

# CRS Report for Congress

## The Servicemembers Civil Relief Act (P.L. 108-189)

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## Report Documentation Page

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# The Servicemembers Civil Relief Act (P.L. 108-189)

## Summary

Recognizing the special burdens that members of the military may encounter in trying to meet their financial obligations while serving their country, Congress passed the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA). This law has been amended from time to time, ordinarily in response to military operations that require the activation of the Reserves. P.L. 108-189, the "Servicemembers Civil Relief Act (SCRA)," was enacted on December 19, 2003 and overhauls the SSCRA. This report summarizes the rights granted to persons serving on active duty in the U.S. Armed Forces under the newly enacted SCRA.

SCRA is a comprehensive rewrite of the SSCRA which clarifies language that has been subject to differing interpretations by courts, and modifies or expands certain benefits. The SCRA provides protections for servicemembers in the event that their military service impedes their ability to meet financial obligations incurred before their entry into active military service. The SCRA does not require forgiving any debts or the extinguishment of contractual obligations on behalf of servicemembers who have been called up for active duty, nor does it provide absolute immunity from civil lawsuits. Instead, it suspends claims against servicemembers and protects them from default judgments. The SCRA also protects military members and their families from eviction, protects against cancellation of life insurance policies or non-reinstatement of health insurance policies, allows some professionals to suspend malpractice or liability insurance while on active duty, and protects from taxation in multiple jurisdictions as well as forced property sales to pay overdue taxes.

The SCRA provides for a cap on interest at an annual rate of 6% on debts incurred prior to a person's entry into active duty military service, sets forth procedures for requesting such a reduction, and clarifies that the balance of interest for the servicemember's period of military service is to be forgiven by the lender. Other measures protect military families from being evicted from rental property or from mortgaged property, from cancellation of life insurance, from taxation in multiple jurisdictions and from foreclosure of property to pay taxes that are due, and from losing certain rights to public land. It raises the amount of the rent that qualifies for protection from eviction, allows servicemembers on active duty to terminate housing leases, and allows some servicemembers to terminate automobile leases.

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# The Servicemembers Civil Relief Act (P.L. 108-189)

The increasing number of activations of Reserve and National Guard military units for support in the war against terrorism or the war in Iraq means that a growing number of Americans may be entitled to invoke civil protections provided to them on the basis of their service in the Armed Forces. This led to calls for a re-examination of the Soldier's and Sailors' Civil Relief Act of 1940 (SSCRA) which provided servicemembers certain civil protections. P.L. 108-189, the "Servicemembers Civil Relief Act (SCRA)," enacted on December 19, 2003, restates and strengthens the protections available to servicemembers. This report summarizes the SCRA, and describes other legislative efforts aimed at amending the former SSCRA.

Congress has long recognized the need for protective legislation for servicemembers whose service to the nation compromises their ability to meet obligations and protect their legal interests. During the Civil War, Congress enacted an absolute moratorium on civil actions brought against soldiers and sailors. During World War I, Congress passed the Soldiers' and Sailors' Civil Relief Act of 1918,<sup>1</sup> which did not create a moratorium on legal actions against servicemembers, but instead directed trial courts to apply principles of equity to determine the appropriate action to take whenever a servicemember's rights were involved in a controversy. During World War II, Congress essentially reenacted the expired 1918 statute as the Soldiers' and Sailors' Civil Relief Act of 1940, and then amended it substantially in 1942 to take into account the new economic and legal landscape that had developed between the wars. Congress has enacted amendments on several occasions during subsequent conflicts, including in the 107<sup>th</sup> Congress, when the benefits of the SSCRA were extended to certain members of the National Guard called up by their respective state governors to support federal efforts during national emergencies (such as the war against terrorism).<sup>2</sup> Most recently, on December 19, 2003, Congress enacted P.L. 108-189.

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<sup>1</sup> 40 Stat. 440 (1918).

<sup>2</sup> P.L. 107-330. The 107<sup>th</sup> Congress also held hearings on H.R. 5111, the Servicemembers' Civil Relief Act, but delayed further action on that bill until the 108<sup>th</sup> Congress. It was reintroduced as H.R. 100 with only a few changes, and passed the House of Representatives on May 7, 2003. The Senate Committee on Veterans' Affairs held hearings July 10, 2003, on two companion bills to H.R. 100, as well as other proposed changes to the SSCRA.

The SCRA<sup>3</sup> is an exercise of Congress' power to raise and support armies (U.S. Const. Art. I, sec. 8, cl. 12) and to declare war (Art. I, sec. 8, cl. 11).<sup>4</sup> In order to lessen the potential hardship suffered by those whose entry into active duty military service materially affects their ability to meet financial obligations and to protect their legal interests, the SCRA provides certain rights and other types of legal protection, to enable servicemembers to devote their full attention to their military duties. The law does not forgive any debts or extinguish contractual obligations on behalf of servicemembers who have been called up for active duty, nor does it provide absolute immunity to servicemembers from civil lawsuits. Instead, it provides for the suspension of claims against servicemembers and protection from default judgments, as well as certain other contractual rights and protections. In this way, it seeks to balance the interests of servicemembers with those of their creditors and others to whom the servicemember owes a legal obligation, spreading the burden of national military service to a broader portion of the citizenry.

Many of the SCRA provisions are especially beneficial for Reservists activated to respond to a national crisis, but many provisions are also useful for career military personnel.<sup>5</sup> One of the measures that affects many who are called to active duty is the SCRA's cap on interest at an annual rate of 6% on debts incurred prior to a person's entry into active duty military service (Sec. 207). Other measures protect military families from being evicted from rental property or from mortgaged property (Secs. 301 and 303); from cancellation of life insurance (Secs. 402 through 409); from taxation in multiple jurisdictions (Sections 510 and 511) and from foreclosure of property to pay taxes that are due (Secs. 501 and 511); and from losing certain rights to public land (Secs. 501 through 508).

This report summarizes the SCRA section by section, as enacted by P.L. 108-189, codified in 50 U.S.C. app. § 502 et seq. It will be updated as necessary.

## I. General Provisions

**Sec. 2** (50 U.S.C. app. § 502). The purpose of the Act is to provide for, strengthen, and expedite the national defense through protection to servicemembers, to enable them to "devote their entire energy to the defense needs of the Nation." The SCRA protects servicemembers by temporarily suspending certain judicial and administrative proceedings and transactions that may adversely affect their civil rights during their military service.

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<sup>3</sup> One of the amendments effected by P.L. 108-189 is the change in the name of the Act from Soldiers' and Sailors' Civil Relief Act (SSCRA) to Servicemembers Civil Relief Act (SCRA). Therefore, all of the historical and legal background of this Act makes reference to SSCRA instead of SCRA. This report will use the current name of the Act, SCRA, when making reference to any historical or legal background information.

<sup>4</sup> *Dameron v. Brodhead*, 345 U.S. 322 (1953).

<sup>5</sup> See James P. Pottorff, *Contemporary Applications of the Soldiers' and Sailors' Civil Relief Act*, 132 MIL. L. REV. 115, 118 (1991) (noting that many protections are ordinarily unavailable to career servicemembers because they enter into most major legal and financial obligations, such as mortgages, while on active duty).

## Definitions

Sec. 101 (50 U.S.C. app. § 511). This section supplies definitions for terms that are used throughout the Act. For the purposes of the SCRA, the following definitions apply:

### **‘Servicemember’.**

Persons covered by the SCRA include members of the “uniformed services” found in 10 U.S.C. § 101(a)(5), which includes the Army, Navy, Air Force, Marine Corps, Coast Guard, and the commissioned corps of the National Oceanic and Atmospheric Administration and the Public Health Service.

