

**A GUIDE TO THE SOLDIERS' AND SAILORS'  
CIVIL RELIEF ACT  
OR  
"CERTAINLY SUING SOLDIERS IS NOT SIMPLE"**

by  
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**1. Cite:**

Soldiers' and Sailors' Civil Relief Act of 1940, as amended -  
50 U.S.C. App. §§501-593.

References herein will be to the section within 50 U.S.C. Appendix.

**2. Purpose:**

Congressional recognition of the need for protecting persons in the military service by enacting civil relief legislation to **suspend** the enforcement of certain civil liabilities during the period of service (and a short period thereafter) so that the military member can devote all of his or her entire energy to the defense needs of the nation (§510).

**3. Persons Covered by the Act:**

- All persons on Federal active duty, including regular members of the Armed Forces (Army, Navy, Air Force, Marine Corps and Coast Guard), Reserve, National Guard and Air National Guard personnel who have been activated and are on Federal active duty (whether as volunteers or as a result of involuntary activation), inductees serving with the armed forces; Public Health Service and National Oceanic and Atmospheric Administration Officers detailed for duty with the armed forces and persons who are training or studying under the supervision of the United States preliminary to induction (§511).
- In addition, certain benefits are extended to dependents of person in the military service (§536), certain persons who have guaranteed obligations of service personnel (§513) and citizens of the United States serving with the armed forces of the U. S. allies during the time of war (§514).

4. **Persons NOT covered by the Act:**

- No coverage or protection for members of Reserve, National Guard and Air National Guard components not on active duty;
- No coverage for retired personnel (must be on active duty);
- No coverage for military personnel who make appearances in suits (except for stay provisions discussed below);
- No coverage for National Guard and Air National Guard troops called to duty under Title 32 U.S.C. state orders.

5. **When the Act Applies:**

The Act applies when the member is on active duty. Active duty begins on the date of entry on active duty and ends on the date of discharge or death while in the active service (§511(2)). Enlisted Reservists and Guardsmen and draftees may seek relief as soon as they receive orders to report for active duty or induction (§516).

6. **Default Judgments:**

- Affidavit of non-military service is required in **all default judgments** (§520 (1)).
- Willful falsification of affidavit is a misdemeanor and may be punished by imprisonment of up to one year and a fine of up to \$100,000.00 (§520(2)).
- Obtaining certificates of service (§581) -- going to be very difficult to obtain. Probably have to go with affidavits of non-military service.
- If no affidavit of non-military service is filed, court **MAY NOT** enter judgment against defendant until it has appointed an attorney to represent the party and protect his/her interest. Additionally, the court **MAY** require the plaintiff to file a bond to indemnify the defendant, if he/she is in military service, against any damages that he/she may suffer in the default judgment should later be set aside in whole or in part.
- Additionally, the court “may make such other and further order or enter such judgment as in its opinion may be necessary to protect the rights of the defendant under [the] Act.” (§520(1)).

- Re-opening default judgments (§520(4)):
  - May be done for any judgment rendered while member on active duty or within 30 days of release from active duty;
  - May be re-opened by the member at any time up to 90 days after termination of service;
  - Defendant must have been prejudiced by reason of military service in making a defense (e.g., “Well, I was in Turkmenistan at the time, Your Honor. We were a little busy and my commander denied my leave.”);
  - It must appear that the defendant had a meritorious or legal defense to the action or some part thereof.

**\*\*IMPORTANT\*\***

“Vacating, setting aside or reversing any judgment because of any of the provisions of [the] Act shall not impair any right or title acquired by any bona fide purchaser for value under such judgment.”

(§520 (4))

This section is obviously in the law to protect third party, *bona fide* purchasers. However, if the purchaser had notice or is charged with having notice of non-compliance with the Act, the judgment **can** be vacated and the title acquired by the purchaser voided. Question: can titled examiners relax now?

