

## I. The Servicemembers' Civil Relief Act (SCRA).

A. 50 U.S.C. App. §§ 501-596 Public Law 108-189, Effective December 19, 2003

### B. Resources

1. North Carolina Legal Assistance to Military Personnel (LAMP) Committee
  - a) Website ([www.nclamp.gov](http://www.nclamp.gov))
  - b) Other Resources: "A Judge's Guide to the SCRA" by COL (Ret.) Mark Sullivan
2. The Judge Advocate General's Legal Center and School
  - a) Website (<http://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/Main?OpenFrameset>)
  - b) Publications: scroll down to "Legal Assistance" and click on JA 260 (March 2006)
3. Certificates of Service §582
  - a) <https://www.dmdc.osd.mil/scra/owa/scra.home>
  - b) Prima facie evidence as to all aspects of a person's military service or non-service
  - c) Member who is missing in action is presumed to continue in service until accounted for

### C. Previously known as the Soldiers' and Sailors' Civil Relief Act (SSCRA)

1. Complete revision of the SSCRA
2. Clarifies the language of the SSCRA
3. Incorporates and codifies decades of SSCRA caselaw
4. Technical revisions made in December 2004
5. More changes made in 2008

### D. Purpose of the SCRA

1. Provide for strengthen and expedite the national defense through protection extended by this Act to service members of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and
2. Provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of service members during their military service.

### E. The "Must-have" case cites in ANY SCRA complaint

1. **Boone v. Lightner** 319 U.S. 561, 575 (1943): "Protect those who have been obliged to drop their own affairs to take up the burdens of the nation."
2. **Le Maistre v. Leffers** 333 U.S. 1, 6 (1948): "The Act should be read with an eye friendly to those who have dropped their affairs to answer their country's call."

### F. Key Protections

1. Alters conventional contracts
2. Prevents default judgments except in accordance with its provisions
3. Allows for termination of residential and automobile leases

4. Reduces most pre-service debt to 6% interest rate
5. Anticipatory relief (instead of filing bankruptcy)
6. Private causes of action recognized
7. Criminal sanctions for Title III violations (same as SSCRA)
8. Mandatory 90-stay of proceedings (no longer discretionary as in SSCRA)

G. Definitions §§511, 512, 513, 516

1. Servicemember: Active Duty, Reservists and Guard under Title 10, National Guard under Title 32, Public Health Service Officers, National Oceanic and Atmospheric Officers
2. Dependents: Member's spouse or child, Person for whom member provided more than ½ support for 180 days preceding application for relief under the Act
3. Courts: All Courts (including bankruptcy), All Administrative agencies, whether or not of record (Expansion from SSCRA)
4. Judgment: Any judgment, decree, order or ruling, final or temporary
5. Jurisdiction: All civil courts which would otherwise have jurisdiction (All means ALL)
6. Persons Secondarily Liable: If court grants relief to the member, the relief may also be granted to persons primarily or secondarily liable with the member (surety, guarantor, endorser, accommodation maker, comaker (not included under SSCRA), or any other person who may be primarily or secondarily subject to the obligation or liability.

H. Waiver of Rights §517

1. May waive
2. Waiver must be in separate writing (12-point font)
3. Forbids boilerplate waivers
4. Must be made during or after period of service, **no** pre-service waivers

I. Nondiscrimination §518 – Claiming rights under the SCRA may not be the basis for:

1. Determination by the lender that the member is unable to pay
2. Denial or revocation of credit
3. Change in terms of existing credit arrangement
4. Refusal to grant credit
5. Adverse credit report
6. Refusal by insurer to insure member
7. Changing the conditions or terms of insurance
8. Identifying service member as member of the National Guard or Reserves

J. Legal Representatives §519: Recognizes a legal representative, an attorney or someone possessing a power of attorney (added to SSCRA)