### **‘Military Service’.**

The Act defines “military service” to include “active duty” as defined in 10 U.S.C. § 101(d)(1), National Guard service as service under a call to active service authorized by the President or the Secretary of Defense for a period more than 30 consecutive days under 32 U.S.C. § 502(f)<sup>6</sup> for purposes of responding to a national emergency declared by the President and supported by Federal funds, for officers of the Public Health Service or the National Oceanic and Atmospheric Administration, “active service” (not further defined), and any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful case. “Active duty” for armed services is defined in 10 U.S.C. 101(d)(1) as “full-time duty in the active military service of the United States ... [including] full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.” “Active military service” is not further defined in section 101 of title 10, U.S. Code, although “active service” is given the meaning “service on active duty or full-time National Guard duty,” in § 101(d)(3).

Under the prior law the definition of “military service” included language referring to “periods of training or education under the supervision of the United States preliminary to induction into military service.” Under the new law, persons on active duty and attending a service school are covered, while persons attending training prior to entering active duty, such as officer candidates, may not be covered. It is unclear, for example, whether “active military service” under 10 U.S.C. § 101(d) covers training as a member of the Reserve Officer Training Corps<sup>7</sup> or attendance at a military academy.<sup>8</sup>

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<sup>6</sup> 32 U.S.C. § 502(f) states that under regulations from the Secretary of the Army or the Secretary of the Air Force, a member of the National Guard may be ordered to perform training or other duty in addition to the mandatory yearly training.

<sup>7</sup> See *Brown v. United States*, 151 F.3d 800 (8<sup>th</sup> Cir. 1998) (finding that senior ROTC training activities are “active military service” under the Veterans Benefits Act)

<sup>8</sup> The question does not appear to have been tested in court, possibly due to the unlikelihood that a person attending a service academy would be materially affected by such status. In contexts other than the SCRA, military cadets have been considered to be in active military

**'Period of military service'.**

A servicemember's "period of military service" begins when he or she enters military service and ends on the date of release from military service or upon death during military service. This new meaning differs from the previous meaning only in the use of the word "release" rather than "discharge" from military service. In military terminology, a "discharge" can mean a complete severance from all military status with respect to enlisted personnel, while "release from active duty" means termination of active-duty status and transfer or reversion to reserve status.<sup>9</sup> The phrase is used in the SCRA to determine the length of the availability of certain benefits. The SCRA also uses the phrase "termination or release from military service" in some provisions, but does not provide a definition for "termination."

**'Dependent'.**

The Act defines "dependent" as a servicemember's spouse or child (as defined for purposes of veterans' benefits, in 38 U.S.C. § 101<sup>10</sup>), or another individual for whom the servicemember provided more than one half of the support in the 180 days prior to an application for relief under the Act. This language appears to codify courts' treatment of the term "dependent" as relating to financial dependency rather

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<sup>8</sup> (...continued)

service for some purposes. See *Collins v. United States*, 642 F.2d 217, 220-21 (7th Cir.), cert. denied 452 U.S. 964 (1981) (finding a cadet at the Air Force Academy to be on active duty for purposes of applying the Feres doctrine to prohibit his bringing suit against the government); *Porath v. McVey*, 884 S.W.2d 692 (Mo.App.S.D.1994) (West Point cadet was considered to be on active duty for the purpose of determining whether he was "emancipated," under state law, for child support purposes), *Bishop v. Bishop*, 671 A.2d 644 (N.J.Super.Ch.,1995) (same); *Minnich v. World War II Service Compensation Bd.*, 57 N.W.2d 803 (Iowa 1953) (plaintiff awarded military bonus for time during World War II as military cadet based on definition of "active duty" that included "active service" at an "armed forces school").

<sup>9</sup> 53A Am.Jur. 2d Military and Civil Defense § 183.

<sup>10</sup> 38 U.S.C. § 101(4) defines child as a person who is unmarried and under the age of eighteen; who before attaining the age of eighteen became permanently incapable of self-support; or who after attaining the age of eighteen and until completion of education or training (but not after attaining the age of twenty-three) is pursuing a course of instruction at an approved educational institution; and who is a legitimate child, a legally adopted child, a stepchild who is a member of a veteran's household or was a member at the time of the veteran's death, or an illegitimate child but, as to the alleged father, only if acknowledged in writing signed by him, or if he has been judicially ordered to contribute to the child's support or has been, before his death, judicially decreed the father of such child, or if he is otherwise shown by evidence to be the father of the said child.

than strict familial relationships,<sup>11</sup> although the formula for determining what portion of support is required appears to be new.<sup>12</sup>

### **'Court'.**

Courts obligated to honor the protections of SCRA include any federal or State court or administrative agency, whether or not a court or administrative agency of record. This definition expands the definition of "court" expressly to include administrative agencies of record.

### **'State'.**

The Act defines "state" as a commonwealth, territory, or possession of the United States and the District of Columbia.

### **'Secretary Concerned'.**

The Act defines "Secretary concerned" with respect to a member of the armed forces as having the meaning in 10 U.S.C. § 101(a)(9)<sup>13</sup>; with respect to commissioned officers of the Public Health Service, the Secretary of Health and Human Services; and with respect to commissioned officers of the National Oceanic and Atmospheric Administration, the Secretary of Commerce.

### **'Motor Vehicle'.**

The Act defines "motor vehicle" as a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads and highways, but does not include a vehicle operated only on a rail line (as defined in 49 U.S.C. § 30102(a)(6)).

## **Jurisdiction and Application**

**Sec. 102** (50 U.S.C. app. § 512). The SCRA applies everywhere in the United States, including the District of Columbia, and in any territory "subject to the jurisdiction of" the United States. It applies to any civil judicial or administrative

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<sup>11</sup> See, e.g., *Balconi v. Dvascas*, 507 N.Y.S. 2d 788 (N.Y. Civ. Ct. 1986) (finding ex-spouse of serviceman who relied on his child support payments to be a "dependent" within the meaning of the SCRA who could assert the protection against eviction).

<sup>12</sup> See *id.* It is not clear how much support the plaintiff in that case had been receiving from her ex-husband; it is conceivable that she might not be covered under the proposed definition.

<sup>13</sup> 10 U.S.C. § 101(a)(9) defines "Secretary" as the Secretary of the Army with respect to Army matters; the Secretary of the Navy with respect to matters concerning the Navy, Marine Corps, and the Coast Guard when it is operating as a service of the Department of the Navy; the Secretary of the Air Force with respect to matters concerning the Air Force; and the Secretary of Homeland Security with respect to matters concerning the Coast Guard when it is not operating as a service in the Department of the Navy.

proceeding in any court or agency in any jurisdiction subject to the Act. However, it does not apply to criminal proceedings.

### **Protection of persons secondarily liable.**

**Sec. 103(a-b)** (50 U.S.C. app. § 513(a-b)). These subsections extend some protection to persons who share a debt with one or more covered servicemembers or have secondary liability as a “surety, guarantor, endorser, accommodation maker, co-maker, or other person who is or may be primarily or secondarily subject to the obligation or liability” at issue. If the SCRA provisions are invoked as to the servicemember, the court has discretion to grant a stay, postponement, or suspension of the proceedings against such persons, or to set aside or vacate a judgment. Whether a court grants such relief appears to be influenced by equitable considerations, including whether the servicemember is able to appear in court, whether the servicemember’s presence is necessary for the defense, and whether an unjust forfeiture could otherwise result. If the servicemember is only nominally a party to the suit, as in cases of negligence where the insurance company might be considered the “true defendant,” the modern trend is to deny a stay.<sup>14</sup> The right to open a default judgment taken against a person in the military service is reserved to that person only and is not available to a judgment co-debtor.

