

## Servicemembers Civil Relief Act Replaces Soldiers' and Sailors' Civil Relief Act

John T. Meixell  
Office of the Judge Advocate General  
U.S. Army  
Legal Assistance Policy Division

On December 19, 2003, President Bush signed Public Law Number 108-189<sup>1</sup>, a major amendment to the Soldiers' and Sailors' Civil Relief Act (SSCRA)<sup>2</sup>. Prior to these changes, the last major revision of the SSCRA occurred in 1940.<sup>3</sup> Other than minor changes in 1942 and 1991, the current version largely reflects the Act as written in 1918.<sup>4</sup> Now, after over sixty years, a complete revision and update of the SSCRA has been enacted. The President's signature relegates the SSCRA to history and we will now operate under the new Servicemembers Civil Relief Act (SCRA)<sup>5</sup>.

The SCRA reflects the combined effort of the House and Senate Committees on Veterans Affairs and will serve as a source of important protections for our servicemembers, active and reserve, in the future. Much of the resulting legislation reflects a 1991 Department of Defense draft revision of the SSCRA, which was updated in 2002. The three goals of this draft were: "to make the Act easier to read and understand by clarifying its language and putting it in modern legislative drafting form; to incorporate into the Act many years of judicial interpretation; and to update the Act to take into account generally accepted practice under its provisions and new developments in American life not envisioned by the original drafters."<sup>6</sup> The resulting SCRA accomplishes these three goals.

This note will not attempt to review the history of this legislation or analyze the new law. It is only intended to alert practitioners to some of the more important provisions of this legislation. Citations in this article to the SCRA refer to the sections of the final version of H.R. 100. Even experienced practitioners

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<sup>1</sup> Servicemembers Civil Relief Act, Pub. L. No. 108-189 (2003).

<sup>2</sup> 50 U.S.C. app. sections 501-594 (2000).

<sup>3</sup> Act of October 17, 1940, ch. 888, 54 Stat. 1178 (codified as amended at 50 U.S.C. app. sections 501-593 (1994)).

<sup>4</sup> Admin. & Civil L. Dep't, The Judge Advocate General's School, US Army, JA 260, The Soldiers' and Sailors' Civil Relief Guide (July 2000) (providing a brief historical review of the SSCRA).

<sup>5</sup> Pub. L. No. 108-189 (2003). Section 1(a) provides that the act shall be known as the "Servicemembers Civil Relief Act."

<sup>6</sup> Memorandum, Colonel Steven T. Strong, Director, Legal Policy, Office of the Under Secretary of Defense (Personnel & Readiness), to Service Legal Assistance Chiefs (October 3, 2001) (on file with author).

under the SSCRA will have to acquaint themselves with these new section numbers.<sup>7</sup>

## TITLE I--GENERAL PROVISIONS

The SCRA definition of “military service” incorporates the changes made to the SSCRA in 2002.<sup>8</sup> This extends coverage to members of the National Guard serving “more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds”.<sup>9</sup> Prior to the 2002 amendment, the SSCRA only applied to members of the National Guard if they were serving in a Title 10 status. The SCRA applies to National Guard personnel serving in either Title 10 status or Title 32 status as defined in the Act.

Next, the SCRA expands the definition of “court” to include “an administrative agency of the United States or of any State”.<sup>10</sup> Previously, the SSCRA did not apply to administrative hearing. The increasingly widespread use of administrative hearings had left a large gap in the intended protection of servicemembers. This extension to administrative proceedings is emphasized again when the SCRA specifically defines its applicability as including “any judicial or administrative proceeding commenced in any court or agency”.<sup>11</sup>

Finally, Section 109 of the SCRA adds a provision concerning a legal representative of the servicemember. A legal representative is defined 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.<sup>12</sup> Also, the SSCRA referred to dependents, but never defined the term. Section 101(4) of the SCRA now contains a definition of the term “dependent.”<sup>13</sup>

## TITLE II--GENERAL RELIEF

Section 201 of the SCRA establishes requirements that must be met before a court can enter a default judgment. This complete revision of the corresponding provision of the SSCRA clarifies the procedures required before a court can enter a default judgment but provides little substantive change. One addition is language defining when a court should grant a stay when the defendant is in military service and has not received notice of the proceedings.<sup>14</sup>

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<sup>7</sup> The appendix to this article provides a cross-reference between some of the more frequently used sections of the SSCRA and the new SCRA.

<sup>8</sup> Veteran Benefit Act of 2002, Pub. L. No. 107-330, 116 Stat. 2820 (2002).

<sup>9</sup> Pub. L. No. 108-189 section 101(2)(A)(ii) (2003).

<sup>10</sup> *Id.* section 101(5).

<sup>11</sup> *Id.* section 102(b).

<sup>12</sup> *Id.* section 109(b).

<sup>13</sup> *Id.* section 101(4).

<sup>14</sup> *Id.* section 201(d).

