



Fort Stewart Legal Assistance Office

INFORMATION BRIEF



SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

SUBJECT: The Servicemembers Civil Relief Act (SCRA)

PURPOSE: To provide Legal Assistance clients with information regarding the Servicemembers Civil Relief Act (SCRA).

REFERENCES:

- 50 U.S.C. App. §§ 501-596; "The Servicemembers Civil Relief Act Guide," JA 260 (March 2006)
- 50 U.S.C. App. §§ 501-596 as amended by P.L. 111-275 (13 Oct 2010); "Servicemembers Civil Relief Act,"
- O.C.G.A. §§ 44-7-22, 44-7-37 (residential leases)
- O.C.G.A. § 46-5-8 (cell phone contracts)

DISCUSSION:

1. General.

a. The purpose of the SCRA (the Act) is to "provide for, strengthen, and expedite the national defense through protection extended by this Act to Servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and 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."

b. The Act does not end any obligation, but merely puts them on hold. The protection usually begins with entrance on active duty. It is immaterial whether the SM was voluntarily or involuntarily called to active duty. The protections of the Act are based on the concept that a SM's military service may "materially affect" their ability to protect their legal rights and fulfill their financial obligations. The law states that because a SM may earn less after enlisting than he earned as a civilian, his status as a SM may "materially affect" his ability to pay his pre-service debts. Because of this, a SM may be allowed to postpone payment of some or all debts made prior to enlisting.

c. In addition, a SM's geographic location may "materially affect" his ability to attend and participate in court proceedings in another location. Accordingly, the Act allows the SM to postpone all court proceedings against him for a period of time (minimum of 90 days), possibly until he returns to the United States if overseas. Some protections of the Act apply both to obligations incurred before and after entry onto active duty, while others apply only to obligations incurred before entry onto active duty.

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d. The Act applies to members of the Navy, Marine Corps, Army, Air Force, and Coast Guard on active duty (including reservists), Public Health Services, National Oceanic and Atmospheric Administration officers, and National Guard members called to Federal active service for more than 30 days. U.S. citizens serving in the prosecution of a war or military action with a U.S. ally are also protected. Several sections also extend protections to SMs' recognized Family Members which generally include spouse, children, and those provided more than one-half of their support by the SM.

e. Regardless of when the Act applies, the SM *must ask* for relief. Courts, finance companies, banks, landlords etc., have no way of knowing that you are on active duty unless you tell them.

2. Maximum 6% Interest Rate Cap on Debt.

a. One of the most widely known benefits under the Act is the ability to reduce pre-service consumer debt and mortgage interest rates to 6% under certain circumstances during your period of service.

b. Requirements:

(1) The debt was incurred at a time before you entered into military service in any branch.

(2) The interest rate is currently above 6% per year.

(3) Your military service "materially affects" your ability to pay the loan at the regular (pre-service) interest rate. You must provide the lender with written notice and a copy of your orders.

(4) **NOTE:** This Six Percent Rule does not apply to federally-guaranteed student loans, but may apply to private student loans.

(5) 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 \$42,000 per year. As a staff sergeant, he now earns almost \$28,000. Under the Act, SSG Smith may ask the car financing company to lower the interest rate to 6% while he is on active duty because his military service has materially affected his ability to pay since he is earning less money on active duty than he was before. SSG Smith should inform the finance company of his situation in writing with a copy of his orders to active duty attached, and request immediate confirmation that they have lowered his interest rate to 6% under the SCRA.

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(6) 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 is retroactively applied to the first day that SSG Smith went on active duty. In other words, SSG Smith gets credited for any amount paid above 6% from the day, going forward, that he went on active duty. However, SSG Smith must continue making the monthly payments of principal and interest at 6% to avoid his account being considered delinquent. Continuing payments should avoid any adverse credit reports from the finance company.

3. Stay of Court Proceedings. If a SM's military duty requirements "materially" affect their ability to appear at a judicial or administrative hearing, the SM is entitled to an automatic 90-day stay, or delay, of the proceedings. If the SM requests a stay, the judge must grant one automatic 90-day stay. The SM's request for a stay must contain both: a) a letter from the SM stating how their current military duties materially affect their ability to appear and stating a date when the SM can appear, and b) a letter from the SM's commanding officer stating how the SM's current military duties prevent appearance and that military leave is not authorized for the SM at the time of the letter. The Act permits a SM to write directly to a court to request a stay, but in so doing, the SM does not make an appearance, nor does the SM waive any defenses. Additionally, fines and penalties for failure to comply with a contract cannot be assessed against you during a SCRA stay of an action to make you comply with the contract. Note that since the Act applies to ALL courts and administrative agencies, a SM may request, and must be granted, a stay of administrative child support hearings. A SM should immediately see a Legal Assistance Attorney or other legal counsel when the SM finds out he must appear in court or before a proceeding and know that his military duties will prevent him from appearing. If a SM requests a second stay after the automatic 90-day initial stay and the court denies that stay, the court must then appoint an attorney to defend the SM's interests in court or in the proceeding.

4. Default Judgment Protection.

a. A court may not grant a default judgment (i.e., a judgment when a person fails to appear in court) against a SM unless the party who instituted the action follows specific procedures. This is designed to protect a SM when the SM has a valid defense.

b. Within 90 days of discharge from the service, a SM must request that the court reopen a case when the SM's military service "materially affected" participation in a law suit, and a default judgment was improperly decreed. This protection only applies to civil actions, not criminal proceedings.