The Act added the term “co-maker”<sup>15</sup> to the list of persons who may be entitled to a stay in an action which has been stayed with respect to a servicemember. This effectively codifies courts’ interpretations of the previous version of the SCRA.<sup>16</sup> However, it does not explicitly adopt the test some courts have used to determine whether a stay is appropriate.

### **Criminal bail bond sureties.**

**Sec. 103(c)** (50 U.S.C. app. § 513(3)). This subsection protects bail bondsmen who are unable to procure the appearance of the principal due to that person’s active duty service. In such a case, the court hearing the charge may not enforce the bond during the period of military service of the accused, and has the discretion to return the bail in its entirety to the bail bondsman in the interest of equity and justice. While some courts have interpreted this subsection to allow for no discretion,<sup>17</sup> others have required sureties to make a further showing that the appearance of the principal

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<sup>14</sup> See *Tabor v. Miller*, 369 F.Supp. 647 (D. Pa.), *aff’d*, 389 F.2d 645 (3d Cir.), *cert. denied sub nom Stearns v. Tabor*, 391 U.S. 915 (1968) (where servicemember did not claim he was precluded by service from appearing and his insurer had rejected an offer to settle within the limits of the policy, stay of proceedings was denied).

<sup>15</sup> A co-maker is “one of two or more persons who sign an instrument to indicate a promise to pay a financial obligation. Any co-maker may be sued for the entire amount of the indebtedness, although a co-maker who is forced to pay more than his or her share may seek contribution from the other co-makers.” MERRIAM-WEBSTER’S DICTIONARY OF LAW (2001).

<sup>16</sup> *Modern Industrial Bank v. Zaentz*, 29 N.Y.S.2d 969 (N.Y.Mun.Ct. 1941); *Modern Industrial Bank v. Grossman*, 40 N.Y.S.2d 628 (1943).

<sup>17</sup> See *United States v. Jeffries*, 140 F. 2d 745 (7<sup>th</sup> Cir. 1944).

was in fact prevented due to military service and that the surety made an effort to secure the appearance of the principal in court.<sup>18</sup>

### **Waiver of protection.**

**Sec. 103(d)** (50 U.S.C. app. § 513(d)). Persons who are primarily or secondarily liable on the obligation of a person in military service may waive their benefits, but such a waiver must be executed in a separate instrument from that which creates the obligation. Such a waiver ceases to be valid if the person who executed it subsequently enters active military service or is the dependent of a person who subsequently enters active duty, unless the waiver is executed after the person ordered to active duty receives those orders.

### **Citizens serving with the forces of war allies.**

**Sec. 104** (50 U.S.C. app. § 514). This section extends the benefits of the SCRA to citizens of the United States who serve in the armed forces of allies of the United States in the prosecution of a war or military action, as long as such service is similar to service in the U.S. armed forces. The Act eliminated the protection revocation for those who are dishonorably discharged.

### **Notification of benefits.**

**Sec. 105** (50 U.S.C. app. § 515). This section requires military authorities to provide servicemembers with written information of their rights and benefits under the SCRA.

### **Benefits to Reserves ordered to report for military service and to persons ordered to report for induction.**

**Sec. 106** (50 U.S.C. app. § 516). This section provides benefits under titles I, II, and III of the SCRA to servicemembers during the period of time between the date they receive their induction or activation orders and the date they report for active duty. The coverage ends in the event the orders to active duty are revoked.

### **Waivers; Effects on other rights and remedies.**

**Sec. 107** (50 U.S.C. app. § 517). This section provides that servicemembers may waive some of the benefits of the SCRA by agreeing to modify or terminate a contract, lease or bailment, or an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage. Such a waiver is effective only if executed in writing during or after the servicemember's period of active military service. The written agreement must specify the legal instrument to which the waiver applies, and if the servicemember is not a party to that instrument, the servicemember concerned. This section extends the protections to servicemembers covered under

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<sup>18</sup> See *Ex parte Moore*, 12 So.2d 77 (Ala. 1943); *Cumbie v. State*, 367 S.W.2d 693 (Tex. Civ. App. 1963).

section 106 of the Act (reservists ordered into active duty and persons ordered to report for induction).

### **Protection from adverse action due to exercise of rights.**

**Sec. 108** (50 U.S.C. app. § 518). This section protects the rights and credit of servicemembers from any penalty imposed solely due to their invocation of rights under the SCRA. In other words, a lender cannot revoke a covered person's credit card or exercise foreclosure rights merely because the servicemember requests the rate of interest be capped at 6% pursuant to the SCRA. It provides that no stay, postponement, or suspension of any tax, fine, penalty, insurance premium, or other civil obligation or liability applied for, or received by, a person in military service can be the sole basis for any of the following:

- (1) a determination by a lender (or other person) that the servicemember is unable to pay the civil obligation or liability;
- (2) a decision by a creditor to deny or to revoke credit; to change the terms of an existing credit arrangement; or to refuse to grant credit in substantially the amount, or on substantially the terms, requested;
- (3) an adverse creditworthiness report by, or to, a consumer credit information enterprise;
- (4) an insurer's refusal to sell insurance coverage;
- (5) an annotation by the creditor or a person engaged in the practice of assembling or evaluating consumer credit information, to reference the servicemember's military status on his or her credit report; or,
- (6) a change in the terms offered or conditions required for issuance of insurance.

Creditors may, however, take adverse action against a servicemember who fails to comply with obligations after they are adjusted by reason of the Act. The Act does not appear to preclude insurers or creditors from offering different terms or conditions, denying credit, or taking other adverse actions based solely on the servicemember's status in anticipation that the servicemember might later invoke a right under the Act.

### **Legal representation.**

**Sec. 109** (50 U.S.C. App. § 519). The Act added new section 109 to clarify that legal representatives, such as attorneys or persons possessing a power of attorney, may assert the benefits of the Act when acting on the servicemember's behalf. Prior to the Act, courts had sometimes denied a motion for a stay or other relief requested by a servicemember's attorney in an action on behalf of the servicemember. This section states that the use of the word "servicemember" includes persons with legal authority to act on their behalf.

## II. General Relief

Sections 201 through 207 describe the general relief available to servicemembers in most kinds of court actions. They serve to suspend civil liabilities of military personnel and preserve causes of action either for or against them.

### **Protection against default judgments.**

**Sec. 201** (50 U.S.C. app. § 521). In a civil lawsuit, the failure of the defendant to appear in court may result in the award of a default judgment on behalf of the plaintiff. This section protects servicemembers from default judgments in civil actions while they are unable to appear in court due to military service. Before a court can grant a default judgment, the plaintiff must file an affidavit stating that the defendant is not on active duty in military service showing necessary facts to support the affidavit<sup>19</sup> or that the plaintiff was unable to determine whether or not the defendant is in military service. A false affidavit to that effect is punishable by imprisonment for up to one year, a fine of up to \$1,000, or both. The court, before entering a judgment, must also appoint an attorney to represent the person on active duty in order to protect his or her legal rights and interests. However, if the attorney appointed to the case cannot locate the servicemember, actions by the attorney would not waive any defenses of or otherwise bind the servicemember. Additionally, if the court is unable to determine if a defendant is in military service, the court may require a bond which may later be used to indemnify the defendant if it is determined that he or she was in military service and the judgment against the defendant is set aside or vacated in part. Moreover, if a court enters a default judgment against a servicemember, the court may set aside its judgment if the servicemember files a motion within 60 days after leaving active military service and can demonstrate that military service prejudiced his or her availability to appear in court (unless the default was based on a false affidavit by the plaintiff regarding military service of the defendant, in which case such a showing is unnecessary) and that there are meritorious or legal defenses to the suit. This is a change from the previous SSCRA where the motion had to be filed within 30 days after leaving military service.