The court must grant a stay for at least ninety days upon request of the court appointed attorney if there may be a defense which cannot be presented in the absence of the servicemember, or the attorney has been unable to contact the servicemember to determine the existence of a defense. This stay procedure is unrelated to the new required stay procedures where the servicemember has received actual notice of the proceedings and requests a stay.<sup>15</sup>

The SSCRA gave the court discretion to grant a stay of proceedings when the servicemember's military service materially affected his ability to participate in the case.<sup>16</sup> The SCRA substantially revises this provision, mandating an initial stay. Additionally, the previously discussed extension of the SCRA to administrative hearings expands the reach of this stay provision to include administrative proceedings. The SCRA mandates an automatic stay for at least ninety days upon the servicemember's request.<sup>17</sup> The request<sup>18</sup> must explain why the current military duty materially effects the servicemember's ability to appear, provide a date when the servicemember can appear, and include a letter from the commander stating that the servicemember's duties preclude his appearance and that he is not authorized leave at the time of the hearing. Prior practice discouraged a direct application to the court for a stay in fear that the court may treat such a request as an appearance. Section 202(c) of the SCRA eliminates this concern. This new provision makes clear that a request for a stay "does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense."<sup>19</sup> Servicemembers who remain unable to appear may use similar procedures to request further stays at the discretion of the court.<sup>20</sup> In another new requirement, the court must appoint counsel to represent the servicemember if the court denies the request for an additional stay.<sup>21</sup>

The six percent interest cap<sup>22</sup> was one of the most frequently used provisions of the SSCRA. This provision requires the reduction of interest on any pre-service loan to six percent. One area of ambiguity was whether the interest in excess of six percent is forgiven, deferred, or subject to some other treatment. Section 207 of the SCRA resolves this issue. It also, for the first time, details the steps that a servicemember must take to obtain the interest rate reduction. The servicemember must make a written request to reduce the interest to six percent and include a copy of his applicable active duty orders.<sup>23</sup> Once the creditor receives notice, the creditor must grant the relief effective as of the date the

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<sup>15</sup> *Id.* sections 201(e) & (f).

<sup>16</sup> 50 U.S.C. app. section 521 (2000).

<sup>17</sup> Pub. L. No. 108-189 section 202(b)(1) (2003).

<sup>18</sup> *Id.* section 202(b)(2). As a condition to stay proceedings, the statute requires a written request.

*Id.*

<sup>19</sup> *Id.* section 202(c).

<sup>20</sup> *Id.* section 202(d)(1).

<sup>21</sup> *Id.* section 202(d)(2).

<sup>22</sup> 50 U.S.C. app. section 526 (2000).

<sup>23</sup> Pub. L. No. 108-189, section 207(b)(1) (2003).

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.<sup>24</sup> As under the SSCRA, the creditor may avoid reducing the interest rate to six percent only if it can convince a court that the servicemember's military service has not materially affected the servicemember's ability to pay.<sup>25</sup>

### TITLE III--RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES

Section 300 of 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.<sup>26</sup> The SCRA increases the applicable rent ceiling to \$2400 per month for the year of 2003.<sup>27</sup> The Act provides a formula to calculate the rent ceiling for subsequent years.<sup>28</sup> Using this formula, the 2004 monthly rent ceiling is \$2465.<sup>29</sup>

Perhaps the most significant changes are found in Section 305 of the SCRA. Its counterpart in the SSCRA 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.<sup>30</sup> This provision did not provide any relief to an active duty soldier required to move due to military orders. It also failed to address automobile leases. Section 305 remedies these problems. Leases covered under Section 305 include the same range of leases that the SSCRA covered.<sup>31</sup> The section still applies to leases entered into prior to entry on active duty.<sup>32</sup> 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 ninety days or more.<sup>33</sup> The section also contains a totally new provision addressing automobiles leased for personal or business use by servicemembers and their dependents.<sup>34</sup> Servicemembers may cancel pre-service automobile leases if the servicemember receives orders to active duty for a period of one hundred and eighty days or more.<sup>35</sup> Also, servicemembers may terminate automobile leases entered into while the servicemember is on active duty if the servicemember

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<sup>24</sup> *Id.* sections 207(a)(2) & (3).

<sup>25</sup> *Id.* section 207(c).

<sup>26</sup> 50 U.S.C. app. section 530 (2000).

<sup>27</sup> Pub. L. No. 108-189 section 301(a)(1)(A)(ii) (2003).

<sup>28</sup> *Id.* section 301(a)(2).

<sup>29</sup> E-mail, Colonel Steven T. Strong, Director, Legal Policy, Office of the Under Secretary of Defense (Personnel & Readiness), (December 31, 2003) (on file with author).

<sup>30</sup> 50 U.S.C. app. section 534.

<sup>31</sup> Pub. L. No. 108-189 section 305(b)(1) (2003).

<sup>32</sup> *Id.* section 305(b)(1)(A).

<sup>33</sup> *Id.* section 305(b)(1)(B).

<sup>34</sup> *Id.* section 305(b)(2).