5. Lease Termination.

a. Residential Leases: A SM may terminate a lease under the Act if the SM entered into the lease before entering into active duty or after entering military service when the SM receives PCS orders or deployment orders for not less than 90 days. The leased premise was occupied by

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the SM or his Family Members. Termination of a lease must be made by giving at least 30 days *written notice* along with a copy of the SM's orders. Normally, the SM will be required to make one more month's rent payment after his notice to the landlord. The landlord cannot impose any early termination fees.

(1) Georgia has expanded on these federal protections by requiring Georgia leases to contain the "military clause," which cannot be waived by the lessee. While the federal law requires the lessee to pay an entire one month's rent after notice of termination, the Georgia law requires that the SM only pay a pro-rated amount for the 30 days after the written notice and a copy of the orders were given. The Georgia statute applies to PCS or TDY orders in excess of 35 miles for at least 60 days. The Georgia statute also applies if the SM is ordered into government quarters, or becomes eligible for government quarters and the SM will forfeit his housing allowance if he does not move in.

(2) REMEMBER: You must give your landlord (1) written notice and (2) a copy of orders to be protected by either the federal or Georgia statute!

b. Termination of Motor Vehicle Leases: A SM may terminate a motor vehicle lease if it is a pre-service lease and the SM is later called to duty or receives orders for a period of not less than 180 days, or if it is a lease executed during military service, and the SM later receives PCS orders outside the continental United States, or deployment orders, for a period of not less than 180 days. SM must return the vehicle to the lessor no later than 15 days after the SM's delivery of written notice of termination to the lessor along with copy of military orders. No early termination charge/penalties allowed for early termination.

c. Termination of Telephone Service Contracts: In October 2010, Congress amended section 535a of the Act, which now allows SMs to terminate a telephone service contract (i.e., A contract for cellular telephone service or telephone exchange service entered into by the SM before receiving the military orders) at any time after the date the SM receives military orders to relocate for a period of not less than 90 days to a location that does not support the contract. In the case of a contract for cellular telephone service entered into by any individual in which a SM is a designated beneficiary of the contract, the individual who entered into the contract may also terminate the contract with respect to the SM if the SM is eligible to terminate contracts and with respect to all of the designated beneficiaries of such contract if all such beneficiaries accompany the SM during the SM's period of relocation. Termination of a contract shall be made by delivery of a written or electronic notice of such termination and a copy of the SM's military orders to the service provider, delivered in accordance with industry standards for notification of terminations, together with the date on which the service is to be terminated.

6. Home Evictions.

a. As of January 2010, if a SM rents a dwelling for \$2,958.53 or less per month, neither the SM nor the SM's Family Members may be evicted without a valid court order. The court may

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stay the eviction for up to three months, if it finds the military service has had a "material affect" on the ability to pay rent. This protection applies regardless of whether the dwelling was rented before or after entering active duty.

b. The dollar amount changes annually to adjust for inflation, so make sure to check the Federal Register's most current "Publication of Housing Price Inflation Adjustment Under 50 U.S.C. app. § 531."

7. Installment Contracts, Mortgages, Trust Deeds or Liens.

a. Some protections of the Act apply to installment contracts, mortgages, trust deeds, or liens that were made and on which payments were started before the SM enters military service. Due to reduced military income, a SM may now be unable to make the monthly payments.

b. Normally, creditors could repossess or foreclose on the property. However, under the Act, the creditors cannot do so without first obtaining a court order. This provision applies even if the contract states that there can be repossession without court action.

c. Again, this does not apply to contracts entered into after entering active duty. Refinancing a pre-service debt may be considered post-service, and thus not be subject to these protections.

8. Life Insurance. If a SM can no longer pay premiums on commercial life insurance purchases made prior to entry into the service, the Veterans Administration may guarantee payment (up to the maximum limit of SGLI insurance (currently \$400,000)) thus keeping the policy in effect. Upon separation, the SM has two years to pay back all the premiums and interest.

9. Health Insurance. The Act requires an insurer, upon the release of a SM from military duties, to reinstate his or her health insurance coverage (and that of his or her family) which was in effect on the day before military duty began and which was terminated during the period of military service. The Act also states that said person and his/her family are entitled to the health insurance coverage, which they would have received if no military duties had intervened. The reinstatement is to be without a waiting period and there can be no exclusion for a condition which arose before or during the Servicemember's period of service.

10. Taxation. Under the Act, only the SM's state of legal domicile may tax military pay. The Act also states that a SM neither acquires nor loses domicile solely by residing in a state pursuant to military orders. Generally, the SM is not subject to personal property tax, except by the state of domicile, regardless of where currently stationed. The Act does not exempt non-military income derived from sources within a state where a SM may be serving. Real property, such as a house, is subject to local taxes. The Act also allows you to keep home-state registration on your motor vehicle if properly licensed in your home state.

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11. Statutes of Limitations. The law has established time limits in which a person must bring a legal action. If not brought within these time limits, the right of action is barred. Under the Act, these statutes may be suspended during active duty. The result is that a SM may be able to initiate claims, and claims may be initiated against the SM, even though substantial time has elapsed while the Servicemember is on active duty.

12. Prohibitions. The Act prohibits adverse credit ratings, the denial of credit, the denial of insurance or other adverse financial actions based solely on the fact that a military member has applied for benefits authorized under the Act.

EXPIRATION: Because the law is constantly changing by legislative enactments and court decisions, you should obtain an updated version of this paper if it is more than one year old.

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