This section does not provide a means to challenge judgments resulting from cases in which the servicemember made an appearance before the court. Some courts have found that a communication to the court regarding the servicemember's military status, and the resulting applicability of the SCRA to the suit, constitutes an appearance and bars the servicemember from asserting certain defenses,<sup>20</sup> such as a lack of jurisdiction of the court over the servicemember, and negates the servicemember's right to petition to have the judgment overturned. An informal communication, such as a letter or a telegram to the court asking for protection under

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<sup>19</sup> This requirement may be satisfied by a statement, declaration, verification, or certificate, in writing, under oath.

<sup>20</sup> See *Blankenship v. Blankenship*, 263 Ala. 297, 82 So. 2d 335 (1978); *Vara v. Vara*, 14 Ohio 2d 261, 171 N.E.2d 384 (1961); *Reynolds v. Reynolds*, 21 Cal. 2d 580, 134 P.2d 251 (1943).

the SCRA should not be counted as an appearance,<sup>21</sup> but some courts have found that a letter from a legal assistance attorney constitutes an appearance, waiving the servicemember's protection against a default judgment. An appearance by defendant's counsel may also waive protection, unless the counsel was appointed pursuant to this section.

Subsection (h) contains a provision to protect the rights of a bona fide purchaser by stating that vacating, setting aside, or reversing any judgment under the Act will not impair any right or title acquired by any bona fide purchaser for value under the judgment. Therefore, it may be impossible to recover property that had been attached to satisfy a default judgment, although the servicemember would have the right to damages for the value of the property.

### **Stays of proceedings when servicemember has notice.**

**Sec. 202** (50 U.S.C. app. § 522). A court must stay further proceedings in civil litigation where the servicemember's ability to participate in the litigation is materially affected by absence due to military service. It applies to servicemembers who are in military service or within 90 days after termination or release from military service.

The servicemembers must set forth, in their application for a stay, facts stating the manner in which current military duty requirements materially affect their ability to appear and state a date when the servicemembers will be able to appear, and submit a letter from the servicemember's commanding officer certifying that leave is not authorized for the servicemember to attend proceedings at that time. Courts have been divided as to how to allocate the burden of proof regarding the issue of whether the servicemember's ability to appear in court is "materially affected" by military duty. Courts must also take into account the interests of the opposing party. While a stay is a reasonable imposition upon an individual citizen on behalf of those discharging their obligations to the common defense, it is not available to shield wrongdoing or lack of diligence or to postpone relief indefinitely, or to be used to stay proceedings in matters where the interests or safety of the general public may be at stake. Courts may deny a stay in cases involving purely legal issues or where the servicemember is not the true party in interest, in which the servicemember's presence is not essential.

A request for a stay under this section does not constitute an appearance for jurisdictional purposes or a waiver of any substantive or procedural defense. Therefore, a servicemember may apply for relief without waiving the right, for example, to assert that the court has no jurisdiction in the case. Moreover, additional stays may be granted based on continuing material effect of military duty on the servicemember. If additional stays are denied, the court must appoint counsel to

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<sup>21</sup> See *Kramer v. Kramer*, 668 S.W. 2d 457 (Tex. Ct. App. 1984) (letter from servicemember invoking the SCRA and requesting a stay did not constitute an "appearance" for the purpose of providing personal jurisdiction); see generally United States Judge Advocate General School, *Soldier's and Sailor's Civil Relief Act Guide*, JA-260, § 3-2 (2000)[hereinafter "JA-260"].

represent the servicemember. A servicemember who is unsuccessful in securing a stay under this section is precluded from seeking the protections against default judgments granted under section 201. This section is inapplicable to section 301 (protection from eviction or distress).

### **Fines and penalties under contracts.**

**Sec. 203** (50 U.S.C. app. § 523). Whenever an action is stayed by the court pursuant to the SCRA, penalties that would otherwise accumulate against the person for failing to carry out the terms of the contract cannot be imposed during the period the stay remains in effect. Even if no stay is in effect, the court has the discretion to relieve an active duty servicemember of the obligations to pay any fines or penalties for failing to carry out the terms of a contract if that person's ability to pay the fines and penalties or to carry out the terms of the contract is impaired by active military service.

### **Stay of enforcement.**

**Sec. 204** (50 U.S.C. app. § 524). If a servicemember is materially affected by reason of military service in complying with a court judgement or order, the court may, on its own motion, and will on the application of the servicemember, stay the execution of any judgment or order against the servicemember and vacate or stay an attachment or a garnishment of property, money, or debts in the possession of the person on active duty in military service for actions or proceedings commenced against the servicemember. This section applies to actions brought against the servicemember before the period military service or within 90 days after termination of the servicemember's.

### **Duration and term of stays; co-defendants not in service.**

**Sec. 205** (50 U.S.C. app. § 525). Stays granted by courts under the SCRA can remain in effect for the entire period of a servicemember's active duty military service plus 90 days, or any part thereof. As a practical matter, however, courts do not look favorably on protracted stays, and expect most military members to make themselves available to participate in proceedings within a reasonable period of time, especially during peacetime if the servicemember is not stationed abroad.<sup>22</sup> Suits against any co-defendants not in military service may proceed even if the suit has been stayed with respect to the person in the military. This section does not apply to sections 202 (stays for actions for which the defendant has notice) and 701 (anticipatory relief). These sections contain their own rules for determining the maximum length of a stay granted under them.

### **Statute of limitations.**

**Sec. 206** (50 U.S.C. app. § 526). In cases in which a statute of limitations would prohibit any court action with respect to a lawsuit brought after expiration of

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<sup>22</sup> See Roger M. Baron, *The Staying Power of the Soldiers' and Sailors' Civil Relief Act*, 32 SANTA CLARA L. REV. 137 (1992).

the time specified by law, this section tolls (extends) the time period applicable to a covered servicemember by an amount of time equal to the person's period of military service. That time is not counted in determining the servicemember's deadline for exercising rights such as redeeming real estate that has been sold or forfeited or to pay any other obligation or assessment. The section applies not just to courts but also to any other board, commission or agency, and may be exercised by the servicemember's heirs, executors, administrators, or assigns, regardless of whether the right or cause of action arose prior to or during the person's period of military service. It does not, however, apply to federal tax laws.

### **Maximum rate of interest.**

**Sec. 207** (50 U.S.C. app. § 527). This section caps the maximum interest charged on any debt incurred by a servicemember *prior* to entering active duty at a rate of interest no higher than six percent (6%) a year, if that servicemember's ability to pay is materially affected by active duty status. The interest above the 6% cap is to be forgiven by the creditor and does not accrue to be owed after the debtor's release from active duty. The monthly payments of an obligation or liability covered by this section is to be reduced by the amount in excess of the 6%, but the terms of the original obligation are to remain the same. A lender seeking to charge a higher rate must get a court order to do so. It is up to the lender to prove that the servicemember's ability to pay the higher rate is not affected by military activation. With regard to credit card debt, the 6% rate applies only to debt incurred prior to service. Therefore, any purchases charged to the same credit card after entry into military service will be subject to the full interest rate charged by the credit card.