**7. Stays of Proceedings:**

- When a party to a suit (whether plaintiff or defendant) is in military service or was on active duty within the last 60 days, a court **MAY** in its discretion grant a stay of the proceedings. When such a party requests the stay, it **MUST** be granted unless the court finds that the party’s ability to defend or prosecute the action is not materially affected by military service (§521).
- No fine and/or penalties under contracts may be imposed for failure to comply with the contract during the stay (§522).
- Garnishments, attachments and executions of judgments may also be stayed and/or vacated under similar terms. Court may grant stay *sua sponte*; if member requests a stay, it **MUST** be granted unless court

finds that ability to comply with judgment or order is not materially affected because of military status (§523).

- The stays can remain in effect for the entire period of active service plus three months thereafter (§524).

#### 8. **Statutes of Limitation:**

- During the period of active duty, prescriptive statutes (both for and against the member) are tolled and do not run, **regardless** of whether or not the member's service has materially affected compliance, and regardless of whether the cause of action arose before or during period of service (§525).
- Only exception is that the rule does not apply to time limitations established under federal internal revenue laws (§527).

#### 9. **Maximum Rate of Interest (§526):**

- Applies to **any** interest-bearing obligation or liability: car loans, mortgages, business loans for which the service member is personally liable (as a co-signor, co-maker or guarantor), credit cards, lines of credit, auto and equipment leases if they have a stated rate of interest);
- Applies to **pre-service** debts; **NOT** applicable to debts incurred during active service;
- Maximum rate is 6% per annum (includes services charges, renewal charges, fees or any other charges except bona fide insurance);
- If member requests the reduction in interest rates, the creditor **MUST** either comply or apply to court for relief. Relief will be granted only if court determines that the member's ability to satisfy the obligation has not been "*materially affected*" by virtue of military service.
- The payments on the loan must be re-amortized to 6% **so that the payments are lowered**; otherwise there is no real relief to the member (see *OCC Advisory Letter 2001-01*, 25 October 2001).
- If the loan is co-signed or guaranteed, everyone gets the benefit of the 6% interest rate cap (§513)

- “Material effect” is **NOT** defined in the statute. Must compare pre-active duty total income with total active duty income (pay and allowances):

Base Pay  
Basic allowance for housing (BAH)  
Basic allowance for subsistence (BAS)  
Flight pay  
Pro-pay (medical officers and vets)  
Imminent Danger pay  
Foreign Duty pay (enlisted only)

- Interest rate cap does **NOT** apply to federal guaranteed student loans (20 U.S.C. §1078(d))

#### 10. **Protection of Dependents from Eviction (§530):**

- If rent for house or apartment occupied for dwelling purposes does not exceed \$1,200.00 per month, leave of court must be granted before the member’s wife, children or other dependents may be evicted. Applies regardless of whether quarters were rented before or after entry into military service.
- In cases of eviction of dwelling quarters, court may grant a stay of up to three months or enter any other “order as may be just” **IF** the ability of the tenant to pay the rent is materially affected by reason of military service.
- Misdemeanor offense (1 year / \$100,000.00 fine or both) to evict or attempt to evict in violation of this section.

#### 11. **Installment Contracts (§531):**

- Any member who contracts to purchase movable or immovable property and who pays an installment or makes a deposit under the contract **and subsequently enters military service** receives certain protections.
- No obligee who has received an installment or deposit under such a contract may terminate the contract or repossess the property for failure of the service member to make payments under the contract **except by court order**.
- As a condition to terminating the contract and allowing the obligee to resume possession of the property, the court may order the repayment of prior deposits or installments or may continue the case unless the service

member's ability to continue paying on the contract is not materially affected by reason of military service.

- Misdemeanor offense (1 year or \$100,000.00 fine or both) for violation of this section.

