

SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

Public Law 108-189, 50 USC App 501-596

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Captain Bryan Libel
Judge Advocate
Oregon National Guard
bryan.libel@us.army.mil
503.584.3571

Alphabet Soup

- **SM** – Servicemember
- **DoD** – Department of Defense
- **SCRA** - Servicemembers Civil Relief Act
- **SSCRA** – Soldiers & Sailors Civil Relief Act
- **AC** – Active Component of Military Service Branches
- **Reserve** – Army Reserve, Air Force Reserve, Marine Corps Reserve, Navy Reserve
- **ARNGUS** – Army National Guard of the United States
- **ORNG** – Oregon National Guard
- **CONUS** – Continental United States
- **OCONUS** – Outside Continental United States

Purpose of the SCRA

To provide for, strengthen and expedite the national defense through protection extended by this Act to Servicemembers of the United States to enable such persons 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 Servicemembers during their military service.

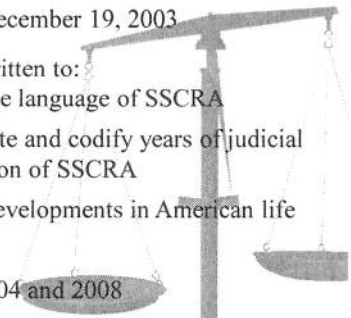
Servicemembers Civil Relief Act

Enacted on December 19, 2003

SCRA was written to:

- Clarify the language of SSCRA
- Incorporate and codify years of judicial interpretation of SSCRA
- Reflect developments in American life since 1940

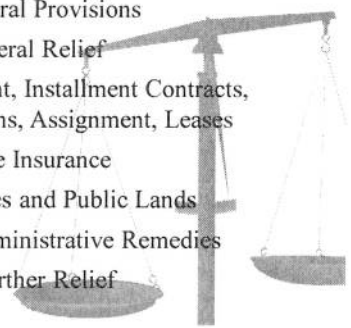
Revised in 2004 and 2008



Horizontal lines for notes

SCRA Organization

- Title I – General Provisions
- Title II – General Relief
- Title III – Rent, Installment Contracts, Mortgages, Liens, Assignment, Leases
- Title IV – Life Insurance
- Title V – Taxes and Public Lands
- Title VI – Administrative Remedies
- Title VII – Further Relief



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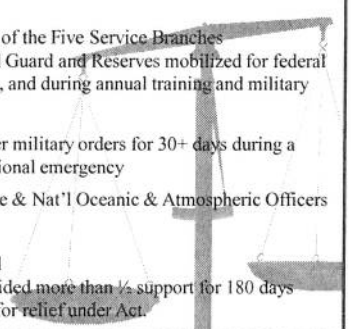
Definitions - § 511

Servicemember

- Active Duty Service of the Five Service Branches
 - Includes National Guard and Reserves mobilized for federal active duty service, and during annual training and military schooling
- National Guard under military orders for 30+ days during a President-declared national emergency
- Public Health Service & Nat'l Oceanic & Atmospheric Officers

Dependent

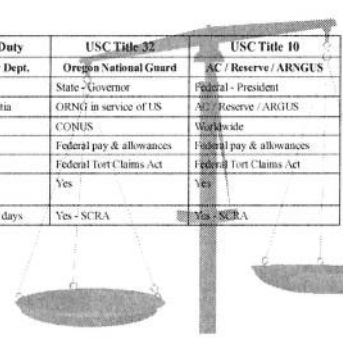
- SM's spouse or child
- Person that SM provided more than 1/2 support for 180 days preceding application for relief under Act.



