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SUMMARY

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The Servicemembers Civil Relief Act (SCRA): Section-by-Section Summary

Congress enacted the Servicemembers Civil Relief Act (SCRA) in 2003 in response to the increased deployment of Reserve and National Guard military and as a modernization and restatement of the protections and rights previously available to servicemembers under the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA). The SCRA has been amended since its initial passage, and Congress continues to consider amendments from time to time.

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. The SCRA is an exercise of Congress's power to raise and support armies and to declare war. The purpose of the act is to provide for, strengthen, and expedite the national defense by protecting servicemembers, enabling 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 legal rights during military service. The SCRA does not provide forgiveness of all debts or the extinguishment of contractual obligations on behalf of active-duty servicemembers, nor does it grant absolute immunity from civil lawsuits. Instead, the SCRA provides for the suspension of claims and protection from default judgments against servicemembers. In this way, it seeks to balance the interests of servicemembers and their creditors, spreading the burden of national military service to a broader portion of the citizenry. Some protections are contingent on whether military service materially affects the servicemember's ability to meet obligations, while others are not. Courts are to construe the SCRA liberally in favor of servicemembers, but retain discretion to deny relief in certain cases. The Services are required to provide information to servicemembers explaining their rights under the SCRA.

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. One measure that affects many who are called to active duty is the cap on interest at an annual rate of 6% on debts incurred prior to a person's entry into active-duty military service. Creditors are required to forgive the excess interest and are prohibited from retaliating against servicemembers who invoke the 6% interest cap by submitting adverse credit reports solely on that basis. Other measures protect military families from being evicted from rental or mortgaged property; from cancellation of life insurance and professional liability insurance; from taxation in multiple jurisdictions; from losing domicile for voting and other purposes due to being stationed elsewhere; from losing child custody due to deployment or the possibility of deployment; from foreclosure of property to pay taxes that are due; and from losing certain rights to public land.

The SCRA makes it unlawful for lienholders or lessors to foreclose or seize property owned or used by servicemembers without a court order. It also permits servicemembers to prematurely terminate leases and other term contracts without incurring any early termination penalties. Statutes of limitations that might otherwise prevent servicemembers from pursuing remedies in court or before any governmental agency, including state and local entities, are tolled for the duration of the servicemember's military service. Servicemembers may initiate an action in court for relief prior to defaulting on any pre-service obligation or liability, in order to obtain restructuring of loan repayments or other equitable relief without incurring any penalty. Servicemembers may bring an action in court to enforce their rights under the SCRA, or the Attorney General may bring a civil action in U.S. district court for violations of the SCRA by a person who (1) engages in a pattern or practice of violating the act; or (2) engages in a violation that raises an issue of significant public importance.

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Introduction

The Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA)[1] provided civil protections and rights to individuals based on their service in the U.S. Armed Forces. Congress enacted the Servicemembers Civil Relief Act (SCRA)[2] in 2003 in response to the increased deployment of Reserve and National Guard military and as a modernization and restatement of the protections and rights previously available to servicemembers under the SSCRA.[3] The SCRA has been amended since its initial passage, and Congress continues to consider amendments from time to time.

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. For example, Congress tolled all judicial actions during the Civil War, civil and criminal, for persons who "by reason of resistance to the execution of the laws of the United States, or the interruption of the ordinary course of judicial proceedings," were beyond the reach of legal process.[4] During World War I, Congress passed the Soldiers' and Sailors' Civil Relief Act of 1918,[5] which, unlike many state laws of the Civil War era, did not create a moratorium on legal actions against servicemembers,[6] but instead directed trial courts to apply principles of equity to determine the appropriate action to take whenever a servicemember's rights were implicated in a controversy. During World War II, Congress essentially reenacted the expired 1918 statute as the Soldiers' and Sailors' Civil Relief Act of 1940,[7] and then amended it substantially in 1942 to take into account the new economic and legal landscape that had developed between the wars.[8] Congress enacted amendments to the SSCRA on several occasions during subsequent conflicts, including in 2002, when the benefits of the SSCRA were extended to certain members of the National Guard.[9]

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[1] P.L 76-961, 54 Stat. 1178 (1940).

[2] P.L. 108-189, 117 Stat. 2836 (2003).

[3] *See* H.Rept. 108-81, at 32 (2003). *See also*, S.Rept. 108-197, at 9 (2003) (stating that the military had activated approximately 300,000 Reserves since September 2001, and that a Department of Defense survey indicated that self-employed Reservists reported an average $6,500 in lost income when mobilized or deployed).

[4] Act of June 11, 1864, ch 118, 13 Stat 123 (1864).

[5] 40 Stat. 440 (1918).

[6] *See* Boone v. Lightner, 319 U.S. 561, 569 n.2 (U.S. 1943) (describing legislative history stating that a "'sweeping exemption' such as that provided by most States in Civil War days, was 'too broad, for there are many cases where the financial ability of soldiers and sailors to meet obligations in some way is not materially impaired by their entrance into service.'") (citing Hearings and Memoranda before Senate Judiciary Committee on S. 2859 and H.R. 6361, 65th Cong., 1st and 2d Sess., at 27).

[7] P.L. 76-861, 54 Stat. 1178, (1940).

[8] H.Rept. 108-81, at 33 (2003) (quoting statement by Representative Overton Brooks (D-LA) on the floor of the House during consideration of amendments to the SSCRA: "This bill springs from the desire of the people of the United States to make sure as far as possible that men in service are not placed at a civil disadvantage during their absence. It springs from the inability of men who are in service to properly manage their normal business affairs while away. It likewise arises from the differences in pay which a soldier receives and what the same man normally earns in civil life." Cong. Rec. H.5553 (June 11, 1942)).

[9] Veterans Benefits Act of 2002, P.L. 107-330, 116 Stat. 2820 (2002) (extending benefits of the SSCRA to members of the National Guard called up by their respective state governors to support federal efforts during national emergencies (including the war against terrorists responsible for the attacks of September 11, 2001)).

The SCRA[10] is an exercise of Congress's power to raise and support armies[11] and to declare war.[12] The purpose of the act is to provide for, strengthen, and expedite the national defense by protecting servicemembers, enabling them to "devote their entire energy to the defense needs of the Nation."[13] The SCRA protects servicemembers by temporarily suspending certain judicial and administrative proceedings and transactions that may adversely affect their legal rights during military service. The SCRA does not provide forgiveness of all debts or the extinguishment of contractual obligations on behalf of active-duty servicemembers, nor grant absolute immunity from civil lawsuits. Instead, the SCRA provides for the suspension of claims and protection from default judgments against servicemembers. In this way, it seeks to balance the interests of servicemembers and their creditors, spreading the burden of national military service to a broader portion of the citizenry.[14] Courts are to construe the SCRA liberally in favor of servicemembers, but retain discretion to deny relief in certain cases.[15]

Many of the SCRA provisions are especially beneficial for Reservists activated to respond to a national crisis, but some provisions are also useful for career military personnel.[16] One measure that affects many who are called to active duty is the cap on interest at an annual rate of 6% on debts incurred prior to a person's entry into active-duty military service.[17] Other measures protect military families from being evicted from rental or mortgaged property[18]; from cancellation of life insurance[19]; from taxation in multiple jurisdictions[20]; from foreclosure of property to pay taxes that are due[21]; and from losing certain rights to public land.[22]

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[10] 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). The name of the act was changed to the more inclusive SCRA "because soldiers, sailors, marines and airmen are collectively referred to as 'servicemembers' in other statutes" H.Rept. 108-81, at 35 (2003), at 35 (April 30, 2003)). Therefore, all of the historical and legal background of this act makes reference to the 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.

