

A JUDGE'S GUIDE TO THE SERVICEMEMBERS CIVIL RELIEF ACT

by Mark H. Sullivan

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INTRODUCTION

You may find there is those occasional parties to a lawsuit who are on active duty in the armed forces. This Guide highlights some of the issues related to the impact of military service on civil litigation, financial obligations, mortgages, leases, and other matters. Its specific focus is on the Servicemembers Civil Relief Act (SCRA) and its application in the civil courtroom.

Congress initially passed legislation at the start of World War II called the Soldiers' and Sailors' Civil Relief Act (SSCRA) to provide protection to those called to those in the armed forces. Enacted in 1940, the SSCRA was updated after the Gulf War in 1991 but was still largely unchanged as of 2003. The SCRA was written to clarify the language of the SSCRA, to incorporate decades of court interpretation of the SSCRA, and to update the SSCRA to reflect new developments in American life since 1940. The SCRA, signed into law December 29, 2003, not only protects those on active duty; it also affords protection for Reservists and members of the National Guard (when activated) under Title 38, U.S. Code).

The statute is found at 50 U.S.C. App. § 501 et seq. Courts have generally construed the SSCRA liberally to protect those in uniform, and the same should be true with the SCRA. The U.S. Supreme Court has said that the statute should be read "with an eye friendly to those who dropped their affairs to answer their country's call." *Le Meriden v. Coffey*, 314 U.S. 1, 6 (1944).

QUESTIONS & ANSWERS

1. Q. What are the purposes of the SCRA?

A. The Act's purposes are to enable servicemembers (SMs) to devote their entire energy to the defense needs of the Nation, and to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of SMs during their military service. 50 U.S.C. App. § 502.

2. Q. Who is covered under the SCRA?

A. Pursuant to 50 U.S.C. App. § 511, covered servicemembers include

- >Those members of the Army, Navy, Air Force, Marine Corps and Coast Guard on active duty under 50 U.S.C. 10509(1);
- >Members of the National Guard who are called to active duty as authorized by the President or the Secretary of Defense for over 30 consecutive days under 32 U.S.C. 505(f) to respond to a national emergency declared by the President and suggested by federal funds; and
- >Commissioned members of the Public Health Service and the National Oceanographic and Atmospheric Administration.

A SM is also covered for any period of time when he or she is absent from duty because of sickness, wounds, leave or other lawful cause (i.e., he is still a SM even in absent from active duty for one of the above reasons). Under 50 U.S.C. App. § 510, the protections of the Act are extended to members of the National Guard and Reserve, from receipt of orders to report for duty until the date that they report. Covered

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Lei Huang



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