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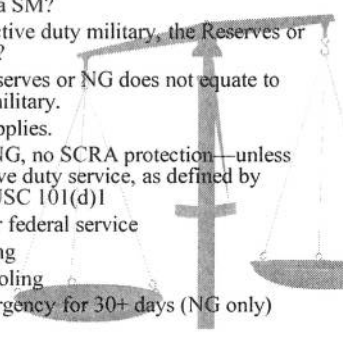
Servicemember Duty Status Matrix

	State Active Duty	USC Title 32	USC Title 10
Organization	Oregon Military Dept.	Oregon National Guard	AC / Reserve / ARNGUS
Command & Control	State - Governor	State - Governor	Federal - President
Who performs duty	Organized State Militia	ORNG in service of US	AC / Reserve / ARGUS
Duty performed	CONUS	CONUS	Workwate
Pay	State pay	Federal pay & allowances	Federal pay & allowances
Tort immunity	Yes	Federal Tort Claims Act	Federal Tort Claims Act
Re-employment Rights	Yes	Yes	Yes
Civil Protections	Yes - State law, 30+ days	Yes - SCRA	Yes - SCRA



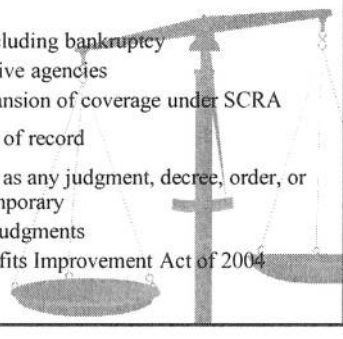
SCRA Military Status Analysis

1. Is individual is a SM?
2. Is SM part of active duty military, the Reserves or National Guard?
 - a. Full-time Reserves or NG does not equate to active duty military.
3. If AC, SCRA applies.
4. If Reserves or NG, no SCRA protection—unless performing active duty service, as defined by SCRA and 10 USC 101(d)1
 - a. mobilized for federal service
 - b. annual training
 - c. military schooling
 - d. national emergency for 30+ days (NG only)



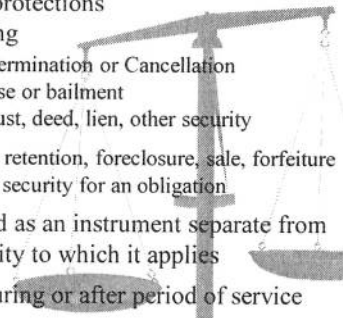
Definitions - § 511

- Court includes:
 - All courts—including bankruptcy
 - All administrative agencies
 - A large expansion of coverage under SCRA
 - Whether or not of record
- Judgment defined as any judgment, decree, order, or ruling, final or temporary
 - Not just final judgments
 - Veterans Benefits Improvement Act of 2004



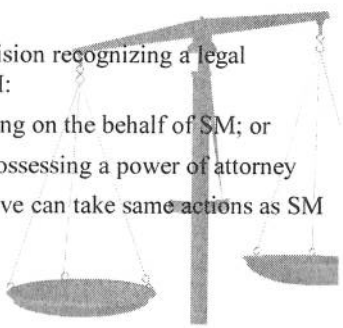
Waiver of SCRA Rights - § 517

- SM may waive protections
- Must be in writing
 - Modification, Termination or Cancellation
 - Contract, lease or bailment
 - Mortgage, trust, deed, lien, other security
 - (Re)possession, retention, foreclosure, sale, forfeiture of property that is security for an obligation
- Must be executed as an instrument separate from obligation or liability to which it applies
- Must be made during or after period of service



Legal Representatives - § 519

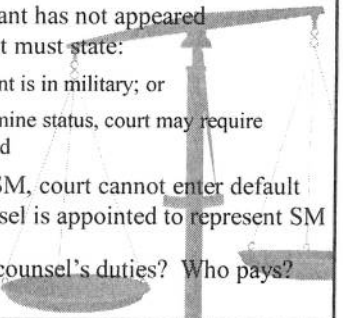
- SCRA adds a provision recognizing a legal representative of SM:
 - An attorney acting on the behalf of SM; or
 - An individual possessing a power of attorney
- Legal Representative can take same actions as SM



Default Judgments - § 521

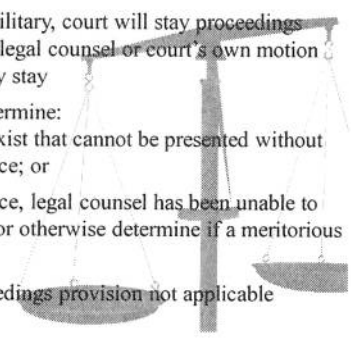
- Applies if Defendant has not appeared
- Plaintiff's affidavit must state:
 - Whether Defendant is in military; or
 - If unable to determine status, court may require Plaintiff to post bond
- If Defendant is a SM, court cannot enter default judgment until counsel is appointed to represent SM

Query – Appointed counsel's duties? Who pays?



