

## REGION LEGAL SERVICE OFFICE MID-ATLANTIC, LEGAL ASSISTANCE

### SERVICEMEMBERS CIVIL RELIEF ACT OF 2003 (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA))

The Servicemembers Civil Relief Act of 2003 (SCRA), formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), is a federal law that gives all military members some important rights as they **enter active duty**. It covers such issues as rental agreements, security deposits, prepaid rent, eviction, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosure, civil judicial proceedings, and income tax payments. It also provides many important protections to military members while on active duty.

The SCRA is applicable to each and every state, territory, and political subdivision of the United States. It will supersede state laws that conflict with the provisions of the SCRA

The SCRA applies to any judicial (court) proceeding and to any administrative (state or federal agency – e.g., Internal Revenue Service, Department of Motor Vehicles, Department of Child Support Enforcement) proceeding. The protections of the SCRA do not apply to criminal proceedings. Changes to the SCRA in 2010 provide for courts to award attorney fees and court costs in cases where the servicemember suffered damages because of violations of the Act.

**The SCRA protects** active duty military members and reservists or members of the National Guard called to active duty (starting when on active duty for more than 30 consecutive days) and, in limited situations, dependents of military members (e.g., certain eviction actions).

To receive protection under some parts of the SCRA, the member must be prepared to show that military service has had a "material effect" on the legal or financial matter involved. Protection under the SCRA must be requested during the member's military duty or within 30 to 180 days after military service ends, depending on the protection being requested.

In many situations, the SCRA protections are not automatic, but require some action to invoke the Act. For example, to obtain a reduction of your pre-active duty mortgage or credit card interest rates, you should send your lender/creditor a written request and a copy of your mobilization orders.

**Legal advice available.** If you think that you have rights under the SCRA that may have been violated, or that you are entitled to be shielded from a legal proceeding or financial obligation by the SCRA protections, you should discuss the matter with a [\*legal assistance attorney\*](#) or a civilian lawyer as soon as possible.

#### **The Six Percent Rule**

Service members can reduce pre-service consumer debt and mortgage interest rates to 6% under certain circumstances.

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Consider this example: Three months ago Mr. Smith and his wife bought a car for \$13,000, paying \$1,000 down and financing \$12,000 at 9% interest. Last week, Mr. Smith was called to active duty as Staff Sergeant (SSG) Smith. **Before** entering active duty Mr. Smith earned \$40,000 per year. As a staff sergeant he now earns almost \$25,000. Because of the SCRA, SSG Smith may ask the car financing company to lower the interest rate to 6% while he is on active duty -- military service has *materially affected* his ability to pay since he is earning less money on active duty than before. SSG Smith should inform the finance company of his situation in writing with a copy of the orders to active duty attached, and request immediate confirmation that they have lowered his interest rate to 6% under the SCRA. The finance company must adjust the interest down to 6% unless it goes to court. In court, the finance company, not SSG Smith, would have to prove that SSG Smith's ability to pay the loan has not been materially affected by his military service. The 3% difference is forgiven or excused, and SSG Smith need not pay that amount. SSG Smith does need to continue making the monthly payments of principal and interest (at 6%) to avoid his account being considered delinquent. Continuing payments should also avoid any adverse credit reports from the finance company. (See Section 207, SCRA)

**Note:** In some situations civilian employers have agreed to pay the military member the difference between the military pay and the civilian pay earned **before** the call to active duty. In most such situations, military service has not materially affected the member's ability to pay so it is unlikely that the SCRA 6% interest limitation applies. Of course, if the military member's expenses increased (for example, the member must pay for a second apartment at the duty station, or the member's spouse gave up her job to move with him) military service might have materially affected the member and the SCRA 6% interest limit could apply.

What if instead of buying the car before he came on active duty, SSG Smith left his car at home for his wife and purchased a used car at his duty station. To do so, he borrowed \$4,000 at 9% interest. Since SSG Smith took this debt **after** entering active duty the SCRA 6% interest limit does not apply.