[11] U.S. CONST. art. I, §8, cl. 12.

[12] *Id.* art. I, §8, cl. 11; *see* Dameron v. Brodhead, 345 U.S. 322, 325 (1953) (citing Congress's powers to declare war, raise and support armies, and enact laws necessary and proper for their exercise to uphold a portion of the SCRA).

[13] 50 U.S.C. §3902 (2018).

[14] *See In re* Watson, 292 B.R. 441, 444 (Bankr. S.D. Ga. 2003) ("Substantial justice may result in detriment to parties who are not in the military service.") (citing Craven v. Vought, 43 Pa. D. & C. 482 (Com. Pl. 1942) ("A stay will be granted, in spite of the possibility that plaintiffs may suffer by not being able to prosecute their claims in the courts and the sacrifice is one of those which must be made in war for the common good.")).

[15] Boone v. Lightner, 319 U.S. 561, 575 (U.S. 1943) ("The Soldiers' and Sailors' Civil Relief Act is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation. The discretion that is vested in trial courts to that end is not to be withheld on nice calculations as to whether prejudice may result from absence, or absence result from the service. Absence when one's rights or liabilities are being adjudged is usually prima facie prejudicial. But in some few cases absence may be a policy, instead of the result of military service, and discretion is vested in the courts to see that the immunities of the Act are not put to such unworthy use.").

[16] *See* James P. Pottorff, *Contemporary Applications of the Soldiers' and Sailors' Civil Relief Act*, 132 MIL. L. REV. 115, 118 (1991) (noting that many of the protections of the SCRA are ordinarily unavailable to career servicemembers because they enter into most major legal and financial obligations, such as mortgages, while on active duty rather than prior to entering service).

[17] 50 U.S.C. §3937 (2018).

[18] *Id.* §§3951, 3953.

[19] *Id.* §§3972-3979.

[20] *Id.* §§4000-01.

[21] *Id.* §3991.

[22] *Id.* §§3292-98.

This report provides a section-by-section summary of the SCRA.

Title I: General Provisions

Definitions—Section 101 (50 U.S.C. §3911).

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 include 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'—"Military service" includes "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 of more than 30 consecutive days under 32 U.S.C. §502(f)[23] 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."[24] "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 10 U.S.C. §101(d)(3).

Under the SSCRA, 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 SCRA, 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[25] or attendance at a military academy.[26]

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[23] 32 U.S.C. §502(f) (2018) 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.

[24] 10 U.S.C. §2151 defines senior and intermediate service schools to include the following: The Army War College, The College of Naval Warfare, The Air War College, The Marine Corps War College, The United States Army Command and General Staff College, The College of Naval Command and Staff, The Air Command and Staff College, and The Marine Corps Command and Staff College.

[25] *See* Brown v. United States, 151 F.3d 800 (8th Cir. 1998) (holding that senior Reserve Officer Training Corps training activities are "active military service" under the Veterans Benefits Act).

[26] 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. The law, 37 U.S.C. §203 (2018), provides that cadets of the military academies receive compensation at a rate of 35% of the O-1 paygrade. Upon graduation and acceptance of their commission in the active military service, their pay increases to full O-1 paygrade. Therefore, it would be unlikely that a cadet would be able to claim that entering active duty had a material effect on her ability to pay preexisting debts. In contexts other than the SCRA, military cadets have been considered to be in active military service for some

The SCRA does not cover servicemembers who are absent without leave (AWOL).[27] It apparently does not protect individuals who are in a delayed entry status.[28] Nor does it cover personnel entered on the temporary disability retirement list (TDRL).[29] It does not cover civilian contractor employees who are deployed to serve alongside the Armed Forces.[30]

'Period of military service'—A servicemember's "period of military service" begins when she enters military service and ends on the date of release from military service or upon death during military service.

'Dependent'—"Dependent" is defined as a servicemember's spouse or child (as defined for purposes of veterans' benefits, in 38 U.S.C. §101[31]), 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 than strict familial relationships.[32]

'Court'—The term "court" includes federal and state courts and administrative agencies, whether or not a court or agency of record.

'State'—"State" includes commonwealth, territory, or possession of the United States and the District of Columbia.

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purposes. *See* Collins v. United States, 642 F.2d 217, 220-22 (7th Cir.), *cert. denied*, 452 U.S. 964 (1981) (holding 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, 696 (Mo.App.S.D.1994) (West Point cadet considered to be on active duty for the purpose of determining whether he was "emancipated" under state law, for child support); Minnich v. World War II Serv. Compensation Bd., 57 N.W.2d 803, 804 (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").

[27] United States v. Hampshire, 95 F.3d 999, 1005 (10th Cir. 1996) (servicemember who was AWOL at the time of filing and throughout divorce proceedings was not on "active duty" and was "definitionally precluded by the plain language of the SSCRA from availing himself of its benefits").

[28] *See* Donahou v. Presidential Limousine & Auto Sales, Inc., 2007 WL 1229342 (W.D. Ark. April 24, 2007) (holding that individual who enlisted in the military through a delayed entry program is not in the "military service" while participating in the delayed entry program. Therefore the SCRA does not cover a contract concluded while in the program because it is treated under the SCRA as a pre-service contract.).

[29] Cronin v. United States, 765 F.3d 1331, 1334 (Fed. Cir. 2014) (six-year statute of limitations not tolled for the period the servicemember was listed on the TDRL); Dean v. United States, 92 Fed. Cl. 133, 151 (2010), *aff'd*, 416 F. App'x 908 (Fed. Cir. 2011), *cert. denied*, 565 U.S. 1111 (2012) (servicemember whose name appears on the TDRL is considered "temporarily retired" until such time as he "return[s] to active duty," indicating that Congress did not deem a servicemember to be on active duty while on the TDRL).

[30] Abbattista v. United States, 95 F. Supp. 679, 681–82 (D.N.J. 1951) (Contractor who was performing work on a steamship usually done by seamen was not in military service for purposes of the SCRA).

[31] 38 U.S.C. §101(4) (2018) defines child as a person who is unmarried and under the age of 18; who before attaining the age of 18 became permanently incapable of self-support; or who after attaining the age of 18 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.