<sup>35</sup> *Id.* section 305(b)(2)(A).

receives PCS orders to a location outside the continental United States or deployment orders for a period of one hundred and eighty days or more.<sup>36</sup>

#### TITLE IV--LIFE INSURANCE

Article IV of the SSCRA permits servicemember to request deferments of certain commercial life insurance premiums and other payments for the period of military service and two years thereafter. If the Department of Veterans Affairs approves the request, the United States will guarantee the payments, the policy shall continue in effect, and the servicemember will have two years after the period of military service to repay all premiums and interest.<sup>37</sup> The total amount of life insurance that this program could cover was limited to \$10,000.<sup>38</sup> The SCRA increases this total amount to the greater of \$250,000 or the maximum limit of the Servicemembers Group Life Insurance.<sup>39</sup>

#### TITLE V--TAXES AND PUBLIC LANDS

The important changes within this Title are found in Section 511, Residence for Tax Purposes. The SSCRA provided that a nonresident servicemember's military income and personal property are not subject to state taxation if the servicemember is present in the state only due to military orders.<sup>40</sup> Some states, however, have included the amount of the nonresident servicemember's military income when calculating the applicable state income tax bracket for the servicemember's spouse. The result often places the spouse in a higher tax bracket. Thus, while the military income is not directly taxed, the servicemember and spouse pay more in state income tax than if the state did not consider the servicemember's military pay. This practice will end as Section 511(d) of the SCRA precludes states from using the military pay of nonresident servicemembers to increase the state income tax of the nonresident servicemember or spouse. Section 511 also contains a new provision that clarifies that the protections of this section extend to servicemembers who are legal residents of a Federal Indian reservation.<sup>41</sup>

The remaining changes in this Title are minor. Most of the changes merely clarify language and update the legislative format. The SRCA eliminates three sections of the SSCRA relating to homestead rights to public lands<sup>42</sup> as the programs no longer exist.

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<sup>36</sup> *Id.* section 305(b)(2)(B).

<sup>37</sup> 50 U.S.C. app. sections 540-547 (2000).

<sup>38</sup> *Id.* section 541.

<sup>39</sup> Pub. L. No. 108-189 section 402(c) (2003).

<sup>40</sup> 50 U.S.C. App section 514 (2000).

<sup>41</sup> Pub. L. No. 108-189 section 511(e).

<sup>42</sup> 50 U.S.C. App. sections 502, 503, and 510 (2000).

## TITLE VI--ADMINISTRATIVE REMEDIES

Changes within this Title merely clarify language and update the legislative format.

## TITLE VII--FURTHER RELIEF

The final significant change will have special meaning to reserve judge advocates. The 1991 amendment to the SSCRA<sup>43</sup> allowed an individual with a pre-service professional liability (malpractice) insurance policy to suspend such coverage during the period of active military service. The insurance provider is responsible for any claims brought as a result of actions prior to the suspension. The insurance provider would not charge premiums during the period of suspension, and must reinstate the policy upon the request of the professional. This provision applied to a person “engaged in the furnishing of health-care services or other services determined by the Secretary of Defense to be professional services.”<sup>44</sup> Mobilization orders since 1991 contain Secretarial determination that legal services are “professional services.” The SCRA eliminates the need to include this provision in mobilization orders by modifying the definition of a person covered to specifically include a servicemember providing legal services.<sup>45</sup> The remaining changes within this Title merely clarify language and update the legislative format.

## CONCLUSION

The SCRA’s changes represent a long overdue update to the important protections that the SSCRA provided to servicemembers. With the prospect of continued mobilizations and deployments, our servicemembers will increasingly rely on the improved protections of the SCRA. Legal assistance attorneys must become familiar with these changes and update their SSCRA correspondence to reflect these new provisions. It will become progressively more important to educate judges, attorneys, landlords, lessors, lenders, and other affected parties of these new provisions. Hopefully this note is a first step in this process.

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<sup>43</sup> *Id.* section 592.

<sup>44</sup> *Id.* section 592(a)(2)(A).

<sup>45</sup> Pub. L. No. 108-189 section 703(a)(2)(A) (2003).

## SSCRA/SCRA Reference Guide

<u>Provision</u>	<u>SSCRA Section</u>	<u>50 U.S.C. App.</u>	<u>SCRA Section</u>
Definitions	101	510	101
Application & Jurisdiction	102	512	102
Persons Liable on SM's Obligation	103	513	103
Waiver of Benefits	107	517	107
Effect on Future Financial Acts	108	518	108
Legal Representatives	N/A	N/A	109
Default Judgments	200	520	201
Stay of Proceedings	201	521	202
Statute of Limitations	205	525	206
Maximum Rate of Interest	206	526	207
Eviction and Distress	300	530	301
Installment Contracts	301	531	302
Mortgage Foreclosures	302	532	303
Termination of Leases	304	534	305
Extension to Dependents	306	536	308
Residence for Tax Purposes	514	574	511
Anticipatory Relief	700	590	701
Professional Liability Protection	702	592	703
Reinstatement of Health Insurance	703	593	704
Residency for Voting	704	594	705