A servicemember who wrongly receives an adverse credit report or has his or her credit limit reduced or further credit denied after invoking the 6% interest cap provision may seek relief through the Fair Credit Reporting Act<sup>23</sup> (FCRA) provisions for "adverse actions" and consumer remedies for "willful or negligent noncompliance by credit reporting agencies upon consumer showing of causal connection between inaccurate credit report and denial of credit or other consumer benefit."<sup>24</sup>

## **III. Rent, Installment Contracts, Mortgages, Liens, Assignments, Leases**

Sections 301 through 308 provide protections from eviction and loss of other benefits or rights due to the failure of a servicemember to meet payments on rent, loans, mortgages, or insurance policies. Unlike the other parts of the SCRA, the rights described in these sections can be asserted by a servicemember's dependents in their own right.

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<sup>23</sup> Fair Credit Reporting Act, 84 Stat. 1128, *codified at* 15 U.S.C. §§1681 *et seq.*

<sup>24</sup> See JA-260, *supra* note 21, at § 3-8.

**Evictions and distress.**

**Sec. 301** (50 U.S.C. app. § 531). Under this section, unless a court orders otherwise, a landlord or person with “paramount title” may not evict a servicemember in military service or his or her dependents from a rented home (such as an apartment, a trailer, or a house) if the rent is \$2,400 per month or less. In a case where the landlord seeks a court order for the eviction of a servicemember or his or her dependents, the court is obligated to stay the proceedings for up to three months if the servicemember requests it. In the alternative, the court may adjust the obligation under the lease to preserve the interests of all the parties. The \$2,400 rent ceiling will be adjusted for inflation. Section 202 (stay of proceedings when servicemember has notice) of the Act is not applicable to this section.

**Penalty for violation.** Anyone who knowingly takes part in an eviction in violation of this section can be punished by imprisonment for up to one year, a fine as provided in Title 18, U.S. Code, or both. Persons claiming relief under this section may collect consequential and punitive damages in cases involving wrongful eviction.

**Relief for landlord.** This section allows the courts to grant landlords, or other person with “paramount title,” equitable relief in cases where a stay is granted. Subsection (d) of this section authorizes, if the court orders payment, the secretary of the branch of service to order an allotment of military pay for rent of a dwelling for the wife, children, or other dependents of a person on active duty in military service.

**Protection under installment contracts.**

**Sec. 302** (50 U.S.C. app. § 532). Except by court order, no one who has collected a deposit as partial payment for property, where the remainder of the price is to be paid in installments, can repossess the property or cancel the sale, lease or bailment of the property because of the failure to meet the terms of the contract, if the buyer enters active duty military service after paying the deposit and subsequently breaches the terms of the contract. A violation of this section is punishable by imprisonment for up to one year, a fine as provided in Title 18, U.S. Code, or both. A court may order the cancellation of the installment sale, mandating the return of the property to the seller as well as the return of paid installments to the buyer, or the court may stay the proceedings. This section does not permit a servicemember unilaterally to terminate the contract, although the servicemember may be able to bring an action under § 701 for relief.

**Mortgages and trust deeds.**

**Sec. 303** (50 U.S.C. app. § 533). This section protects servicemembers who, prior to a period of active military service, entered into a property transaction subject to a mortgage, a trust deed, or some other kind of security loan. If the servicemember is unable to make payments on the loan due to military service, the provision prevents the vendor from exercising any right or option under the contract to rescind or terminate the contract, resume possession of the property for nonpayment of any installment due, or to breach the terms, except by action in a court of competent

jurisdiction, until three months after the term of active duty terminates. This section does not prevent the parties from entering into a written agreement with regard to repossession or forfeiture of the property after the servicemember's entry into active duty or receipt of notice of induction. A sale, foreclosure, or seizure of property during a servicemember's period of military service is prohibited unless under a court order issued prior to foreclosure on the property, or if made pursuant to an agreement under section 107 of the Act. At least one court had interpreted the wording of the SSCRA, which states an action is forbidden "unless upon an order previously granted by the court" to mean that the order must have been issued prior to the servicemember's entry into active duty.<sup>25</sup>

If the servicemember breaches the terms of a mortgage, trust deed, or other loan, the court may stay any proceedings brought by the lender to enforce the terms of the agreement. The court may also order any other disposition of the property that it decides is fair to both the borrower and the lender. Property repossessed or other action taken without benefit of a court order is punishable by imprisonment up to one year, a fine as provided by Title 18, U.S.Code, or both, and may subject the creditor to a suit for wrongful conversion. In addition, where a covered person can show oppression, fraud, or malice on the part of the creditor, punitive damages may be awarded.

#### **Settlement of stayed cases relating personal property.**

**Sec. 304** (50 U.S.C. app. § 534). If a court stays an action for foreclosure on property, repossession, or the cancellation of a sales contract against a servicemember, the court can appoint three disinterested persons to appraise the property and, on the basis of the appraisal, order any amount it decides is fair to be paid back to the person on active duty in military service as a condition for allowing the foreclosure, repossession, or cancellation.

#### **Cancellation of residential or motor vehicle lease.**

**Sec. 305** (50 U.S.C. app. § 535). This section allows military persons who live in rental property to terminate leases they entered into prior to a period of active service. It applies to: (1) property leased for a dwelling or for professional, business, or farm use, or other similar purpose, where the person leasing the property later enters active duty in military service, or where the servicemember executes the lease while in military service and thereafter receives military orders for a permanent change of duty station (PCS) or to deploy with a military unit for a period of at least 90 days; and (2) motor vehicle leases for personal or business transportation where the person later enters active military service of not less than 180 days or where the servicemember executes the lease while in military service and thereafter receives PCS orders outside of the continental United States or to deploy with a military unit for at least 180 days. Servicemembers who rent premises are advised to ensure the

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<sup>25</sup> Syracuse Savings Bank v. Brown, 181 Misc. 999, 42 N.Y.S. 2d 156 (N.Y. Sup. Ct. 1943).

rental agreement contains a “military” clause to allow for early termination of a lease in case of military orders to deploy.<sup>26</sup>

The servicemember may terminate a property lease by delivering by hand, private business carrier or mailing return receipt a written notice and a copy of the servicemember’s military orders to the lessor or its agent. With regards to a motor vehicle lease, the servicemember must return the motor vehicle subject to such lease to the lessor or its agent no later than 15 days after the date of delivery of the written notice. As for a residential lease, if the lease called for monthly rent, then cancellation takes effect thirty days after the next due date for rent *following* the day the written notice is sent. For all other property leases, the cancellation is considered effective at the end of the month following the month in which the written notice is sent. Any unpaid rent prior to the effective cancellation must be paid to the landlord on a prorated basis. The servicemember is entitled to a refund of any prepaid rent for time after the lease is canceled within 30 days of the termination of the lease. A court can make adjustments if the landlord petitions the court for an “equitable offset” prior to the date the lease is effectively canceled.<sup>27</sup> For motor vehicle leases, the cancellation is considered effective on the day on which the vehicle is returned to the lessor. The lessor cannot impose early termination fees, but the servicemember is still responsible for any taxes, summonses, title and registration fees, and any other obligation or liability under the lease such as fees for excessive wear, use and milage.

The section provides for the punishment of anybody who knowingly seizes personal effects, security deposit or any other property belonging to a person who has lawfully canceled a lease pursuant to this section. Anyone who seizes or otherwise interferes with the removal of property in order to satisfy a claim for rent due for any time after the date of the effective cancellation of the lease may be punished by imprisonment for up to one year, a fine as provided in Title 18, U.S.Code, or both.