[32] *See, e.g.*, Balconi v. Dvascas, 507 N.Y.S. 2d 788, 790 (N.Y. Civ. Ct. 1986) (holding 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).

'Secretary Concerned'—With respect to a member of the Armed Forces, "secretary concerned" refers to the meaning in 10 U.S.C. §101(a)(9)[33] 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'—"Motor vehicle" is 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)(7)).

'Judgment'—"Judgment" includes any judgment, decree, order, or ruling, final or temporary.[34]

Jurisdiction and applicability of act—Section 102 (50 U.S.C. §3912).

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 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—Section 103 (50 U.S.C. §3913).

The SCRA extends 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.[35] 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.[36] 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.[37] 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.[38] Courts do not have the discretion to grant a stay to a co-debtor if the servicemember has not been granted a stay.[39]

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[33] 10 U.S.C. §101(a)(9)) (2018) 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.

[34] P.L. 108-454, 118 Stat. 3598 (2004) (the definition of the term "judgment" was added by Title VII of the Veterans Benefits Improvement Act of 2004, titled Improvements to Servicemembers Civil Relief Act).

[35] 50 U.S.C. §3912(a) (2018).

[36] *Id.* §3912(b).

[37] Judge Advocate General's Legal Center & School, U.S. Army, JA 260, Servicemembers Civil Relief Act [§3-7].

[38] *See* Tabor v. Miller, 269 F. Supp. 647, 650 (D. Pa.), *aff'd*, 389 F.2d 645 (3d Cir.), *cert. denied sub nom* Stearns v. Tabor, 391 U.S. 915 (1968) (stay of proceedings was denied 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).

[39] *In re* Cockerham, 336 B.R. 592, 594 (Bankr S.D. Ga 2005) ("the protections extended to the codebtor should be consistent with the protections extended to the servicemember").

The act added the term "co-maker"[40] to the list of persons who may be entitled to a stay in an action that has been stayed with respect to a servicemember. This effectively codifies courts' interpretations of the previous version of the SCRA.[41]

Bail bondsmen who are unable to procure the appearance of the principal due to that person's active-duty service receive protection under the act.[42] 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.[43] While some courts have interpreted this subsection to allow for no discretion,[44] others have required sureties to make a further showing that the appearance of the principal was in fact prevented due to military service and that the surety made an effort to secure the appearance of the principal in court.[45]

Persons who are primarily or secondarily liable on the obligation of a person in military service may waive their rights under the SCRA, but such a waiver must be executed in a separate instrument from that which creates the obligation.[46] If the individual executes the waiver and then enters active military service, the waiver as applied to the individual, or to the dependents of the person, is invalidated.[47] In the event that the waiver is executed after the person receives orders to active duty, but before entering active service, the waiver remains valid.[48]

Extension of protections to citizens serving with allied forces—Section 104 (50 U.S.C. §3914).

The SCRA protects 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 the service in the U.S. Armed Forces.

Notification of benefits—Section 105 (50 U.S.C. §3915).

Military authorities are required to provide servicemembers with written information describing their rights and benefits under the SCRA.

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[40] 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).

[41] Modern Indus. Bank v. Zaentz, 29 N.Y.S.2d 969, 972-73 (N.Y. Mun. Ct. 1941) (stay available only where "a stay is already operative in favor of the obligor in military service"); Modern Indus. Bank v. Grossman, 40 N.Y.S.2d 628, 630 (1943) (denying bank's application for a stay where servicemember defendant had not acquired a stay or interposed a defense).

[42] 50 U.S.C. §3913(c) (2018).

[43] *Id.*

[44] *See* United States v. Jeffries, 140 F. 2d 745 (7th Cir. 1944) (holding forfeiture of bond mandatory without requiring a showing that the defendant was actually in military service).

[45] *See Ex parte* Moore, 12 So.2d 77 (Ala. 1943) ("mere circumstance of military service" insufficient to show bail bondsman was unable to procure the presence of servicemember); Cumbie v. State, 367 S.W.2d 693 (Tex. Civ. App. 1963) (requiring a showing of some unsuccessful effort to secure defendant's appearance and that his active military service prevented his appearance).

[46] 50 U.S.C. §3913(d) (2018).

[47] *Id.*

[48] *Id.*

Information for members of the Armed Forces and their dependents on rights and protections of the Servicemembers Civil Relief Act—Section 105a (50 U.S.C. §3916).

Military authorities must provide servicemembers with pertinent information on rights and protections available under the SCRA during initial orientation or, in the case of reserve servicemembers, during initial orientation and when mobilized. Additionally, military authorities may provide pertinent information to the adult dependents of servicemembers on the rights and protections available to the servicemembers and dependents.

Extension of rights and protections to Reserves ordered to report for military service and to persons ordered to report for induction—Section 106 (50 U.S.C. §3917).

Benefits under Titles I, II, and III of the SCRA are applicable 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.

Waiver of rights pursuant to written agreement—Section 107 (50 U.S.C. §3918).

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. In order for the waiver to be effective, it must be executed 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 identity of the servicemember concerned. This section extends the protections to servicemembers covered under Section 106 of the act (reservists ordered into active duty and persons ordered to report for induction).

Congress amended the SCRA in 2004 to include two additional requirements for a waiver to be effective.[49] The first requirement is that it must be executed separately from the legal instrument to which it applies. The second is that it must be printed in at least 12-point type.

Exercise of rights under act not to affect certain future financial transactions—Section 108 (50 U.S.C. §3919).

The SCRA protects servicemembers from any penalty imposed solely due to their invocation of rights. In other words, a lender cannot revoke a covered person's credit card or exercise foreclosure rights because the servicemember requests that the rate of interest be capped at 6% pursuant to the SCRA. The SCRA 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;

[49] P.L. 108-454, 118 Stat. 3598 (2004).

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 credit reporting agency to reference the servicemember's reserve or National Guard military status on 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.[50] 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 representatives—Section 109 (50 U.S.C. §3920).

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.

Title II: General Relief

Sections 201 through 208 describe the general relief available 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 of servicemembers against default judgments—Section 201 (50 U.S.C. §3931).

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.[51] The SCRA protects servicemembers from default judgments in civil actions when they are unable to appear in court due to military service. An amendment to the act in 2008[52] added language clarifying that civil lawsuits include child custody proceedings.

Before a court can grant a default judgment, a plaintiff must file an affidavit stating that the defendant is not on active duty in military service showing necessary facts to support the affidavit or that the plaintiff was unable to determine whether or not the defendant is in military service.[53]

[50] *See* Koenig v. Waukesha State Bank, 2006 WL 2334841 at *7 (E.D. Wis. 2006) (SCRA does not prohibit adverse credit report based on servicemember's failure to make payments during the stay period); Rodriguez v. Am. Express, 2006 WL 908613 at *7 (E.D. Cal. 2006) (credit reports that truthfully reflect credit problems, such as late payments, are not actionable under the SCRA).