**12. Enforcement of Mortgages or Security Interests in Immovable or Movable Property (§532):**

- Section applies provided property was owned at the commencement of service and is still owned when proceedings are filed; default on obligation must occur prior to or during period of service.
- Section applies both to movable and immovable property.
- Court may stay a proceeding commenced during member's military service to enforce the obligation if its terms are breached prior to or during the period of military service.
- Court may on its own motion, and must, on application of the member or any person on his behalf, either stay the proceedings or dispose of the case in a manner that is equitable to all parties **UNLESS** the court determines that the ability to comply with the obligation is not materially affected by the military service.
- No sale, foreclosure or seizure of property for nonpayment is valid if made during the period of military service or within three months thereafter, without either a written agreement between the parties or upon court order.
- Misdemeanor offense (1 year or \$100,000.00 fine or both) for violation of this section.

**13. Conditions for Enforcing a Security Interest in Movable Property and Repossessing Movable Property after a Stay is Granted (§533):**

- When a proceeding to enforce a security interest in movable property has been stayed, the court may appoint three disinterested persons to appraise the property. Based on the appraisal, the court may order the payment of a just sum to the service member or dependents as a condition to ending the stay and allowing proceedings to continue.
- If undue hardship to the dependents of the service member would result (e.g., loss of the family automobile), no such appraisal will be ordered.

**14. Protection Under Leases (§534):**

- Section applies only to **premises** occupied for dwelling, professional, business, agricultural or similar purposes if the service member executed the lease **before** the commencement of military service and he, or he and his dependents, occupied the premises for such purposes.
- The Act **DOES NOT** specifically cover the **lease of movables** (but see discussion at paragraph 16 *infra*).
- Service member may terminate the lease by written notice to the landlord at any time after the beginning of the tenant's military service.
- If on a month-to-month lease, the lease is effectively terminated 30 days after the first date on which the next rental payment is due after the date such notice is delivered or mailed.
- All other leases are terminated on the last day of the month following the month in which the notice is delivered or mailed. Any unpaid rent is due only for the period before termination and any rent paid in advance for a period after termination will be refunded.
- Court may, upon application by the landlord before the termination period, impose such modifications or restrictions on the relief as seem warranted by justice and equity.
- Misdemeanor offense (1 year or \$100,000.00 fine or both) for any person knowingly to seize, detain, or interfere with the removal of the property of a tenant who has lawfully terminated a lease in accordance with the Act.

**15. Enforcement of Storage Liens (§535):**

- Absent a court order, no person can exercise any right to foreclose or enforce any lien for storage of household goods, furniture or personal effect of a service member for the duration of active service plus three months
- Violation of this section is a misdemeanor offense.

**16. Deferral of Property Taxes (§560):**

- Nonpayment of taxes by service member on movable or immovable property (owned and occupied for dwelling, professional, business, or agricultural purposes by him or his dependents at the beginning of military

service and still so used) will not subject the property to forced sale to collect unpaid taxes without court permission.

- Applies to all taxes and assessments, other than income taxes, whether falling due before or during the period of military service.
- Court will take into consideration whether being in service materially affects the ability of the service member to pay the taxes and, if the court so decides, it can stay the sale for a period not exceeding six months from the date of termination of service.
- If court permits sale of property, service member has right of redemption for at least six months after termination of service or longer if local law permits.
- Interest charges on past due taxes shall not exceed six percent per annum.

**17. Miscellaneous General Stay Provisions (§590):**

- A person may, at any time during the period of military service or within six months thereafter, apply to a court for relief in respect of **any obligation or liability incurred by such person prior to the period of military service** or in respect of any tax or assessment whether falling due prior to or during the period of military service.
- The court may grant relief in a variety of ways, primarily stays and additional periods within which to comply with obligations.
- Section 590 may be the most comprehensive section of the entire Act, since it enables a court to enter basically any kind of relief it feels the service member should receive. It can function almost like a Chapter 11 bankruptcy plan order in that it can be used by a court to force a creditor to accept a payout of an obligation over a lengthy period of time.
- **Contract for purchase of real property**  
Court can stay enforcement of obligation during military service **plus** a period equal to period of military service **plus** the remaining period of the obligation.
  - For example, if Capt A, a Reservist, was called to active duty in year two of a 30 year mortgage, and served four years of active duty, upon application for a Section 590 stay order modifying his mortgage payments (lowering them substantially, for example), the court could order the lowered mortgage payments during the period of service (four years) and for an additional four years

