

The Servicemembers Civil Relief Act
(SCRA)

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50 USCA
Chapter 50,
sec. 3901 - 4043

- 50 USCA sec. 3902:

“The purposes of this chapter are--

(1) to provide for, strengthen, and expedite the national defense through protection extended by this chapter 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.”

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“The SCRA provides protections for servicemembers in the event that their military service impedes their ability to meet financial obligations incurred before entry into active military service. Forgiving of all debts or the extinguishment of contractual obligations on behalf of servicemembers who have been called up for active duty is not required, nor is absolute immunity from civil lawsuits provided.

Instead, the act suspends civil claims against servicemembers and protects them from default judgments.

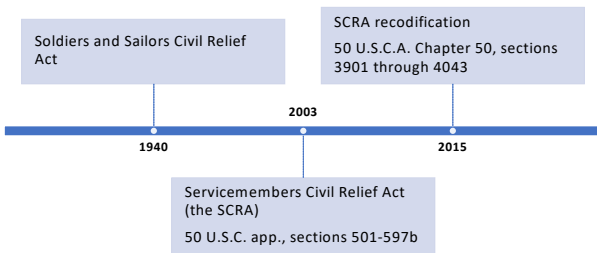
The SCRA includes provisions that prohibit the eviction of military members and their dependents from rental or mortgaged property; create a cap on interest at 6% on debts incurred prior to an individual entering active duty military service; protect against the cancellation of life insurance or the non-reinstatement of health insurance policies; allow some professionals to suspend malpractice or liability insurance while on active duty; and proscribe taxation in multiple jurisdictions and forced property sales in order to pay overdue taxes.

The U.S. Attorney General is authorized to commence a civil action to enforce provisions of the SCRA. Additionally, servicemembers and their dependents have the right to commence a civil action, that is, a private cause of action, to enforce protections afforded them under the SCRA.”

The Servicemembers Civil Relief Act (SCRA): An Explanation
Congressional Research Service, report for Congress, August 27, 2014

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History....



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LeMaistre v. Leffers,
331 US 1 (1948)

The Soldiers' and Sailors' Civil Relief Act should be interpreted by courts with "an eye friendly to those who dropped their affairs to answer their country's call."



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Topics for today



The SCRA's procedural requirements

When a defendant has not made an appearance
When a servicemember requests a stay



Overview of the SCRA's substantive protections for servicemembers

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The SCRA does not apply to criminal proceedings
50 USCA 3912 (b)

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Who is covered?

50 USCA 3911(2); 10 USCA 101:
Members of the Army, Navy, Air Force, Marine Corps, Space Force and Coast Guard on active duty;
Members of the National Guard who have been called to active duty for over 30 days;
Commissioned members of the Public Health Service and the National Oceanographic and Atmospheric Administration; and
The above servicemembers absent from duty on account of sickness, leave, or other lawful causes.

NC GS 127B-25 through 36: The North Carolina Servicemembers Civil Relief Act
A servicemember, as defined in 50 U.S.C. § 3911(1), who resides in this State.
A member of the North Carolina National Guard.

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Procedural protections

Section 3931

- Applies in any civil case
- Applies when the defendant has not made an appearance

Section 3932

- Applies in any civil case when servicemember has notice of the proceedings, and
- Requests a stay

Two sections are mutually exclusive, not cumulative

- 50 USCA 3932(e)
- 50 USCA 3931(e) and (f)

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When a defendant has not made an appearance.....

Section 3931

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Section 3931

- (a) **Applicability of section.** This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.
- (b) **Affidavit requirement.**
 - (1) **Plaintiff to file affidavit.** In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—
 - (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or
 - (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

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The image shows a legal form titled "STATE OF NORTH CAROLINA" and "In the General Court of Justice". The form is for a "SERVICE MEMBERS CIVIL RELIEF ACT DECLARATION". It includes fields for "County", "Plaintiff", and "Defendant". Below these fields is a "DECLARATION" section with numbered instructions for the plaintiff to complete. A "NOTE" at the bottom explains the purpose of the form and the consequences of not providing an affidavit.