#### **Delay of Court and Administrative Proceedings**

Active duty service members, who are unable to appear in a court or administrative proceeding due to their military duties, can postpone the proceeding for a mandatory minimum of ninety days upon the service member's request. The request must be in writing and (1) explain why the current military duty materially effects the service members ability to appear, (2) provide a date when the service member can appear, and (3) include a letter from the commander stating that the service member's duties preclude his or her appearance and that he is not authorized leave at the time of the hearing. This letter or request to the court will not constitute a legal appearance in court. Further delays may be granted at the discretion of the court, and if the court denies additional delays, an attorney must be appointed to represent the service member. (See Section 202, SCRA)

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#### **Termination of Leases**

The SCRA allows termination of leases by active duty service members who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of 90 days or more. The SCRA also includes automobiles leased for personal or business use by service members and their dependents. The pre-service automobile lease may be cancelled if the service member receives active duty orders for a period of one hundred and eighty (180) days or more. The automobile lease entered into while the service member is on active duty may be terminated if the service member receives PCS orders to a (1) location outside the continental United States or (2) deployment orders for a period of one hundred and eighty days or more. (See Section 305, SCRA)

#### **Eviction for Nonpayment of Rent**

Although the SCRA does not excuse soldiers from paying rent, it does afford some relief if military service makes payment difficult. Military members and their dependents (in their own right) have some **protection from eviction**. (See Section 301, SCRA)

The landlord must obtain a court order to evict a military member or his/her dependents. The court must find the member's failure to pay is **not** materially affected by his/her military service. Material effect is present where the service member does not earn sufficient income to pay the rent. Where the member is materially affected by military service, the court *may* stay the eviction (three months unless the court decides on a shorter or longer period in the interest of justice) when the military member or dependents request it. There is no requirement that the lease be entered into before entry on active duty, and the court could make any other "just" order under § 301 of the SCRA. The requirements of this section are:

- (1) The landlord is attempting eviction during a period in which the service member is in military service or after receipt of orders to report to duty;
- (2) The rented premises is used for housing by the spouse, children, or other dependents of the service member; and
- (3) **The agreed rent does not exceed \$2,400 per month**. Soldiers threatened with eviction for failure to pay rent should see a legal assistance attorney. (The amount is subject to change in future years and as of 2011 the ceiling is \$2975.54)

#### **Default Judgment Protection**

If a default judgment is entered against a service member during his or her active duty service, or within 60 days thereafter, the SCRA allows the service member to reopen that default judgment and set it aside. In order to set aside a default judgment, the service member must show that he or she was prejudiced by not being able to appear in person, and that he or she has good and legal defenses to the claims against him/her. The service member must apply to the court for relief within 90 days of the termination or release from military service. (See Section 201, SCRA).

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#### **Life Insurance Protection**

The SCRA also permits the service member to request deferment of certain commercial life insurance premiums and other payments for the period of military service and two years thereafter. If the Department of Veteran Affairs approves the request, the United States will guarantee the payments, the policy shall continue in effect, and the service member will have two years after the period of military service to repay all premiums and interest. The SCRA increases the amount of insurance this program will cover to the greater of \$250,000.00 or the maximum limit of the Service members Group Life Insurance. (See Section 401, SCRA)

#### **State Taxation Clarification**

The SCRA provides that a nonresident service member's military income and personal property are not subject to state taxation if the service member is present in the state only due to military orders. The state is also prohibited from using the military pay of these nonresident service members to increase the state income tax of the spouse. (See Section 511, SCRA)

#### **Health Insurance Reinstatement**

The SCRA further provides for the reinstatement of any health insurance upon termination or release from service. The insurance must have been in effect before such service commenced and terminated during the period of military service. The reinstatement of the health insurance is not subject to exclusions or a waiting period if the medical condition in question arose before or during the period of service, the exclusion or waiting period did not apply during coverage, and the medical condition has not been determined by the Secretary of the Veteran Affairs to be a disability incurred or aggravated by military service. The reinstatement of health insurance protection does not apply to a service member entitled to participate in employer-offered insurance (See rules regarding employer offered health insurance care in the Uniformed Services Employment and Re-employment Act). And finally, the service member must apply for the reinstatement of the health insurance within 120 days after termination or release from military service. As always submit such request to the insurance company in writing with a copy of the orders for active duty and release from active duty. (See Section 704, SCRA)

[DefenseLINK](#) offers information on how to obtain *Soldier's and Sailors Certificates*, often required before a default judgment may be approved when suing a member of the military. Presumably these certificates are still applicable under the SCRA when signed by the Secretary concerned.

Want to know more? Read the [SCRA Website](#) and the [SSCRA/SCRA Reference Guide](#).

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