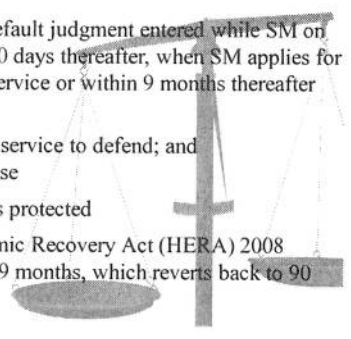
Default Judgment Stay - § 521

- If Defendant is in military, court will stay proceedings
 - Upon request of legal counsel or court's own motion
 - Minimum 90-day stay
- Court first must determine:
 - A defense may exist that cannot be presented without defendant's presence; or
 - After due diligence, legal counsel has been unable to contact defendant or otherwise determine if a meritorious defense exists
- § 522 Stay of Proceedings provision not applicable



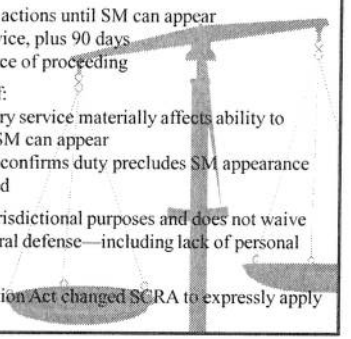
Setting Aside Default Judgments – § 521

- Court will re-open default judgment entered while SM on active duty or within 60 days thereafter, when SM applies for relief during military service or within 9 months thereafter and shows:
 - Material effect of service to defend; and
 - Meritorious defense
- Bona Fide purchasers protected
- * Housing and Economic Recovery Act (HERA) 2008 extended protection to 9 months, which reverts back to 90 days on Jan. 1, 2011.



Stay of Proceedings - § 522

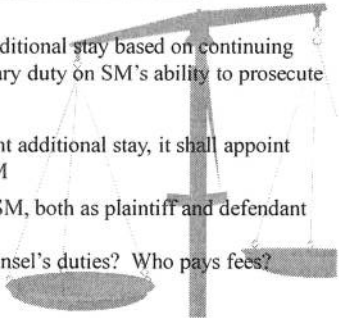
- Temporary delay in civil actions until SM can appear
 - During period of service, plus 90 days
 - SM has received notice of proceeding
- Mandatory 90-day stay if:
 - SM states how military service materially affects ability to appear and date when SM can appear
 - Commanding officer confirms duty precludes SM appearance and leave not authorized
- Not an appearance for jurisdictional purposes and does not waive any substantive or procedural defense—including lack of personal jurisdiction
- * 2008 Defense Authorization Act changed SCRA to expressly apply to child custody cases



Stay of Proceedings - § 522
Extension of Stay

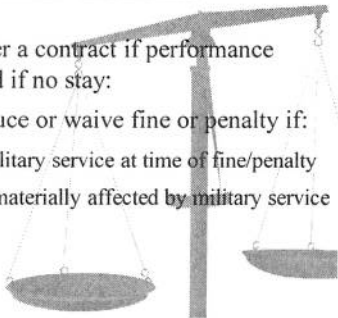
- SM may apply for additional stay based on continuing material effect of military duty on SM's ability to prosecute or defend the action
- If Court does not grant additional stay, it shall appoint counsel to represent SM
- Provision applies to SM, both as plaintiff and defendant

Query – Appointed counsel's duties? Who pays fees?