[51] FED. R. CIV. P. 55.

[52] P.L. 110-181 §584, 122 Stat. 128 (2008).

[53] This requirement may be satisfied by a statement, declaration, verification, or certificate, in writing, under oath. 50 U.S.C. §3931(b)(4) (2018).

A false affidavit is punishable by imprisonment for up to one year, a fine of up to $1,000, or both.[54]

The court, before entering a default judgment, must also appoint an attorney to represent the person on active duty in order to protect her legal rights and interests.[55] However, if the attorney appointed to the case cannot locate the servicemember, actions by the attorney would not waive any defenses or otherwise bind the servicemember.[56] 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 she was in military service and the judgment against the defendant is set aside or vacated in part.[57] 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 her availability to appear in court and that there are meritorious or legal defenses to the suit.[58]

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 asserting certain defenses[59] and negates the 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 the SCRA should not be counted as an appearance,[60] 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.[61] An appearance by defendant's counsel may also waive protection, unless the counsel was appointed pursuant to this section.[62]

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 SCRA will not impair any right or

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[54] *Id.*§3931(c) (2018).

[55] *Id.*§3931(b)(2) (2018).

[56] *Id.*

[57] *Id.*§3931(b)(3) (2018).

[58] *Id.*§3931(g) (2018). If the default was based on a false affidavit by the plaintiff regarding military service of the defendant, then it is unnecessary for the servicemember to demonstrate that military service prejudiced her ability to appear in court.

[59] *See* Vara v. Vara, 171 N.E.2d 384, 392 (Ohio Com. Pl. 1961) (holding defendant's initial appearance by the filing of a motion for relief under the SCRA and by the representations and arguments of his attorney was an appearance by defendant for a purpose other than to test the court's jurisdiction and for a purpose other than to test the sufficiency and service of process, and that such appearance by and on behalf of defendant constituted a general appearance precluding relief from judgment).

[60] *See* Kramer v. Kramer, 668 S.W. 2d 457, 458 (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); Rutherford v. Bentz, 104 N.E.2d 343, 345 (Ill. App. Ct. 1952) (telegram by defendant to judge invoking the SCRA did not constitute a general appearance, since communication was to the judge as an individual and not to the court); *see generally* The Judge Advocate General's Legal Center & School, U.S. Army, JA 260, Servicemembers Civil Relief Act [§3-2].

[61] *See* Skates v. Stockton, 683 P.2d 304, 306 (Ariz. Ct. App. 1984) (holding that a letter to the trial court from a legal assistance attorney requesting a stay constituted an appearance and therefore waived the servicemember's protections from a default judgment).

[62] *See* Blankenship v. Blankenship, 82 So. 2d 335, 340 (Ala. 1978) (holding that attorney's representation of servicemember constituted appearance in court and precluded relief from default judgment).

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.[63]

Stay of proceedings when servicemember has notice—Section 202 (50 U.S.C. §3932).

A court may stay further proceedings in civil litigation, including any child custody proceeding, where the servicemember's ability to participate in the litigation, as either the plaintiff[64] or the defendant, 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 court must grant a stay of at least 90 days upon receipt of a qualifying application by the servicemember. The court may also grant a stay with respect to co-defendants who are not themselves protected under the SCRA.[65]

In an application for a stay under this section, the servicemember must set forth facts stating the manner in which current military duty requirements materially affect her ability to appear, and state a date when she will be able to appear. Additionally, the servicemember must submit a letter from her commanding officer certifying that leave is not authorized to attend proceedings at that time. While a stay is considered under the SCRA as 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.[66] Courts may deny a stay in cases involving purely legal issues or where the servicemember is not the true party in interest or in which presence of the individual is not essential.[67]

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.[68] Therefore, a servicemember may apply for relief without waiving the right, for example, to assert that the court has no jurisdiction in the case.[69] Moreover, additional stays may be granted based on continuing material effect of military duty.[70] If additional stays are denied, the court must appoint counsel to represent the servicemember.[71] A servicemember who is unsuccessful in securing a stay under this section is

[63] Hanson v. Crown Toyota Motors, Inc., 572 P.2d 380, 381 (Utah 1977) (because wrongful repossession of vehicle during a period of military service deprived the court of an opportunity to preserve the status quo, it had the authority to award damages).

[64] P.L. 108-454, 118 Stat 3598 (2004) (adding the words "plaintiff or" before "defendant" in the introductory statement of the section. The former SSCRA contained both terms "plaintiff" and "defendant," but prior to the 2004 amendment to the SCRA, the term "plaintiff" had been omitted).

[65] Pandolfo v. Labach, 727 F. Supp. 2d 1172, 1172 (D.N.M. 2010) ("the Court sees no sound reason for proceeding to trial against [non-servicemember] only to repeat the process once [servicemember] is again available for trial …").

[66] Boone v. Lightner, 319 U.S. 561, 575 (U.S. 1943) (affirming the denial of a stay where the servicemember was deemed to be taking advantage of the protection granted by the SCRA as a matter of policy rather than actual need).

[67] *See* Posey v. Lake Pend Oreille Sch. Dist. No. 84, 2007 WL 420256 (D. Idaho 2007) (request for stay denied based on fact that the motion for summary judgment under consideration had been fully briefed, and under advisement, prior to co-defendants' activation to active duty) *rev'd on other grounds*, 546 F.3d 1121 (9th Cir. 2008).

[68] 50 U.S.C. §3932(c).

[69] *Id.*

[70] *Id.*§3932(d).

[71] *Id.*

precluded from seeking the protections against default judgments granted under Section 201.[72] This section is inapplicable to Section 301[73] (protection from eviction or distress).

Fines and penalties under contracts—Section 203 (50 U.S.C. §3933).

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 a contract cannot be imposed for the period the stay remains in effect. Even without a stay, courts have the discretion to reduce or waive any fines or penalties imposed on a servicemember for failure to carry out the terms of a contract, but only if the servicemember's ability to perform those obligations was impaired by military service. This provision would cover penalties such as early termination fees or fines for late payments.[74]

Stay or vacation of execution of judgments, attachments, and garnishments—Section 204 (50 U.S.C. §3934).

If a servicemember is materially affected by reason of service from complying with a court judgment or order, the court may, on its own motion, and must, 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 for actions or proceedings commenced against the servicemember. This section applies to actions brought against the servicemember before or during the period of military service or within 90 days after termination of service.

Duration and term of stays; co-defendants not in service—Section 205 (50 U.S.C. §3935).

Stays granted by courts under the SCRA can remain in effect for the entire period of a servicemember's 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.[75] With the court's approval, 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.

Statute of limitations—Section 206 (50 U.S.C. §3936).

This section tolls the time period applicable for bringing any action by a covered servicemember for an amount of time equal to the person's period of military service.[76] There is no discretion for

[72] *Id.*§3932(e).

[73] *Id.*§3932(f).