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Information About Servicemembers Civil Relief Act Affidavits And Declarations

1. **Plaintiff to file affidavit/declaration**
 In any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit:
 - (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or
 - (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.
 50 U.S.C. 3931(b)(1).
2. **Appointment of attorney to represent defendant in military service**
 If in a civil action or proceeding in which the defendant does not make an appearance it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember. 50 U.S.C. 3931(b)(2).
 State funds are not available to pay attorneys appointed pursuant to the Servicemembers Civil Relief Act. To comply with the Federal Uniform Appellate Waiver Act and in consideration of 50 U.S.C. 3931(b)(2), and 50 C.F.R. 101-11.6, plaintiffs in Chapter 58B, Chapter 50C, and Chapter 50D proceedings should not be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. Plaintiffs in other types of actions and proceedings may be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. The allowance or disallowance of the ordering of costs will require a case-specific analysis.
3. **Defendant's military status not ascertained by affidavit/declaration**
 If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable provision of a political subdivision of a State. The court may issue such orders or other judgments as the court determines necessary to protect the rights of the defendant under this Act. 50 U.S.C. 3931(b)(3).
4. **Satisfaction of requirement for affidavit/declaration**
 The requirement for an affidavit above may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury. 50 U.S.C. 3931(b)(4). The presiding judicial official will determine whether the submitted affidavit is sufficient.
5. **Penalty for making or using false affidavit/declaration**
 A person who makes or uses an affidavit permitted under 50 U.S.C. 3931(b) (or a statement, declaration, verification, or certificate as authorized under 50 U.S.C. 3931(b)(4)) knowing it to be false shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year.

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When defendant has not made an appearance....

- If affidavit shows defendant is not in the military:
 - Case may proceed as usual
- If affidavit shows defendant is in the military:
 - Court must appoint an attorney for servicemember
 - 90-day stay may be required
- If court is unable to ascertain whether defendant is in the military:
 - Case may proceed as normal
 - Court may require plaintiff to post a bond

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Section 3931(b)(2)

- **Appointment of attorney to represent defendant in military service.** If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

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Section 3931(d)

- In an action covered by this section in which the defendant is in military service, the court **shall** grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, **or on the court's own motion**, if the court determines that—
 - (1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or
 - (2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

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Issues

- Does the affidavit have to be filed with the complaint?
- Can the plaintiff testify instead of executing the affidavit?
- What does the affidavit have to say?
- Can I enter an ex parte TRO before the affidavit is filed and before I appoint counsel?
- What is the role of appointed counsel?
- How is appointed counsel paid?
- If a stay is granted, does that mean I cannot do anything?
- Is an order/judgment void if these procedures are not followed?

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When a defendant requests a stay.....

Section 3932

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Section 3932(b)

(1) Authority for stay. At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and **shall**, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.



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Section 3932(b)

(2) Conditions for stay. An application for a stay under paragraph (1) shall include the following:

(A) A letter or other communication 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.

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Initial stay

- If statutory conditions are met, initial stay is mandatory

- See *Johnson v. Johnson*, 940 N.W.2d 807 (Mich. App. 2019)

- *In re Branch*, 367 N.C. 733 (2015)

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Section 3932(d): Additional stay

"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 effect 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."

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Section 3932(d)

- Additional stays are required only if court determines that military duty has "continuing material effect ... on the servicemembers' ability to appear."

- See *George P. v. Superior Ct.*, 127 Cal.App.4th 216 (2005)



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Determined on a case-by-case basis

"Where, by continuing the trial of the case, servicemember would have ample time to arrange for a leave or furlough to attend the trial in person or to be deposed by videotaped deposition or otherwise, needs and interests of all parties would be accommodated and servicemember's conduct of his defense would not be materially affected, so stay of proceedings was not required."

- *Keefe v. Spangenberg*, 533 F.Supp. 49 (W.D. Oklahoma, 1981)

"In an action for a small amount of damage to an automobile and the rights of plaintiff would not be prejudiced by a stay, and defendant servicemember was on maneuvers, it was an abuse of discretion not to grant a stay until such time as the servicemember could obtain a furlough in order to attend the trial."

- *Smith v. Sanders*, 168 SW2d 359 (1943)

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Section 3932(d): Additional stay

Appointment of counsel when additional stay refused. If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

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Statutes of Limitations

50 USCA 3936

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- **(a) Tolling of statutes of limitation during military service**
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.
- **(b) Redemption of real property**
A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.
- **(c) Inapplicability to internal revenue laws**
This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

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Tolling of limitation periods

- Applies in actions by or against a servicemember
 - *Beaver v. Fountain*, 208 NC App 174 (2010)
- But see *Kegley v. City of Fayetteville*, 170 NC App 656 (2005)(SCRA did not apply to toll time limit to object to city annexation ordinance)

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Stay on execution of judgments

50 USCA 3934

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• Stay or vacation of execution of judgments, attachments, and garnishments

• (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.

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Substantive Protections for Servicemembers

And sometimes their dependents

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- Interest rate limitation
Section 3937
- Eviction protections (dependents)
Section 3951
- Right to terminate contracts, including leases (dependents)
Sections 3955, 3956, 3957
- Limitations on installment sales contracts
Section 3952
- Limitations on the enforcement of storage liens
Section 3958

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