### **Protection of life insurance policy.**

**Sec 306** (50 U.S.C. app. § 536). If a person entering military service has used a life insurance policy as collateral to secure a debt, this section protects the servicemember from foreclosure on the policy to satisfy the debt unless the assignee first obtains a court order, except in the case that the assignee is the insurance company itself (in which case the debt amounts to a policy loan). A court may refuse to grant the order if it determines that the servicemember’s ability to repay is materially affected by military service. This rule applies during the entire time the insured is on active duty plus one year. The rule does not apply in three cases: (1) if the insured gives his or her written permission to let a creditor make a claim against the policy in order to satisfy the debt involved; (2) if any premiums required under the life insurance policy are due and unpaid (excluding premiums guaranteed under title IV of this Act); or (3) if the person whose life is insured has died.

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<sup>26</sup> See JA-260, *supra* note 21, at § 4-7.

<sup>27</sup> An “equitable offset” may allow the landlord to retain part or all of the amount of rent remaining on the lease as well as the security deposit, to compensate for unreasonable expenses incurred as the result of early lease termination. *Omega Industries, Inc., v. Raffaele*, 894 F.Supp. 1425 (D. Nev. 1995).

Finally, this section provides that anyone who knowingly takes or attempts action contrary to this section will be punished to imprisonment for up to a year, or a fine as provided in title 18, U.S. Code, or both.

### **Enforcement of storage liens.**

**Sec. 307.** (50 U.S.C. app. § 537). This section protects servicemembers with property or effects subject to a lien, including liens for storage, repair or cleaning of property, by providing that no one is allowed to foreclose or enforce lien during the servicemember's in military service plus three months *unless* a court finds that the servicemember's ability to meet the obligation is not materially affected by military service. A court can also stay the proceedings in these types of enforcement actions or order some other disposition of the case it deems equitable to the parties. This section does not affect the scope of section 303 (mortgages and trust deeds).

Finally, the section provides a penalty for anyone who knowingly takes any action contrary to its provisions. Such an action is punishable by imprisonment up to one year, a fine as provided by title 18, U.S.Code, or both.

### **Dependents' rights.**

**Sec. 308** (50 U.S.C. app. § 538). This section extends the benefits of the rules provided under title III (50 U.S.C. app. §§ 531 to 537) of the SCRA to dependents of active duty personnel in their own right. Dependents must petition a court in order to permit them to take advantage of those rules, and the court is not required to grant permission if it determines that the ability of the applicant dependents to comply with the terms of the obligation, contract, lease, or bailment has not been materially impaired by the military service of the person upon whom the applicants are dependent.

## **IV. Life Insurance**

Title IV provides relief from insurance premiums and guarantees servicemembers continued coverage under certain commercial life insurance policies.

### **Definitions**

**Sec. 401** (50 U.S.C. app. § 541). This section defines which life insurance policies are covered, and provides other definitions relevant to title IV of the SCRA. To be covered by the Act, the policy must be for a whole, endowment, universal, or term life insurance (other than group term life insurance), or benefit similar to life insurance that comes from membership in any fraternal or beneficial association and has to satisfy all of the following conditions:

- (1) the policy does not include a provision limiting the amount of insurance coverage based on the insured's military service;

(2) the policy does not require the insured to pay higher premiums if he or she is in military service;

(3) the policy does not include a provision that limits or restricts coverage if the insured person engages in any activity required by military service; and

(4) the policy has to be “in force” (premiums have to be paid on time before any benefit guaranteed by these sections of the law can be claimed) for at least 180 days before the insured enters military service.

**‘Premium’.** ‘Premium’ is defined as the amount specified in the policy to be paid to keep the policy in force.

**‘Insured’.** ‘Insured’ is defined as a servicemember who owns a life insurance policy.

**‘Insurer’.** ‘Insurer’ is defined as any firm, corporation, partnership, association, or business that can, by law, provide insurance and issue contracts or policies.

### **Insurance rights and protections.**

**Sec. 402** (50 U.S.C. app. § 542). This section further defines who is entitled to take advantage of the provision and how to apply for protection, and limits total amount of covered policies to the greater of \$250,000, or an amount equal to the maximum limit of the Servicemember’s Group Life Insurance(SGLI). Either the person insured, an insured’s legal representative, or, when the insured person is outside the United States, a beneficiary of the insurance policy must make a written application to the insurer and send a copy to the Secretary of Veterans Affairs.

### **Application for insurance protection.**

**Sec. 403** (50 U.S.C. app. § 543). This section provides that to invoke protection for the policies under this part of the SCRA the servicemember, his or her legal representative or beneficiary, must submit an application in writing identifying the policy and insurer, with an acknowledgment that the insured’s rights under the policy are subject to and modified by the provisions of title IV of this Act. The Secretary of Veterans Affairs may require the parties to provide additional information as necessary. The insurer then reports the action to the Department of Veterans Affairs as required by regulation (found in 38 C.F.R. part 7). By making an application for the protection guaranteed by these sections of the law, the insurer and insured are deemed to have accepted any necessary modifications to the terms of the life insurance policy.

### **Policies entitled to protections.**

**Sec. 404** (50 U.S.C. app. § 544). The Secretary of Veterans Affairs determines whether a policy is entitled to the protection guaranteed by these sections, and is responsible for notifying the insurer and the insured as to his determination. Once

the policy is deemed qualified for protection, the policy will not lapse or be canceled or forfeited if the insured fails to pay premiums, or pay any debt or interest due on a policy loan. This protection applies during the time the insured person is in military service and for two years after he or she leaves military service.

### **Policy restrictions.**

**Sec. 405** (50 U.S.C. app. § 545). The approval of the Secretary of Veterans Affairs is necessary for a policy holder to make certain withdrawals and other payments or credits under a policy protected by this part of the SCRA. If such approval is not obtained, rather than paying dividends to the insured or reinvesting them to purchase additional coverage, the insurer must add dividends to the value of the policy to be treated as a credit. The insured is not permitted to take out loans against the policy or cash it in while it is protected without the approval of the Secretary of Veterans Affairs. However, the insured retains the right to modify the designation of beneficiaries.

### **Deductions of unpaid premiums.**

**Sec. 406** (50 U.S.C. app. § 546). If a covered policy matures due to the death of the insured, the insurance company may reduce its settlement with the beneficiaries by the amount of any unpaid premiums (plus interest). If the rate of interest is not specified in the policy, it will be the same rate applied to policy loans in other policies issued at the time when the insured's policy was issued. Deductions must be reported to the Secretary of Veterans Affairs.

### **Premiums and interest guaranteed by the United States.**

**Sec. 407** (50 U.S.C. app. § 547). This section provides a government guarantee for premiums and interest that become due on a policy. In the event the insured fails to pay all of the premiums owed on a policy at the time the guarantee period expires and the cash surrender value of the policy is less than the amount due, the United States will pay the unpaid premiums and may then attempt to collect the amount from the insured. (Any funds collected from the insured are added to appropriations for the payment of guaranteed premiums under this part of the SCRA). If the unpaid premiums do not exceed the policy's cash surrender value, the insurer will treat them as a policy loan. Moreover, any money paid by the government to an insurance provider under this section is a debt owed by the insured to the government and may not be discharged by bankruptcy.

### **Regulations.**

**Sec. 408** (50 U.S.C. app. § 548). The Secretary of Veterans Affairs will promulgate regulations to carry out the provisions of the article.

### **Review.**

**Sec. 409** (50 U.S.C. app § 549). The findings of fact and conclusions made by the Secretary in administering these sections are subject to review by the Board of

Veterans' Appeals and the U.S. Court of Appeals for Veterans' Claims. Judicial review is permitted only to the extent provided by chapter 72 of title 38, U.S. Code.

## **V. Taxes and Public Lands**

The fifth broad category of provisions of the SCRA provides protection for certain rights regarding public lands and protects servicemembers from having to pay certain taxes to multiple jurisdictions. It also protects servicemembers from having certain personal or real property attached in order to satisfy tax liens.

