copy of his/her military orders. Once the creditor receives notice, the creditor must grant the relief effective as of the date the servicemember is called to active duty. The creditor must forgive any interest in excess of the six percent with a resulting decrease in the amount of periodic payment that the servicemember is required to make. The creditor may challenge the rate reduction if it can show that the SM's military service has not materially affected his or her ability to pay.

RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS AND LEASES

11. The SSCRA provided that, absent a court order, a landlord may not evict a servicemember or the dependents of a servicemember from a residential lease when the monthly rent is \$1200 or less. Section 301 of the SCRA modifies the eviction protection section by barring evictions from premises occupied by SMs for which the monthly rent does not exceed \$2,400 for the year 2003. Section 301 also provides a formula to calculate the rent ceiling for future years. Using this formula, the 2009 monthly rent ceiling was \$2932.31.

12. A substantial change is found in Section 305 of the Act. Previously the statute allowed a servicemember to terminate a pre-service "dwelling, professional, business, agricultural, or similar" lease executed by or for the servicemember and occupied for those purposes by the servicemember or his dependents. It did not provide help for the SM on active duty who is required to move due to military orders. Section 305 remedies these problems. Under the old SSCRA, a lease covering property used for dwelling, professional, business, agricultural or similar purposes could be terminated by a SM if two conditions were met: a. The lease/rental agreement was signed before the member entered active duty; and b. The leased premises have been occupied for the above purposes by the member or his or her dependents.

13. The section still applies to leases entered into prior to entry on active duty. It adds a new provision, however, extending coverage to leases entered into by active duty servicemembers who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of 90 days or more.

14. It also adds a new provision allowing the termination of automobile leases (for business or personal use) by SMs and their dependents. Pre-service automobile leases may be canceled if the SM receives orders to active duty for a period of 180 days or more. Automobile leases entered into while the SM is on active duty may be terminated if he or she receives PCS orders to a location outside the continental United States or deployment orders for a period of 180 days or more.

LIFE INSURANCE

15. Life insurance companies cannot terminate coverage or require payment of additional premiums if you are in military service. Increases in premiums based on age in individual term insurance is not covered by SCRA. An insurer also may not limit or restrict coverage for any activity required by military service.

TAXES

16. The SCRA adds a provision that would prevent states from increasing the tax bracket of a nonmilitary spouse who earned income in the state by adding in the service member's military income for the limited purpose of determining the nonmilitary spouse's tax bracket. This practice has had the effect of increasing the military family's tax burden.

17. The Military Spouses Residency Relief Act (MSRRA), passed in November 2009, amends the Servicemembers Civil Relief Act (SCRA) to provide that the spouse of a military member does not lose or acquire a residence/domicile for purposes of taxation (both income and personal property) by reason of being absent or present in a tax jurisdiction of the United States solely to be with the Soldier in compliance with the Soldier's military orders if the residence/domicile of the spouse and Soldier is the same.

18. The Internal Revenue Service and state and local taxing authorities must defer your income taxes due before or during your military service if your ability to pay the income tax is materially affected by military service. No interest or penalty can be added because of this type of deferral.

FURTHER RELIEF

19. The new Act adds legal services as a professional service specifically named under the provision that provides for suspension and subsequent reinstatement of existing professional liability (malpractice) insurance coverage for designated professionals serving on active duty. The SSCRA specifically named only health care services for protection in the 1991 amendment. The insurance provider would be responsible for any claims brought as a result of actions prior to the suspension. The carrier would not

charge premiums during the period of suspension, and must reinstate the policy upon the request of the professional. Legal services have been covered since 3 May 1999 by Secretary of Defense designations. The SSCRA permitted such a Secretarial designation, but Section 592 of the SCRA clarifies this area.

20. Historically, the SSCRA applied to members of the National Guard only if they were serving in a Title 10 status. Effective 6 December 2002, the SSCRA protections were extended to members of the National Guard called to active duty for 30 days or more pursuant to a contingency mission specified by the President or the Secretary of Defense. This continues in the SCRA.

21. If you own a small business, your nonbusiness assets and military pay are protected from creditors while you are on active duty. This applies to business debts or obligations.

22. Like your tax residency, your residency for state, federal or local voting purposes is unaffected by your absence from the state due to military service. Similar protections exist for spouses.

WAIVERS OF RIGHTS UNDER SCRA

It is possible to waive your rights under the SCRA. Only written waivers signed during or after a servicemember's period of military service are effective. If you sign a waiver of your SCRA rights before you enter military service, the waiver will be considered invalid. Whether you are considering signing a waiver document at any time, either before, during or after military service, it is extremely important to read the document carefully and sign only after obtaining the advice of a qualified attorney.

Legal Assistance Can Help

If you have questions concerning this matter, please call the Presidio of Monterey Legal Assistance Office to schedule an appointment. Our office numbers are: (831) 242-5084/5083.