thereafter (a period equal to the period of service), provided that over the **remaining** life of the mortgage (the remaining 20 years) the deferred amount was repaid with interest along with the payments as they came due at the original amount for those last 20 years of the mortgage.

- **Any other obligation**

- Court can stay enforcement of obligation during military service plus a period equal to the period of service

- Capt A, with an automobile on a new 60 month lease, is called to active duty and serves two years. A Section 590 stay order could modify his lease payments for the period of his service (two years) plus another two years thereafter, provided that the deferred amounts were repaid (with interest) during the remaining period of the lease, along with the new payments as they accrue.

- **Deferred payments must be paid over the “extension period”, plus new payments as they accrue**

- If the lessor of an automobile or truck refuses to let the service member out of a lease after callup, consider applying to a court for a stay under §590, and ask for a stay in the obligation to continue paying the lease payments for the duration of the member's active duty plus an additional period equal to the period of the member's active duty. When confronted with the possibility that the leased vehicle may be in the possession of the service member but the lessor's right to collect lease payments is stayed, the lessor will probably agree to terminate the lease and take back the vehicle. This same provision would be available for leased equipment (for example, leased medical equipment).

**18. Special provisions for medical professionals and attorneys (§592):**

- Allows medical professionals and attorneys who enter active duty to suspend their malpractice policies without further payment of premiums, upon notice to the carrier.
- Must be reinstated upon written demand by the professional within 30 days after release from active duty.

**19. Non-employer sponsored health insurance policies (§593):**

- For health coverage that is not sponsored by the employer -- those plans are covered by USSERA, service member has right to reinstatement of coverage.
- No exclusions or waiting periods allowed upon reinstatement.

**20. No discrimination for claiming rights under SSCRA (§518):**

- Claiming rights under SSCRA cannot be the basis for:
  - A determination by lender that the member is unable to pay
  - A denial or revocation of credit
  - A change in the terms of an existing credit arrangement
  - A refusal to grant credit to the member
  - An adverse credit report
  - A refusal by an insurer to insure the member
- Enforcement of violation would be through Fair Credit Reporting Act, §603, 15 U.S.C. §1681

**21. Suggested Resource Materials for SSCRA Research:**

The best resource materials for research under the SSCRA are available from the U.S. Army, specifically its excellent JA 260, "Soldiers' and Sailors' Civil Relief Act Guide". Produced by the Army Judge Advocate General's School, the work is both scholarly and practical. No practice under the SSCRA should be undertaken without first downloading and printing out a copy of JA 260. It is available from the Army JAG Corps' publicly accessible website. With an Internet browser, click on [www.jagcnet.army.mil/TJAGSA](http://www.jagcnet.army.mil/TJAGSA), then click on "Publications", scroll down to the topic "Legal Assistance" and click on JA 260. There are also numerous excellent articles in the "Army Lawyer" on various SSCRA topics. They are available through LEXIS-NEXIS and other web-based legal search sites.

Another excellent source of point papers on the SSCRA (written primarily for the financial community in Q & A format) can be found at the Bankersonline homepage at <http://www.bankersonline.com/lending/sscrapage.html>. The site also contains a copy of the current Advisory Letter (2001-10, dated 25 October 2001) from the Office of the Comptroller of the Currency on the SSCRA.