K. Extension of Protection to citizens of U.S. serving with allied forces if service is similar to military service §514

L. Title I – General Provisions

1. Persons protected and jurisdiction
2. Non-discrimination provision

M. Title II – General Relief

1. Default judgments §521
  - a) Applies only if member has not appeared
  - b) The court SHALL reopen a default judgment entered while member is on active duty or within 60 days thereafter when:
    - (1) Member applies while on active duty or within 90 days thereafter, AND
    - (2) Shows material affect, PLUS
    - (3) Meritorious defense
    - (4) Note: Bona fide purchasers are protected
  - c) Plaintiff must include a Plaintiff's affidavit
    - (1) Whether or not defendant is in the military; or,
    - (2) If unable to determine status – court may require plaintiff to post a bond
  - d) If Plaintiff is a military member, court cannot enter a default judgment until an attorney is appointed to represent the military member
2. Stay provision § 522
  - a) Clarification of SSCRA: application for a stay does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense
  - b) Member has notice of the proceedings
  - c) If Defendant is in military, court SHALL stay proceedings
  - d) Minimum of 90 days
  - e) Court may grant sua sponte
  - f) Member must provide
    - (1) notice that military service materially affects ability to appear and date when can appear
    - (2) letter from commanding officer stating that duty prevents appearance and leave is not authorized
  - g) Court must determine that:
    - (1) There may be a defense that cannot be presented with the presence of the defendant; or
    - (2) After due diligence counsel has been unable to contact defendant or otherwise determine if a meritorious defense exists
  - h) Member may apply for additional stay and if court does not grant an additional stay, it SHALL appoint counsel to represent the member.
  - i) If real party in interest is not the member, no stay will be granted, i.e. Liability Insurer (within the policy limits) and Subrogation law suit
3. Fines and Penalties in Contracts §523
  - a) No penalties under a contract if performance is stayed by a court
  - b) Court may reduce or waive penalty if:

- (1) Member was in active service at time of fine or penalty
- (2) Performance was materially affected by military service

- 4. Statutes of Limitation §526
- 5. Maximum rate of interest §527

N. Title III – §§531-538 Major protections against evictions, termination of installment contracts, foreclosure on mortgages, and termination of automobile and residential leases

- 1. Evictions and Distress §531
  - a) Only with court order
  - b) Applies to dependents
  - c) Court SHALL stay for 90 days OR adjust the lease obligations
  - d) Criminal sanctions for violation
- 2. Installment Contracts for Purchase or Lease §532
  - a) In event of breach of contract, no termination or repossession without a court order
  - b) Only applies to pre-service obligation
  - c) Purchase, lease or bailment of real or personal property where payment or deposit was made prior to entering service
  - d) Misdemeanor offense for violation
  - e) After hearing, a court may order repayment to member to terminate the contract, or
  - f) SHALL stay the proceeding if member's ability to comply is materially affected and member applies to court for relief (length of stay determined by the court)
  - g) Court may act sua sponte
- 3. Termination of home, business, auto leases and cell phone contracts §535
  - a) Significant departure from SSCRA
  - b) Applies whether pre-service or not
  - c) Takes consideration of long-term deployments
  - d) Obviates the need for "military clauses" in leases
  - e) Criminal penalties for noncompliance by lessors
  - f) Requires written notice and orders or verification by commanding officer
- 4. Taxes on real and personal property §561
  - a) Tax or assessment falls due and is unpaid
  - b) Court can order a sale only if service does not materially affect
  - c) Pre-service
  - d) Court may stay for period of service plus 180 days
  - e) Member has redemption rights for period of service plus 180 days
- 5. Income Taxes §570
  - a) Must be able to show material affect
  - b) Payment of federal, state, or local tax deferred for period of service plus 180 days
  - c) No interest or penalty

- d) Statute of limitations suspended for period of service plus 270 days
- 6. Residence for Income tax Purposes
  - a) Applies to income and personal property tax
  - b) Can be taxed ONLY by member's state of residence
  - c) May not use military pay to increase the combined income into a higher tax bracket (The "Kansas Rule")
  - d) Native Americans cannot be taxed by state if residence is on Reservation
- O. Title VI – Administrative Remedies
- P. Title VII – Further Relief
  - 1. Anticipatory Relief §591
  - 2. Malpractice Insurance §593
  - 3. Self-funded medical insurance coverage reinstatement §594
  - 4. Residency for voting §595
  - 5. Non-availability of non-business assets for business or trade obligations §596 (*Cathey v. First Republic Bank*, 2001 U.S. Dist. LEXIS 13150 or found at [www.roa.org/pdf/home/cathey.pdf](http://www.roa.org/pdf/home/cathey.pdf))
- Q. What the SCRA does NOT do
  - 1. No provision for award of attorney's fees
  - 2. No provision for specific damages
  - 3. Does not address many problems in family law
  - 4. Does not protect students: tuition or reinstatement
  - 5. Federal student loans are not covered