### **Personal and real property taxes.**

**Sec. 501** (50 U.S.C. app. § 561). This section applies to all taxes except income taxes, and it protects all personal property (including motor vehicles) belonging to a person in military service, as well as all real property used by the servicemember as a home, a business, or for agriculture, as long as the property continues to be occupied by the servicemember's family or employees. Property belonging to a person in military service cannot be sold to collect unpaid taxes unless a court first gives its permission. A court may stay an action to force the sale of property belonging to a person in military service for the collection of unpaid taxes if it finds that the debtor's ability to pay the taxes is materially affected by his or her military service. In the event a servicemember's property is sold for such a purpose, the servicemember has the right to redeem the property up to six months after the person leaves military service, without regard to any impairment of the servicemember's ability to pay the taxes due to military service. This section will not be construed to shorten any period provided by state law. Finally, the section provides that a 6% interest rate will be applied to the assessment or lien resulting from the unpaid taxes, but that no other penalty will apply. Finally, this section applies to joint ownership of all forms of personal and real property by a servicemember and his or her dependents.

### **Rights in public lands.**

**Sec. 502** (50 U.S.C. app. § 562). Persons in military service cannot be deemed to have forfeited any right they had to use public lands of the United States prior to entering military service based on absence from the land or failure to perform required maintenance or other improvements. Holders of permits and licenses who subsequently enter military service may suspend the licenses for the duration of military service plus six months, allowing the servicemember to obtain a reduction or cancellation of fees for the duration of that time.

### **Desert-land entries.**

**Sec. 503** (50 U.S.C. app. § 563). This section protects the rights of persons in military service who had claims to desert lands prior to entering military service. The protection lasts while the person is in military service and for six months after he or she leaves military service or is released from hospitalization because of wounds or disability suffered while in military service. To qualify for this protection, the

servicemember must give notice of military service to the appropriate land office within six months after entering military service.

### **Mining claims.**

**Sec. 504** (50 U.S.C. app. § 564). This section suspends certain requirements for maintaining a mining claim during the holder's period of active military service and for six months after he or she leaves military service or is released from hospitalization because of wounds or disability suffered while in military service. During this time period, the mining claim cannot be forfeited due to nonperformance of the requirements of the lease. To qualify for this protection, the servicemember must notify the appropriate claims office that he or she has entered military service within 60 days after the end of the assessment year in which the person enters military service.

### **Mineral permits and leases.**

**Sec. 505** (50 U.S.C. app. § 565). Any person who holds a permit or a lease under the federal mineral leasing laws who enters military service is allowed to suspend all operations during military service (plus six months), in which case the period of service is not counted as part of the term of the person's permit or license but the holder is not required to pay rentals or royalties during that time. However, to qualify for these privileges, the person has to notify the Bureau of Land Management that he or she has entered military service within six months after entering military service.

### **Perfection or defense of rights.**

**Sec. 506** (50 U.S.C. app. § 566). Nothing in title V of the SCRA prevents a person in military service from taking any action authorized by law or regulations of the Department of the Interior to assert, perfect, or protect the rights covered in those sections. A servicemember may submit any evidence required to assert this right in the form of affidavits or notarized documents. Affidavits provided pursuant to this section are subject to 18 U.S.C. § 1001.

### **Distribution of information concerning benefits.**

**Sec. 507** (50 U.S.C. app. § 567). The Secretary concerned is responsible for providing military authorities with information about the benefits of this article (except those pertaining to taxation) for distribution among servicemembers and forms to be used by applicants for these benefits.

### **Land rights of servicemembers.**

**Sec. 508** (50 U.S.C. app. § 568). This section extends the protection of land rights under this article to servicemembers under the age of 21. Any residency requirements related to the establishment of a residence within a limited time will be suspended for 6 months after release from military service.

**Regulations.**

**Sec. 509** (50 U.S.C. app. § 569). The Secretary of the Interior has the authority to issue regulations necessary to carry out title V of the Act, other than the sections that deal with taxes (secs. 501, 510, and 511).

**Income taxes; residence for tax purposes.**

**Sec. 510** (50 U.S.C. app. § 570). The collection of income taxes (excluding Social Security (FICA) taxes) owed by a person in military service either before or after he or she entered into military service is deferred while the person is in military service, and for up to six months thereafter, if the servicemember's ability to pay the taxes is impaired because of his or her military service. No interest or other penalty may be imposed on a debt deferred under this section. The statute of limitations for paying the debt is tolled for the length of the person's period of military service plus nine months.

**Residence for tax purposes.**

**Sec. 511** (50 U.S.C. app. § 571). In order to prevent multiple state taxation of the property and income of military personnel serving within various tax jurisdictions by reason of military service, this section provides that servicemembers neither lose nor acquire a state of domicile or residence for taxation purposes when they serve at a duty station outside their home state in compliance with military orders. A servicemember who conducts other business while in military service may be taxed by the appropriate jurisdiction for resulting income. This section does not protect the income of a spouse or other military dependant from being taxed. However, a tax jurisdiction cannot include the military compensation earned by nonresident servicemembers to compute the tax liability imposed on the non-military income earned by the servicemember or spouse. Personal property of a servicemember will not be subject to taxation by a jurisdiction other than his or her domicile or residence when they serve at a duty station outside of their home state. However, relief from personal property taxes does not depend on whether the property is taxed by the State of domicile. Property used for business is not exempt from taxation. An Indian servicemember whose legal residence or domicile is a Federal Indian reservation will only pay taxes under the laws of the Federal Indian reservation and not to the State where the reservation is located.

The section defines the term "tax jurisdiction" as "a State or a political subdivision of a State," which would include the District of Columbia and any commonwealth, territory or possession of the United States (Sec. 101(6)). "Taxation" includes licenses, fees, or excises imposed on an automobile that is also subject to licensing, fees or excise in the servicemember's state of residence. "Personal property" includes intangible and tangible property including motor vehicles.

## **VI. Administrative Remedies**

Title VI provides courts the authority to deny remedies that would abuse the purpose of the SCRA, indicates how a servicemember's military and financial status can be established in court, and covers other technicalities.

### **Inappropriate use of the Act.**

**Sec. 601** (50 U.S.C. app. § 581). This section provides that a court may deny the protections of the Act with respect to a transfer it finds was made with the intent to exploit the provisions of the Act, in order to delay enforcement of the contract, to obtain reduced interest rates, or to avoid obligations with respect to property that was the subject of the transaction.

### **Certification.**

**Sec. 602** (50 U.S.C. app. § 582). This section provides that a certificate signed by the Secretary concerned serves as prima facie evidence in an action under the SCRA that the individual is in the military service, date of induction or discharge, person's residence at time of induction, rank and rate of pay, and other facts relevant to asserting rights under the SCRA. A servicemember who is missing in action is presumed to continue in military service until he or she is accounted for or his or her death has been reported to the Department of Defense or determined by a court or board with the authority to make such determination.

### **Interlocutory orders.**

**Sec. 603** (50 U.S.C. app. § 583). This section permits courts to revoke, modify, or extend any interlocutory orders they has issued pursuant to the SCRA.

## **VII. Further Relief**

Title VII of the SCRA provides a means for servicemembers to petition for relief without having to wait until a creditor brings an enforcement action against them. It also treats powers of attorney and provides relief from liability insurance premiums for servicemembers who need to maintain such policies for their civilian occupations.