[74] *See* The Judge Advocate General's Legal Center & School, U.S. Army, JA 260, Servicemembers Civil Relief Act [§6-3] (2006).

[75] *See* Roger M. Baron, *The Staying Power of the Soldiers' and Sailors' Civil Relief Act*, 32 SANTA CLARA L. REV. 137, 141-42 (1992).

[76] Bretherick v. Crittenden County, 2007 U.S. Dist. LEXIS 20213 (E.D. Ark. 2007) (stating that SCRA tolling

the court to deny the tolling of an action.[77] The time of service is not counted in determining the servicemember's deadline, for example, for exercising the right to redeem real estate that has been sold or forfeited to enforce an obligation, tax, or assessment. The section applies not just to an action or proceeding in a court but also to any federal or state 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.[78] There is no need to show that military service adversely affected the servicemember's ability to meet relevant obligations.[79] The section does not toll the statute of limitations with respect to federal tax laws.

Maximum rate of interest on debts incurred before military service—Section 207 (50 U.S.C. §3937).

This section caps the maximum interest charged on any debt incurred by a servicemember individually or with the servicemembers' spouse jointly prior to entering active duty at a rate of interest no higher than six percent (6%) a year, if the servicemember's ability to pay is materially affected by active-duty status.[80] 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 are to be reduced by the amount in excess of the 6%, but the terms of the original obligation are to remain the same. The 6% cap is not automatic. The servicemember must provide written notice to the creditor along with a copy of her military orders not later than 180 days after the servicemember is released from military service. A court may grant a creditor relief from this section if, in the opinion of the court, the ability of the servicemember to pay an interest rate in excess of 6% is not materially affected by the military service.

A servicemember who wrongly receives an adverse credit report or has her credit limit reduced or further credit denied after invoking the 6% interest cap provision may seek relief through the Fair Credit Reporting Act[81] (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."[82]

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provision is "crystal clear" in that the period of a servicemember's military service may not be included in computing any period limited by law).

[77] *In re* Brandt, 437 B.R. 294, 299 (Bankr. M.D. Tenn. 2010) (courts have "uniformly concluded that 'may not' is mandatory, not permissive, offers no room for discretion, and that the provision tolls any statute of limitations, general or special, for the period of the service member's active duty").

[78] *See* Giel v. Winter, 503 F. Supp. 2d 208, 211 (D.D.C. 2007) (where a former naval reserve officer appealed decision by the Board for the Correction of Naval Records denying his request for a special selection board remedy to reconsider promotion, the statute of limitations under the Administrative Procedure Act (APA) was tolled during active duty under the SCRA).

[79] *In re* Brandt, 437 B.R. at 299.

[80] The 6% interest rate cap remains in effect during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage; or during the period of military service, in the case of any other obligation or liability (P.L. 110-289, 122 Stat. 2654 (2008)).

[81] Fair Credit Reporting Act, P.L. 91-508, 84 Stat. 1128 (1970), codified at 15 U.S.C. §§1681-1697r.

[82] *See* The Judge Advocate General's Legal Center & School, U.S. Army, JA 260, Servicemembers Civil Relief Act [§3-8].

Historically, federally guaranteed student loans were not eligible for the 6% interest rate cap. Section 428(d) of the Federal Family Education Loan Program, which addressed the applicability of usury laws to federally guaranteed student loans, excluded these loans from the SCRA interest rate limitation.[83] In 2001, the Higher Education Opportunity Act amended Section 428(d) to permit explicitly application of the SCRA interest rate cap to federally guaranteed student loans.[84] As of August 14, 2008, federally guaranteed student loans are treated like all other debts incurred prior to entering active duty. Loans disbursed prior to enactment of the amendment are not covered and therefore are not subject to the 6% interest rate limitation. Additionally, servicemembers currently on active duty who received student loans prior to entering active duty will not be able to claim the 6% cap, but may be entitled to defer repayment or pursue benefits under other laws.[85]

In 2008, the Veterans' Benefits Improvement Act added two new subsections to the SCRA addressing penalties for violation of Section 207.[86] Section 207, as amended, closely mirrors the penalty and preservation of remedies provisions found in other sections of the SCRA. Anyone who violates the maximum interest prohibition may be fined or imprisoned for not more than one year. An individual claiming protection under this section may also be awarded consequential or punitive damages.

The 6% cap does not apply to loans made after entry into military service; however, Congress has enacted legislation to protect servicemembers and their dependents from certain practices of so-called payday lenders.[87]

Child custody protection—Section 208 (50 U.S.C. §3938).

Added in 2014, Section 208 provides protections to servicemembers in connection with child custody proceedings beyond the stay provisions discussed above.[88] If a court enters a temporary change in custody based solely on the deployment or anticipated deployment of a servicemember, the order must expire no later than the conclusion of a period of time justified by the deployment. The section also prohibits a court from considering deployment[89] or possible deployment of the custodial parent as the sole factor in determining the best interest of the child when contemplating a permanent change in custody. Finally, the section does not create a right to remove the child custody dispute to a federal court; and it does not preempt state law that provides greater protections for deploying servicemembers.

[83] 20 U.S.C. §1078(d).

[84] P.L. 110-315, 122 Stat. 3078 (2008).

[85] *See* The Judge Advocate General's Legal Center & School, U.S. Army, JA 260, Servicemembers Civil Relief Act [§6-2].

[86] P.L. 110-389, 122 Stat. 4189 (2008).

[87] P.L. 109-364, §670(a) 120 Stat. 2266 (2006), codified as amended at 10 U.S.C. §987. For an overview of these protections, see Douglas W. Buchanan, *Update: State and Federal Servicemembers Civil Relief Legislation and Cases*, 61 CONSUMER FIN. L.Q. REP. 348, 349-50 (2007). For an explanation of "payday lending," see CRS Report R44868, *Short-Term, Small-Dollar Lending: Policy Issues and Implications*, by Darryl E. Getter.

[88] P.L. 113-291, 128 Stat. 3384 (2014).

[89] Deployment is defined to mean the movement or mobilization of a servicemember to a location for a period of longer than 60 days and not longer than 540 days pursuant to temporary or permanent official orders that do not permit accompaniment by family members. 50 U.S.C. §3938(e) (2018).

Annual notice regarding child custody protection— (50 U.S.C. §3938a).

This provision, added in 2016, requires the secretaries of each military department to ensure that servicemembers receive annually and prior to deployment notice of the child custody protections under the SCRA.[90]

Title III: Rent, Installment Contracts, Mortgages, Liens, Assignments, Leases, Telephone Service Contracts

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.

Evictions and distress—Section 301 (50 U.S.C. §3951).

Under this section as it was enacted in 2003, unless a court orders otherwise, a landlord or person with "paramount title" may not evict a servicemember or her dependents from a rented home (such as an apartment, a trailer, or a house occupied as a residence by the servicemember or dependents) if the rent is $2,400 per month or less. Nor can the property be subject to distress without a court order during the servicemember's period of service. The rent ceiling is adjusted annually for inflation, and in 2018 the amount is $3,716.73.[91]

In a case where the landlord seeks a court order for the eviction of a servicemember 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. Section 202 (stay of proceedings when servicemember has notice) of the act is not applicable to this section.