# **FREQUENTLY ASKED QUESTIONS AND ANSWERS ABOUT THE SSCRA IN LAYMAN'S TERMS**

by  
Col John S. Odom, Jr., USAFR

## **LOANS AND INTEREST RATES LEASES CIVIL LAWSUITS HEALTH INSURANCE STATE INCOME TAXES PROFESSIONAL LIABILITY INSURANCE**

### **1. What is the Soldiers' and Sailors' Civil Relief Act and who does it protect?**

The Soldiers' and Sailors' Civil Relief Act (SSCRA) is a federal law that gives all service persons important rights as they enter active duty. This information paper outlines some of those rights and benefits. The information in this paper is for all active duty military personnel, including personnel in the Reserve Components (all branches of the Reserves, the National Guard and the Air National Guard) who are activated for federal active duty. However, not all of the protections of the SSCRA are available to all personnel and military members should check with a Legal Assistance officer to find out if the SSCRA protects them in particular situations.

### **2. When does the SSCRA protect me?**

- Most SSCRA protection commences on the day you receive your orders to active duty. As a practical matter, you should be ready, and expect to present a copy of those orders to whomever you ask for some right or benefit under the Act.
- When you present the orders to your creditor (or other person with whom you are asserting rights under the SSCRA), it is strongly advised that you present a copy of the orders along with a letter of notification (a sample is at the end of this information paper), and send the letter and orders by U.S. Certified Mail, Return Receipt Requested, so that you can prove later, if necessary, receipt of the letter of notification and orders by the creditor.

### **3. I have heard that the interest rates on my loans are reduced to 6% by the SSCRA. How do I get my creditors to change my interest rates?**

You may be entitled to have the interest rate on some of your loans reduced to 6% for the time you are on active duty. There are a number of special requirements. You need to talk to a Legal Assistance Attorney to ensure you are eligible. You may be eligible if you and your loan meet the following conditions:

- a) You took out the loan during a time when you were **not** on any form of **active duty** in any branch of the military.
- b) The interest rate is currently above 6% per year.
- c) Your military service affects your ability to pay the loan at the regular (pre-service) interest rate. Generally this requirement means that you make less money in the military than you made as a civilian. There are some special legal issues here - you should be ready to talk to your Legal Assistance Attorney about your entire financial situation.
- d) You notified the lender and provided them with a copy of your orders to active duty.

### **4. What kinds of loans qualify for the interest rate reductions?**

If the loan is otherwise eligible for relief (that is, it was incurred as discussed above and the material effect provision of the SSCRA is satisfied), any loans incurred by the service member BEFORE his or her entry onto active duty qualify for the SSCRA interest rate relief (except for Government guaranteed student loans), including:

- home mortgages;
- credit card accounts;
- personal loans from banks or credit unions;
- department store accounts; and
- business loans for which the service member is personally liable as a result of having either signed the promissory note individually or having personally guaranteed the business' debt.

**5. What about the lease on my apartment? I live alone and I will not be there. I want to let my apartment go and put my furniture in storage. Can I get out of my lease?**

Generally - **yes**. If you have a lease for a house, apartment, or even a business location, you may be able to get out of the lease when you come on active duty. Here are the requirements:

- a) You originally signed your lease when you were not on any form of active duty. You do not have to have a military clause in the lease.
- b) You have received your orders to active duty.
- c) You gave written notice to your landlord that you want to terminate your lease. You will still have to pay rent for a short while. Your landlord can charge you rent for 30 days after the date your next rent is due, after the date you give your written notice. Example: You give notice on 15 December. Your next rent is normally due 1 January. The landlord can make you pay rent until 31 January. The key is to get the written notice in the landlord's hands just as soon as possible.
- d) If you attempt to terminate a **business lease**, there are some special considerations that you need to look at. Talk to a legal assistance attorney first.