### **Anticipatory relief.**

**Sec. 701** (50 U.S.C. app. § 591). This section provides relief similar to that provided in sections 301 and 501, except that it permits the servicemember to initiate the action prior to defaulting on the obligation, rather than having to wait for the creditor to commence proceedings. Dependents do not have independent protection under this section as they do for the provisions of Article III. A servicemember can petition the court to stay the enforcement of any pre-service obligation or liability, including a tax obligation, while on active duty or within six months of release from active duty.

Courts may grant the following relief:

(1) if the obligation involves payments of installments for the purchase of real estate (like a mortgage), the court can stay enforcement of the obligation by adding a period of time no greater than the period of military service to the remaining life of the contract, subject to the payment of the balance of principal and accumulated interest that remains unpaid at the termination of the applicant's military service, in equal installments over the duration of the extended life of the contract; and

(2) for any other type of obligation, liability, tax, or assessment, the court can stay enforcement for a period of time equal to the petitioner's period of military service, subject to payment of the balance of principal due plus accumulated interest in equal installments over the duration of the stay.

If a stay has been granted under this section, no fine or penalty can be imposed during the period of the stay as long as the servicemember complies with the terms and conditions of the stay. This provision allows servicemembers who are not yet in default on an obligation, but whose ability to make payments is materially affected by military service, to petition the court in effect to rewrite the contract by extending its life, allowing the servicemember to pay down the amount in arrears with equal installments over a longer period of time. The servicemember must resume making regular payments on the debt after leaving active duty, in addition to the payments to make up for the smaller payments he or she made while on active duty.

#### **Extension of power of attorney.**

**Sec. 702** (50 U.S.C. app. § 592). This section provides for the automatic extension of any valid power of attorney for a person who is declared to be missing in action. Unless the document explicitly states that it is to expire even in the event the person who executed it becomes missing in action, the document continues in force for the entire period the person remains in missing status. It is limited to documents that designate the servicemember's spouse, parent, or named relative as the servicemember's attorney in fact.

#### **Professional liability insurance.**

**Sec. 703** (50 U.S.C. app. § 593). This section provides relief for professional persons who are required to maintain professional liability insurance in their civilian occupation. Beginning July 31, 1990, certain persons who, prior being called to active duty, were furnishing "health care services" or legal services or any other services which the Secretary of Defense determines to be "professional services" and who had in effect a professional liability (*i.e.*, malpractice) insurance policy, may suspend payment of premiums on their liability insurance while they serve on active duty without losing any coverage. The section covers insurance policies that, according to their terms, would not continue to cover claims arising prior to a lapse in coverage unless the insured continues to pay premiums.

***Definitions.***

“Profession” is defined in subsection (i) to include “occupation.” Similarly, the expression “professional” includes the term “occupational.” Subsection (i) also defines “active duty,” adopting the definition used in section 101 of title 10, U.S. Code. However, the provision is further limited to persons called to active duty (other than for training) under 10 U.S.C. §§ 688 (retired members of regular armed forces, members of the Retired Reserves, and members of the Fleet Reserve or Fleet Marine Corps Reserve); 12301(a) (activation of Reserves during war or national emergency declared by Congress); 12301(g) (member of Reserve component in captive status); 12302 (Ready Reserve); 12304 (Selected Reserve and certain Individual Ready Reserve members called to active duty other than during war or national emergency); 12306 (Standby Reserve); 12307 (Retired Reserve); and, if any of the preceding sections are invoked, section 12301(d) (volunteer member of a Reserve component).

***Suspension of coverage.***

Professional liability insurance policies covered by this section are suspended from the time the insurer receives a request for protection until the insured requests in writing to have the policy reinstated. In the case of a joint insurance policy, no suspension of coverage is required for the policyholders who are not called to active duty. For example, if several physicians jointly purchase a group policy of malpractice insurance, and only one of them is called to active duty, the coverage of those not called to active duty need not be suspended by the insurer.

***Premiums.***

The insurer may not charge premiums for coverage that is suspended. The insurer must either refund any amount already paid for coverage that is suspended or, if the insured professional person chooses, apply the amount toward payment of any premium that comes due after coverage is reinstated.

***Liability during suspension.***

The insurer is not obligated to pay any claim that is based on a professional’s actions (or inaction) during a period when a policy is suspended. In the case of claims involving obligations imposed by state law on a professional person to assure that his or her patients or clients will receive professional assistance in his or her absence to serve on active duty, the section clarifies that the failure of the professional person to satisfy such an obligation will generally be considered to be a breach that occurred *before* the professional person began active duty. In such a situation, the insurer would be liable for the claim. In the event a claim arises while the patient is receiving alternate care as arranged by the servicemember for patients during his or her absence, the insurer would not be liable for the claim.

***Actions against policy holder during suspension of coverage.***

In the event a malpractice suit (or administrative action) is filed during the period when the insurance is suspended, the litigation will be stayed until the end of

the suspension period. The stay only applies where the malpractice is alleged to have occurred before the suspension began, and would thus be covered by the policy. Litigation stayed under this rule is deemed to be filed on the date the suspended insurance is reinstated. The period of any stay granted under this provision is not counted when computing whether or not the relevant statute of limitations has run.

In the event that a professional person whose malpractice insurance coverage has been suspended under the section should die during the period of the suspension, any stay of litigation or administrative action against the person under this section is lifted. In addition, the insurer providing the coverage that was suspended is to be liable under the policy just as if the deceased person had died while covered by the policy but before the claim was filed.

### ***Reinstatement of coverage.***

The insurer is required to reinstate the insurance coverage on the date the servicemember transmits a written request for reinstatement, which must occur within 30 days after the covered servicemember is released from active duty. The insurer must notify the policy-holder of the due date for payment of any premium required for reinstatement of the policy, and that the premium must be paid within 30 days after the notice is received by the professional person. The section also limits the premium that the insurer can charge for reinstated coverage to the rate that would have applied if the servicemember had not been deployed. The insurer is not allowed to recoup missing premiums by charging higher rates for reinstated coverage, but it may charge higher rates for reinstated coverage if it raised the rates for all policyholders with similar coverage, if the servicemember would have had to pay a higher premium even if he or she had not suspended coverage.

### **Reinstatement of health insurance.**

**Sec. 704** (50 U.S.C. app. § 594). This section grants servicemembers who were called to military service as described in § 703(a)(1) the right, upon termination or release from military service, to reinstatement of any health insurance policy that was in effect on the day before the servicemember entered military service, and that terminated at any time during his or her service. No new exclusions from coverage or waiting periods for reinstatement of coverage may be imposed with respect to conditions arising prior to or during the servicemember's period of military service, if such an exclusion or waiting period would not have applied during regular coverage and the condition has not been determined to be a disability incurred in the line of duty under 38 U.S.C. § 105. The section does not apply to employer-sponsored health insurance plans covered by the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA).<sup>28</sup> Insurance plans covered by USERRA are subject to similar protections under 38 U.S.C. § 4317. Servicemembers must apply for reinstatement within 120 days of termination or release from active duty.

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<sup>28</sup> P.L. 103-353, 108 Stat. 3161 (1994), *codified at* 38 U.S.C. §§ 4301 *et seq.*

**Guarantee of residency for military personnel.**

**Sec. 705** (50 U.S.C. app. § 595). This section guarantees that military personnel are not deemed to have changed their state residence or domicile for the purpose of voting for any federal, state, or local office, solely because of their absence from the respective state in compliance with military or naval orders.

**Business or trade obligations.**

**Sec. 706** (50 U.S.C. app. § 596). The assets of a servicemember are protected from attachments to satisfy business debts for which the servicemember is personally liable, as long as the assets sought to be attached are not held in connection with the business. The obligor would have the right to apply to the court for a modification of the servicemember's relief where warranted by equitable considerations.