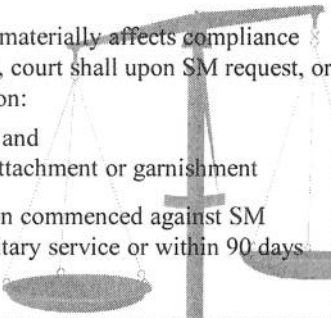
Stay of Proceedings - § 523
Fines and Penalties

- No penalties under a contract if performance stayed by court, and if no stay:
 - Court may reduce or waive fine or penalty if:
 - SM was in military service at time of fine/penalty
 - Performance materially affected by military service



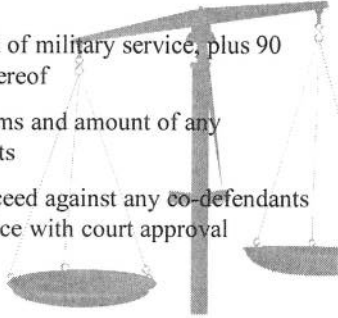
Stay or Vacation of Judgments - § 524

- If military service materially affects compliance with judgment/order, court shall upon SM request, or may upon own motion:
 - Stay execution; and
 - Vacate or stay attachment or garnishment
- Applicable to action commenced against SM before or during military service or within 90 days afterwards



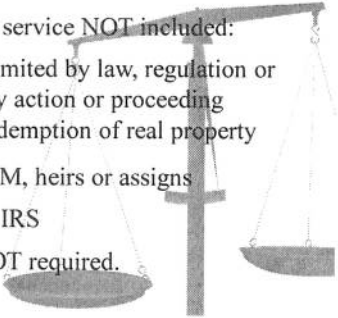
Stay or Vacation of Judgments
Duration of Stays - § 525

- May be for period of military service, plus 90 days, or any part thereof
- Court may set terms and amount of any installment payments
- Plaintiff may proceed against any co-defendants not in military service with court approval



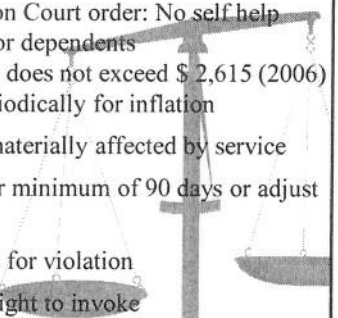
Statute of Limitations - § 526

- Period of military service NOT included:
 - In any period limited by law, regulation or order to bring any action or proceeding
 - Including redemption of real property
 - By or against SM, heirs or assigns
- Does not apply to IRS
- Material effect NOT required.



Evictions & Distress - § 531

- Can only evict upon Court order: No self help
 - Applies to SM or dependents
 - Residential rent does not exceed \$ 2,615 (2006)
 - Adjusted periodically for inflation
 - Ability to pay materially affected by service
- Court shall stay for minimum of 90 days or adjust lease obligations
- Criminal sanctions for violation
- Dependents have right to invoke



Installment Contracts for Purchase
or Lease - § 532

- Contract for purchase, lease, or bailment of real / personal property
 - Payment or deposit made prior to military service
- If SM breaches Pre-service contract before or during military service, Creditor must have Court order to terminate contract / repossess property. Court may:
 - Order repayment to SM by Creditor to terminate contract or repossess property
 - On its own motion, and shall at SM's request, stay proceedings if SM's ability to comply is materially affected
 - Make other equitable disposition to preserve interests of parties
- Misdemeanor offense for violation

Mortgage Foreclosure Protection - § 533

- Applies to any action to enforce pre-service obligation on real or personal property secured by a mortgage, trust deed, etc.
- Court may—and shall upon SM request—after a hearing and upon showing of material effect:
 - Stay proceedings; or
 - Adjust obligation
- Lender must obtain Court order to sale, foreclose or seize property because of a breach of such an obligation

* HERA 2008 expanded applicability period from military service + 90 days to military service + 9 months. Period will revert back on January 1, 2011

