



# SERVICEMEMBERS' CIVIL RELIEF ACT



## ***New Law Rewrites Soldiers & Sailors Civil Relief Act (SSCRA)***

On 19 December 2003, President Bush signed into law the [“Servicemembers Civil Relief Act” \(SCRA\)](#), revising the [Soldiers’ and Sailors’ Civil Relief Act \(SSCRA\)](#).

The SSCRA provided a number of significant protections to service members. These include: staying court hearings if military service materially affects servicemembers’ ability to defend their interests; reducing interest to 6% on pre-service loans and obligations; requiring court action before a service member’s family can be evicted from rental property for nonpayment of rent if the monthly rent is \$1,200 or less; termination of a pre-service residential lease; and allowing service members to maintain their state of residence for tax purposes despite military relocations to other states.

The SSCRA was largely unchanged from its enactment in 1940. The new SCRA was written to: clarify the language of the SSCRA: to incorporate many years of judicial interpretation of the SSCRA; and to update the SSCRA to reflect new developments since 1940. The new law, SCRA:

(1) Extends the application of a service member’s right to stay execution of judgments, attachments, court hearings and garnishments against a service member for the period of military service or within 90 days thereafter. It now requires a court or administrative hearing to grant at least a 90-day stay if requested by the service member. Additional stays can be granted at the discretion of the judge or hearing official. Authorizes a stay of proceedings while an individual is either in military service or within 90 (formerly, 60) days after termination or release from such service for a service member who has received notice of such proceedings, if the court receives a letter or other communication: (a) stating that current duty requirements materially affect the service member’s ability to appear; or (b) from the service member’s commanding officer stating that current duties prevent the service member’s appearance and that military leave is not authorized. Allows a service member granted a stay from such proceedings to apply for an additional stay based on continuing material effect of military duty on the ability to appear.

Provides certain protections for service members against default judgments while in military service, including a minimum 90-day stay of proceedings, with respect to the payment of any tax, fine, penalty, insurance premium, or other civil obligation or liability. Requires a court to appoint an attorney to represent any defendant in military service. Allows a default judgment against a servicemember to be vacated or set aside and the case reopened if the servicemember: (1) was materially affected by such service in making a defense; and (2) has a meritorious or legal defense to the action or a part thereof.

(2) Clarifies the rules on the 6% interest rate cap on pre-service loans and obligations by specifying that interest in excess of 6% per year must be forgiven. The absence of such language in the SSCRA had allowed some lenders to argue that interest in excess of 6% is merely deferred. It also specifies that a service member must request this reduction in writing and include a copy of his/her orders. These include liabilities incurred by both the service member, or jointly by the service member and his or her spouse, before the service member entered military service.

(3) Modifies the eviction protection section by precluding evictions from premises occupied by service members or his or her dependents during a period military service for a premise which the monthly rent does not exceed \$2,400.00 for the year 2003 (an increase from the current \$1,200). The Act provides a formula to calculate the rent ceiling for subsequent years.

(4) Extends the right to terminate real property leases to active duty soldiers moving pursuant to permanent change of station (PCS) orders or deployment orders of at least 90 days. This eliminates the need to request a military termination clause in leases.

(5) Adds a new provision allowing the termination of automobile leases for use by service members and their dependents. Pre-service automobile leases may be cancelled if the service member receives orders to active duty for a period of 180 days or more. Automobile leases entered into while the service member is on active duty may be terminated if the service member receives PCS orders to a location outside the continental United States or deployment orders for a period of 180 days or more.

(6) Adds a provision that would prevent states from increasing the tax bracket of a nonmilitary spouse who earned income in the state by adding in the service member's military income for the limited purpose of determining the nonmilitary spouse's tax bracket. This practice has had the effect of increasing the military family's tax burden.

(7) Adds legal services as a professional service specifically named under the provision that provides for suspension and subsequent reinstatement of existing professional liability insurance coverage for designated professionals serving on active duty. While the SSCRA specifically names only health care services, legal services have been covered since 3 May 1999 by Secretary of Defense designations. The SSCRA permitted such a Secretarial designation, but this revision will clarify this area.

(8) Historically, the SSCRA applied to members of the National Guard only if they were serving in a Title 10 status. The new SCRA adds to the definition of "military service" active service by members of the National Guard or more than 30 consecutive day. *(Effective 6 December 2002, the SSCRA protections were extended to members of the National Guard called to active duty for 30 days or more pursuant to a contingency mission specified by the President or the Secretary of Defense).*

(9) Sample SCRA Letter form is attached

**(10) Includes a definition of dependents for purposes of dependent coverage.**

Yongsan Client Legal Services Division, Office of the Staff Judge Advocate, Eighth US Army  
Bldg 4106, room 229 (ACS building). Please call 738-8111 for an appointment.  
Office hours: M, Tu, W, F 0900-1700 and Th 1300-1600.

[USE YOUR OWN LETTERHEAD]

Date

To: *[Insert Creditor's Complete Address]*

RE: My Account Number # *[Insert your Account Number]*

Dear *[Insert Complete Name of Creditor]*:

On *[insert date you began active duty]* I was called to active duty in the *[insert branch of military service]*, and I have been continually on active duty since that date. Under the Servicemembers' Civil Relief Act (SCRA), 50 United States Code Appendix Section 526, I should receive a maximum interest rate of 6% on all account balances incurred before I came on active duty. Under the SCRA, I understand that any interest due above this 6% rate is forgiven. Please change my account to reflect the requirements of the SCRA, and adjust all *[monthly]* payments to the 6% interest rate.

I have enclosed a copy of my active duty orders for your reference.

I will notify you as soon as my active duty ends.

Thank you for your understanding and cooperation.

Sincerely,

*[Sign your complete name]*

*[Print your complete name]*

*[Telephone number and address]*

Enclosure Orders