The section provides that anyone who knowingly takes part in an eviction or distress 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.

Additionally, courts are allowed to grant landlords, or other persons with "paramount title," equitable relief in cases where a stay is granted. For example, a court might reduce the monthly rent for the duration of a servicemember's deployment but require the servicemember to make up the difference over time after her return.[92] If the court orders payment to the landlord, Subsection (d) authorizes the Secretary concerned to make an allotment from the servicemember's military pay to satisfy the terms of the order.

[90] P.L. 114-328, div. A §573, 130 Stat. 2141 (2016). This provision was not enacted as part of the SCRA.

[91] Publication of Housing Price Inflation Adjustment, 83 Fed. Reg. 5,409 (February 7, 2018) (The Secretary of Defense is required to publish annually in the *Federal Register* the rent ceiling amount adjusted for inflation.).

[92] *See* The Judge Advocate General's Legal Center & School, U.S. Army, JA 260, Servicemembers Civil Relief Act [§4-3].

Protection under installment contracts for purchase or lease—Section 302 (50 U.S.C. §3952).

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 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, or order such other disposition of the property the court deems equitable. This section does not permit a servicemember unilaterally to terminate a contract, although the servicemember may be able to bring an action under Section 701 for anticipatory relief, as discussed further below.

Mortgages and trust deeds—Section 303 (50 U.S.C. §3953).

This section covers servicemembers who, prior to a period of active military service, entered into a property transaction subject to a mortgage, a trust deed, or other security loan. The sale, foreclosure, or seizure of property during a servicemember's period of military service, and one year after, is prohibited unless such action is taken under a court order issued prior to foreclosure on the property, or pursuant to an agreement under Section 107 of the act. A federal appeals court has held that the prohibition on foreclosure bars the charging of fees associated with a notice of foreclosure, even though no foreclosure took place.[93] If the servicemember's ability to comply with the terms of the obligation is materially affected by military service and the servicemember thereby breaches the terms of a mortgage, trust deed, or other loan, the court may adjust the obligation to preserve the interests of all parties, or may stay any proceeding against the servicemember for a period of time as justice and equity require.

Property foreclosure or other similar action against a servicemember protected by this section taken without benefit of a court order is punishable by imprisonment of up to one year, a fine as provided by Title 18, *U.S. Code*, or both.

Settlement of stayed cases relating to personal property—Section 304 (50 U.S.C. §3954).

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 the amount of the servicemember's equity to be paid back to the person on active duty as a condition for allowing the foreclosure, repossession, or cancellation. The court is required to consider whether its action would cause undue hardship to the servicemember's dependents—for example, through loss of use of the property.[94]

[93] Brewster v. Sun Tr. Mortg., Inc., 742 F.3d 876, 879 (9th Cir. 2014) (holding that "the attempted collection of fees related to a Notice of Default on a California property constitutes a violation of [the SCRA]").

[94] *See* The Judge Advocate General's Legal Center & School, U.S. Army, JA 260, Servicemembers Civil Relief Act [§4-8].

Termination of residential or motor vehicle leases—Section 305 (50 U.S.C. §3955).

Military persons who live in rental property are allowed to terminate leases to which they are a party early under certain circumstances. This section 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 rental agreement contains a "military" clause to allow for early termination of a lease in case of military orders to deploy.[95] In 2004, this right to terminate leases early was expanded to also apply to joint leases.[96] The added language specifies that any lease terminated pursuant to this section also terminates any obligation a dependent of the lessee may have under the lease.

The servicemember may terminate a property lease early by delivering by hand, private business carrier, or mailing return receipt requested, a written notice and a copy of her military orders to the lessor or its agent. As for a residential lease, if the lease called for monthly rent, then cancellation takes effect 30 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. The recent amendment to the act prohibits the lessor from charging an early termination fee, but the servicemember is liable for any taxes, summonses, or other obligation in accordance with the terms of the lease.[97] A court can make adjustments if the landlord petitions the court for an "equitable offset" prior to the date the lease is effectively canceled.[98]

To terminate a motor vehicle lease early under this section, the servicemember must return the motor vehicle to the lessor or its agent no later than 15 days after the date of delivery of the written notice. The cancellation is considered effective on the day on which the vehicle is returned to the lessor. The lessor cannot impose early termination fees on a servicemember, but the servicemember is still responsible for taxes, summonses, title and registration fees, and any other obligation and liability under the lease, including reasonable fees for excessive wear, use, and mileage.

Anyone who knowingly seizes personal effects, withholds a security deposit, or otherwise interferes with the return of any other property belonging to a person who has lawfully canceled a

[95] *Id.* [§4-7].

[96] P.L. 108-454, 118 Stat. 3598 (2004).

[97] P.L. 111-275, §301, 124 Stat. 2875 (2010).

[98] 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 Indus., Inc., v. Raffaele, 894 F. Supp. 1425, 1430 (D. Nev. 1995) ("For example, if a military person—who knows that he or she will soon be invoking subsection 304(2) to terminate an existing lease—wrongfully induces a lessor to make tenant improvements, a court may find that equity requires that an equitable remedy be granted in an amount equal to both the cost of those improvements and the monthly rental obligations of that military person.").

lease pursuant to this section is subject to punishment. Specifically, 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.

Termination of telephone service contracts—Section 305a (50 U.S.C. §3956).

Originally added to the SCRA by the Veterans' Benefits Improvement Act of 2008,[99] this section was replaced in its entirety by the Veterans' Benefits Act of 2010.[100] Under the new Section 305a, a servicemember is able to terminate a contract for telephone exchange service, in addition to the previously covered cellular phone service, in certain circumstances. To be eligible, the servicemember must receive orders to relocate for a period of at least 90 days to a location that does not support the contract, and the contract must have been entered into prior to receiving the orders. The telephone service provider is required to cancel the contract without assessing an early termination charge and, in the case of a period of relocation less than three years in duration, allow the servicemember to retain the phone number previously terminated. Additionally, dependents of the servicemember may also terminate their cellular telephone service if they accompany the servicemember to an area that does not support the service contract. If the servicemember re-subscribes to the carrier within 90 days of returning from relocation, the service provider is prohibited from charging a reinstatement fee, but may charge ordinary fees for equipment installation or acquisition.

Protection of life insurance policy—Section 306 (50 U.S.C. §3957).

If a person entering military service has used a life insurance policy as collateral to secure a debt, she is protected from foreclosure on the policy to satisfy the debt unless the assignee first obtains a court order, except where 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 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. Anyone who knowingly takes or attempts action contrary to this section shall be punished by imprisonment for up to a year, or a fine as provided in Title 18, *U.S. Code*, or both.

Enforcement of storage liens—Section 307 (50 U.S.C. §3958).