Enforcement of Storage Liens - § 537

- Only Court-ordered enforcement is allowed
- Applies to storage liens for any reason
- Court shall stay or adjust the obligations of all parties upon SM request and ability to comply is materially affected
- Court may do same on own motion
- Misdemeanor violation if knowingly use self-help
- Other remedies preserved

Certificates of Service - § 582

- Certificate is prima facie evidence of a person's military service or non-service
- A certificate will be furnished upon application
 - Use Defense Manpower Data Center website
 - www.dmdc.osd.mil/scra/owa/home
 - For accurate inquiries, need name, SSN & DOB
 - Certificate of Service is free of charge
- Certificate of service from military service branch:
 - www.defenselink.mil/faq/pis/PC09SLDR.html
 - Nominal fee

Other SCRA Protections

- Persons Secondly Liable - § 513
- Discrimination Protection - § 518
- Maximum Rate of Interest - § 527
- Terminate Vehicle Leases - § 535
- Terminate Premises Leases - § 535
- Terminate/Suspend Cellphone Agreement - § 535A
- Extension of Title III Protections to Dependents - § 538
- Property & Income Taxes Due - §§ 561, 570

Other SCRA Protections

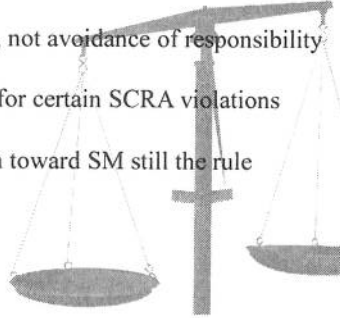
- Residence for Tax Purposes - § 571
- Inappropriate use of Act - § 581
- Anticipatory Relief - § 591
- Suspension of malpractice insurance - § 593
- Reinstatement of SM's private health insurance - § 594
- State of domicile for voting - § 595
- May not use personal assets to satisfy trade or business obligations even though SM personally liable - § 596

Key Concepts

Protection of rights, not avoidance of responsibility

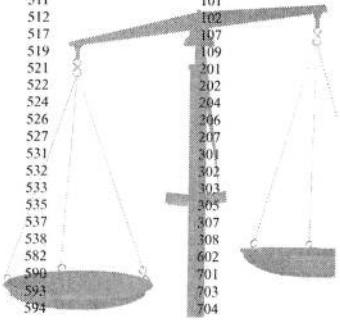
Criminal sanctions for certain SCRA violations

Liberal construction toward SM still the rule



SCRA Statute Reference Guide

SCRA Provision	U.S.C. Section	SCRA Section
Definitions	511	101
Application & Jurisdiction	512	102
Waiver of SCRA Rights	517	107
Legal Representatives	519	109
Default Judgments	521	201
Stay of Proceedings	522	202
Stay/Vacation of Judgments	524	204
Statute of Limitations	526	206
Maximum Rate of Interest	527	207
Eviction and Distress	531	301
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Mortgage Foreclosures	533	303
Termination of Leases	535	305
Storage Liens	537	307
Extension to Dependents	538	308
Certificates of Service	582	602
Anticipatory Relief	590	701
Professional Liability Protection	593	703
Reinstatement of Health Insurance	594	704

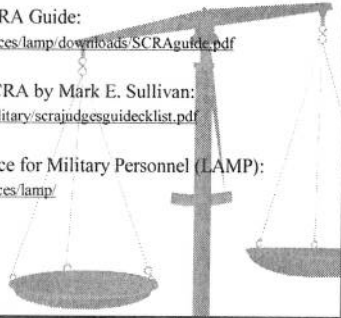


Additional Resources

Army JAG School SCRA Guide:
www.abanet.org/legalservices/lamp/downloads/SCRAguide.pdf

A Judge's Guide to SCRA by Mark E. Sullivan:
www.abanet.org/family/military/scrajudgesguidecklist.pdf

ABA's Legal Assistance for Military Personnel (LAMP):
www.abanet.org/legalservices/lamp/



Contact Information

Captain Bryan Libel
Oregon National Guard
P.O. Box 14350
Salem, Oregon 97309
503.584.3571
bryan.libel@us.army.mil