**6. I have to go to court on a lawsuit that came up over an auto accident last year. How can I get the lawsuit delayed?**

If you are a party (one of the people suing or being sued) in a civil case (not a criminal case), your commander can ask the judge to stay or temporarily delay the proceedings until you can appear. Generally, your commander will have to show that military duty is keeping you from going to court. This is a tricky legal area - we recommend you have your civilian lawyer contact a Military Legal Assistance Attorney to discuss the best way to proceed in your case.

**7. I am self-employed and I have health coverage that is pretty expensive. Can I stop my health coverage? What will happen when I get off of active duty and I try to start it again -- will I still be covered?**

As long as you are on active duty, your health care needs are covered by the Military's medical facilities. In addition, your family members will become eligible for coverage. You may want to suspend your civilian coverage. If you do this, the SSCRA will require your civilian insurance company to reinstate your coverage when you get off of active duty. They have to write you a policy. They cannot refuse to cover most "pre-existing conditions." This SSCRA protection

applies only to non-employer sponsored health plans (private health insurance). If you are covered by an employer-sponsored health plan, when you return to your civilian job, your reinstatement rights are covered by a different federal law (the Uniformed Services Employment and Reemployment Rights Act -- USERRA).

**8. Will I have to pay state income taxes on my pay while I am on active duty?**

If your home state taxes military pay, you will have to pay those taxes. If you get assigned to another state, you will still legally be a “domiciliary” of your home state. The state to which the military assigns you cannot tax your military pay. If you moonlight, they can tax that pay - just your military pay is exempt.

**9. I am a doctor or other health care professional and have professional liability insurance in place at the time I am called to active duty. Do I have to keep paying the premiums on the policy?**

- If you make a written request to your malpractice insurance carrier to suspend your coverage for the duration of your service, the carrier must suspend the policy and charge no premiums for the period of the suspension.
- Your policy must thereafter be reinstated, but only if within 30 days of your release from active duty, you notify the insurer in writing that you have been released from active duty and wish reinstatement of the policy.
  - If you have claims-made malpractice coverage, you may not want to terminate all your coverage but negotiate for a reduced payment. You may want to discuss this with your insurance carrier and a legal assistance officer.

The issues covered in this information sheet are sometimes very complex and you should consult a Judge Advocate or Legal Assistance Officer in your unit for guidance. They can consult JA-260, *Soldiers' and Sailors' Civil Relief Act Guide* for additional assistance.

**Sample Letter to Creditor  
Reduction of Interest Rate**

[return address of service member]

[Date]

**CERTIFIED MAIL -- RETURN RECEIPT REQUESTED  
[CREDITOR ADDRESS]**

Dear **[Sir or Madam]**:

I am currently obligated to your company for a loan bearing an interest rate of [%]. This obligation was entered into on **[DATE]**, at a time when I was not on active military duty.

I have now entered [or been notified that I will enter] the active military service of the nation in the U.S. **[SERVICE]** on **[DATE]**. A copy of my orders is enclosed. This entry into active military service has materially affected my ability to meet this obligation. Under these circumstances, federal law prescribes the maximum interest rate which I may be charged on this obligation.

The Soldiers and Sailors Civil Relief Act (50 U.S.C. App. §526) prescribes a ceiling of 6% annual interest on any obligation under the circumstances described above. This interest rate must be maintained for the entire period that I am on active duty. The percentage cap includes all interest, service charges, renewal charges, and fees. The rate is applied to the outstanding balance of the obligation as of the date of entry onto active duty mentioned above. Any interest charge above this statutory ceiling must be forgiven, not accrued. The monthly payment on the obligation must be re-computed to reflect amortization at the 6% per annum rate of interest.

Please ensure that your records reflect this statutory ceiling and that any charges in excess of a 6% annual rate are withdrawn. You should also be aware that federal law (50 U.S.C. App. §531) circumscribes the manner in which you may enforce certain rights under the contract, including any right to repossession of property.

I thank you in advance for your attention to this matter. Should there be any questions, please feel free to contact me at the address above.

Sincerely,

**[Service member's name, rank and branch of service]**