A servicemember with property or effects subject to a lien, including liens for storage, repair, or cleaning of property, is protected from foreclosure or enforcement of the lien during the period of 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

[99] P.L. 110-389, 122 Stat. 4145 (2008).

[100] P.L. 111-275 §302, 124 Stat. 2875 (2010).

equitable to the parties. This section does not affect the scope of Section 303 (mortgages and trust deeds). Anyone who knowingly takes any action contrary to the provisions shall be punished by imprisonment up to one year, a fine as provided by Title 18, *U.S. Code*, or both. Servicemembers whose property is seized and sold in order to satisfy a lien may recover damages.[101]

Extension of protections to dependents—Section 308 (50 U.S.C. §3959).

The benefits of the rules provided under Title III (50 U.S.C. §§3951-59) of the SCRA are extended to dependents of active-duty personnel in their own right. A dependent must petition a court for permission to take advantage of those rules, and the court is not required to grant permission if it determines that the ability of the applicant dependent 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 applicant is dependent.

Title IV: Life Insurance

Title IV provides relief from insurance premiums and guarantees servicemembers continued coverage under certain commercial life insurance policies. A servicemember who applies for protection under this title will eventually have to pay all of the premiums due, either to the insurer or to the government, in the event the United States pays the delinquent premiums. In this way, servicemembers may defer payments of insurance premiums without losing coverage. There is no need to show that military service materially affects the servicemember's ability to pay.

Definitions—Section 401 (50 U.S.C. §3971).

For the purposes of Title IV of the SCRA, the following definitions apply:

'Policy'—"Policy" includes any individual contract for 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 that satisfies 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 she is in military service;
3. the policy does not include a provision that limits or restricts coverage if the insured 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 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.

[101] Gordon v. Pete's Auto Serv. of Denbigh, Inc., 837 F. Supp. 2d 581, 585 (E.D. Va. 2011). The court also stated that Section 307 is a "strict liability statute; it does not require proof of any *mens rea* to establish civil liability." *Id.*

'Insurer'—"Insurer" includes any firm, corporation, partnership, association, or business that can, by law, provide insurance and issue contracts or policies.

Insurance rights and protections—Section 402 (50 U.S.C. §3972).

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 apply for protection of a covered policy under the act. The written application must be submitted to the insurer with a copy sent to the Secretary of Veterans Affairs. The total amount of policies covered is limited to the greater of $250,000, or an amount equal to the maximum limit of the Servicemember's Group Life Insurance (SGLI). The maximum limit of SGLI currently is $400,000.[102]

Application for insurance protection—Section 403 (50 U.S.C. §3973).

In order to invoke protection for the policies covered under this part of the SCRA, the servicemember, 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).[103] 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 protection and lapse of protections—Section 404 (50 U.S.C. §3974).

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 of that determination. Once the policy is deemed qualified for protection, it may not lapse or otherwise be terminated or be forfeited for the nonpayment of a premium, or interest or indebtedness on a premium. This protection applies during the time the insured person is in military service and for two years after she leaves military service.

Policy restrictions—Section 405 (50 U.S.C. §3975).

The approval of the Secretary of Veterans Affairs is necessary for a policyholder 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.

[102] P.L. 109-80, 119 Stat. 2045 (2005) (increased the maximum SGLI benefit to $400,000).

[103] Title 38, Part 7, of the *Code of Federal Regulations*, revised as of July 1, 2017, addresses the Soldiers' and Sailors' Civil Relief rather than the Servicemembers Civil Relief and cites 50 U.S.C. app 511, 540-547 as authority.

Deduction of unpaid premiums—Section 406 (50 U.S.C. §3976).

If a covered policy matures due to the death of the insured, the insurance company must 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—Section 407 (50 U.S.C. §3977).

In the event the insured fails to pay any 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 insurance company may terminate the policy and the United States will pay the insurance company the difference between the cash surrender value and the amount of the outstanding debt. The amount paid to the insurer becomes a debt owed by the insured to the United States that is not dischargeable in bankruptcy. 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.

Regulations—Section 408 (50 U.S.C. §3978).

The Secretary of Veterans Affairs is responsible for promulgating regulations to carry out the provisions of Title IV, which are found in 38 C.F.R. Part 7.

Review of findings of fact and conclusions of law—Section 409 (50 U.S.C. §3979).

The findings of fact and conclusions of law 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*, which sets forth the scope of review and procedures to be followed.[104]

Title V: Taxes and Public Lands

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

Taxes respecting personal property, money, credits, and real property—Section 501 (50 U.S.C. §3991).

A servicemember's personal property (including motor vehicles) and 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—cannot be sold to collect unpaid taxes or assessments (other than income taxes) without a court order. 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 her military service. In the

[104] *See* 38 U.S.C.§§7261-60.

event a servicemember's property is sold to satisfy tax liabilities, the servicemember has the right to redeem the property for up to six months after the person leaves military service unless a longer period is provided by state or local law. If a servicemember fails to pay a tax or assessment on property covered by this section when due, the amount unpaid and due shall accrue interest at 6%, but no other penalties or interest may be assessed. Additionally, real and personal properties owned jointly by a servicemember and her dependents are covered by this section. However, properties owned through a separate business entity such as a limited liability company may not be covered by this section, even if the servicemember is the sole owner.[105]

Rights in public lands—Section 502 (50 U.S.C. §3992).

Servicemembers cannot be deemed to have forfeited any right (including mining and mineral leasing rights) they had for the use of 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 for grazing livestock on public lands 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—Section 503 (50 U.S.C. §3993).

Servicemembers with claims to desert lands prior to entering military service may not have those claims contested or canceled for failing to expend required amounts in improvements annually, or for failing to effect the reclamation of the claim during the period of service or during hospitalization or rehabilitation due to an injury or disability incurred in the line of duty. The protection is in force during and for six months after she leaves military service or is released from hospitalization. An honorably discharged servicemember whose line-of-duty disability prevents her reclamation of land or ability to pay may apply for a patent for the entered or claimed land. To qualify for this protection, notice must be given to the appropriate land office within six months after entering military service.

Mining claims—Section 504 (50 U.S.C. §3994).

Certain requirements for maintaining a mining claim are suspended during the holder's period of active military service and for six months thereafter or for the duration of hospitalization due to wounds or disability suffered while in the line of duty. During this 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 of commencement of military service within 60 days after the end of the assessment year in which the service began.

Mineral permits and leases—Section 505 (50 U.S.C. §3995).

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 and the holder is not required to pay rentals or royalties during that time. However, to

[105] Davis v. City of Philadelphia, 821 F.3d 484, 488 (3d Cir. 2016) (holding that, under Pennsylvania law, a LLC has its own legal identity, so sole owner servicemember may not invoke the SCRA on LLC's behalf).

qualify for these privileges, the servicemember has six months after entry into military service to notify the Bureau of Land Management of her entry into service.

Perfection or defense of rights—Section 506 (50 U.S.C. §3996).

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 of title—Section 507 (50 U.S.C. §3997).

The Secretary of the Interior is responsible for providing military authorities with information explaining the benefits of this Title (except those pertaining to taxation) as well as related application forms for distribution among servicemembers.

Land rights of servicemembers—Section 508 (50 U.S.C. §3998).

Protection of land rights under this Title are extended to servicemembers under the age of 21. Residency requirements related to the establishment of a residence within a limited time will be suspended for six months after release from military service for both the servicemember and her spouse.

Regulations—Section 509 (50 U.S.C. §3999).

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 concern taxes.

Income taxes—Section 510 (50 U.S.C. §4000).

The collection of federal, state, and local income taxes (excluding Social Security (FICA) taxes) a servicemember owes, either before or after entering service, must be deferred during the period of service and for up to six months after release, if her ability to pay the taxes is materially affected by 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 service plus nine months.

Residence for tax purposes—Section 511 (50 U.S.C. §4001).

In order to prevent multiple state taxation on 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. 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.

Spouses of servicemembers neither lose nor acquire a state of domicile or residence for taxation purposes when they are present in any tax jurisdiction solely to be with the servicemember in compliance with the servicemember's orders.[106] However, the guarantee of residency is contingent on the spouse having the same original residence or domicile as the servicemember. The section further provides that income earned by a spouse while in a duty-station tax jurisdiction, other than her original residence or domicile, solely to be with the servicemember may not be taxed by that tax jurisdiction.

Personal property of a servicemember and her spouse will not be subject to taxation by a jurisdiction other than their domicile or residence while stationed at a duty station outside of their home state.[107] 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 pay taxes only under the laws of the Federal Indian reservation and not to the state where the reservation is located.

"Tax jurisdiction" is defined to include "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 (Section 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.

Title VI: Administrative Remedies

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

Inappropriate use of act—Section 601 (50 U.S.C. §4011).

A court may deny a servicemember 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.

Certificates of service; persons reported missing—Section 602 (50 U.S.C. §4012).

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, the date of induction or discharge, 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

[106] P.L. 111-97, 123 Stat. 3007 (2009) (the Military Spouses Residency Relief Act extended residency protections to the spouses of active-duty servicemembers).

[107] Dameron v. Brodhead, 345 U.S. 322, 325 (1953) (holding that the SCRA preempts state laws that would tax the service-related income or personal property of servicemembers at their duty station when it is not their domicile. The Court concluded the constitutional discussion by stating, "[w]hat has been said in no way affects the reserved powers of the states to tax. For this statute merely states that the taxable domicile of servicemen shall not be changed by military assignments. This we think is within the federal power.").

service until she is accounted for 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—Section 603 (50 U.S.C. §4013).

Courts may revoke, modify, or extend any interlocutory orders they issued pursuant to the SCRA.

Title 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—Section 701 (50 U.S.C. §4021).

A servicemember may initiate an action for relief prior to defaulting on any pre-service obligation or liability, including tax obligations, rather than waiting for the creditor to commence proceedings. Dependents do not have independent protection under this section as they do for the provisions of Title III.

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 for its duration 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 of 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 she made while on active duty.

Power of attorney—Section 702 (50 U.S.C. §4022).

A valid power of attorney for a person who is declared to be missing in action is automatically extended for the entire period the person remains in a missing status, unless it expressly provides a date of expiration. The extension is limited to documents that designate the servicemember's spouse, parent, or named relative as the servicemember's attorney in fact. The power of attorney must have been executed during the servicemember's military service or before entry into active

service but after receiving an order to report for military service or a notification from the Department of Defense that such an order could be forthcoming.

Professional liability protection—Section 703 (50 U.S.C. §4023).

Certain persons who, prior to being called to active duty, were furnishing health care, legal, 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 her patients or clients will receive professional assistance in 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 her absence, the insurer would not be liable for the claim.

Actions against policyholder 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 applies only 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 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 policyholder 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. The insurer may charge higher rates for reinstated coverage if it raised the rates for all policyholders with similar coverage, provided that the servicemember would have had to pay a higher premium even if she had not suspended coverage.

Health insurance reinstatement—Section 704 (50 U.S.C. §4024).

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 her service. Servicemembers must apply for reinstatement within 120 days of termination or release from active duty. An insurer may not impose new exclusions from coverage or waiting periods for reinstatement of coverage 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).[108] Insurance plans covered by USERRA are subject to similar protections under 38 U.S.C. §4317.

In 2006, Congress added language to Section 704 limiting the ability for insurers to charge a servicemember premium increases on a health insurance policy covered by the section.[109] The amount of the premium may not be increased on a policy being reinstated for the balance of the period for which the coverage would have continued had it not been terminated, above an amount that would have been charged before termination. In the event that the premiums for similarly covered individuals increased during the terminated period, the increased premium may be assessed to the servicemember upon reinstatement of the policy.

[108] P.L. 103-353, 108 Stat. 3161 (1994), codified at 38 U.S.C. §§4301-35 (2018).

[109] P.L. 109-233, 120 Stat. 397 (2006).

Guarantee of residency for military personnel and spouses of military personnel—Section 705 (50 U.S.C. §4025).

Military personnel and their spouses are not deemed to have changed their state of 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—Section 706 (50 U.S.C. §4026).

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 when warranted by equitable considerations.

Title VIII: Civil Liability[110]

Title VIII provides the Attorney General the authority to bring civil actions against violators of the SCRA. Servicemembers who are aggrieved by a violation can join an action brought by the Attorney General or can initiate their own civil action against a violator.

Enforcement by the Attorney General—Section 801 (50 U.S.C. §4041).

This section authorizes the U.S. Attorney General to commence a civil action in U.S. district court for violations of the SCRA by a person who (1) engages in a pattern or practice of violating the act; or (2) engages in a violation that raises an issue of significant public importance. Courts may grant any appropriate equitable or declaratory relief, including monetary damages. Additionally, courts, in order to vindicate the public interest, may assess a civil penalty up to $55,000 for a first violation, and up to $110,000 for subsequent violations. Finally, individuals alleging violations of the SCRA, for which the Attorney General has commenced an action, are authorized to intervene in previously commenced cases as a plaintiff.

Private right of action—Section 802 (50 U.S.C. §4042).

In addition to the right to join a previously commenced case, persons aggrieved by a violation of the SCRA have the ability to commence a civil action in their own right. The court may grant appropriate equitable or declaratory relief, including monetary damages. The court is also authorized to award the costs of the action and reasonable attorney fees to an individual who prevails in a civil action under this section.

Preservation of remedies—Section 803 (50 U.S.C. §4043).

This section provides that Sections 801 and 802 do not preclude or limit any other remedies available under the law, including consequential or punitive damages for violations of the SCRA.

[110] Title VIII addressing civil liability was created by P.L. 111-275, §303, 124 Stat. 2877 (2010).

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