

Servicemembers Civil Relief Act



**Contact 31 FW/JA for more information
or legal assistance on this topic.**

**DSN 632-7843 or Commercial 0434-30-
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**Legal Assistance Walk-In Hours
Monday and Wednesday 1530-1630;
Friday 0900-1000**

<https://aflegalassistance.law.af.mil>

The Servicemembers Civil Relief Act of 2003 (SCRA) provides a wide range of protection for individuals entering or called to active duty in the military service. It replaces the Soldiers and Sailors Civil Relief Act. The SCRA is intended to postpone or suspend certain *civil* (not criminal) obligations to enable service members to devote full attention to duty.

Reservists and the members of the National Guard are protected by the SCRA while on active duty.

The protections generally begin on the date of entering active duty and generally terminate within 30 to 90 days after the date of discharge from active duty. Members who face problems in the areas listed below should consult the base legal office.

WHAT SCRA PROTECTS

The following paragraphs provide a synopsis of the most common and relevant provisions in the SCRA.

Rent: The SCRA prohibits eviction, without a court order, of a service member and dependents from rented housing where the rent does not exceed \$2958.00 per month (as of 2010). The court may delay eviction proceedings for up to three months.

Installment Contracts: A service member who enters into an installment contract *prior* to entering active duty is protected if his or her ability to make payments is *materially affected* by military service. Here the courts will compare the service member's pre-service income and military income to determine financial condition. The creditor cannot exercise

rights of rescission, termination, or repossession without a court order.

Maximum Rate of Interest: If a member incurs a loan or obligation (e.g., credit card, car loan, mortgage or personal loan) prior to entering active duty service with an interest rate in excess of 6%, the member will, upon application to the lender, not be obligated to pay interest in excess of 6% per year. This relief applies during the period of active duty service unless the court finds the member's ability to pay has not been *materially affected* by military service. It also applies to loans incurred jointly by the member and the spouse. "Interest" on a loan includes service charges, renewal fees, fees or any other charges. Together, they may not exceed the 6% annual rate. For the period of active duty, interest in excess of 6% *must* be forgiven; it cannot be shifted to the end of the loan period.

Stay of Proceedings: Courts must stay any civil or administrative proceeding for 90 days or more on receipt of a proper application. Two letters must be sent to the court and templates are available at the legal office. The first must state how your duty materially affects your ability to go to court, and when you will be available. The second is from your commander, stating that you are needed for duty and leave is not available.

Default Judgments: Before a court can enter a default judgment (for failure to respond to a lawsuit or failure to appear at trial) against a military member, the person suing the member must provide the court with an affidavit stating the defendant is not in the military. If the defendant is in the military, the court will appoint an attorney to represent the defendant's interests (usually by seeking a delay of proceedings). If a default judgment is entered against a service member, the judgment may be

reopened if the member makes an application within 90 days after leaving active duty, shows he or she was prejudiced, and shows he or she had a legal defense.

Insurance: A service member's private life insurance policy is protected against lapse, termination, or forfeiture for nonpayment of premiums for a period of military service plus two years. The insured or beneficiary must apply to the Veterans Administration for protection under Title IV of the SCRA. Also, the SCRA grants reinstatement of any health insurance which was in effect before active military service began, without waiting periods and without physical restrictions, if certain other conditions are met.

Taxation: A service member's state of legal residence may tax military income and personal property. A member does not lose legal residence solely because of a transfer pursuant to military orders. For example, if a member is a Virginia resident and PCS's to a base in California, the member does not lose Virginia residency nor will he or she be subject to pay California state income tax on his or her military pay. If you owe any taxes before or during military service and that service affects your ability to pay those taxes, you may get the taxes deferred until six months after your military obligation ends. In addition, states cannot use non-resident military income to increase the rate of tax paid on members' or their spouses non-military income. Formerly, 25 states did so, in order to increase the taxes owed on the portion of income they were allowed to tax.

Adverse Actions: Creditors and insurers are prohibited from pursuing adverse actions (i.e., notifying credit agencies, denying credit,

changing terms) against service members who exercise their rights under the SCRA.

Car Leases: A service member can terminate an automobile lease without penalties if the member signed it either before or during active duty and the member meets certain other conditions. Also, if the service member breaches the terms of the lease, the contract cannot be terminated nor the automobile repossessed without a court order.

Spouses: Under the Military Spouses Residency Relief Act, a military spouse who is present with a service member in a particular state under military orders does not have to pay state income tax on wages earned in that state as long as that state is NOT the spouse's domicile. However, the spouse would have to pay taxes to the state of domicile, if the laws of that state required such payments.

Cell Phone Contracts: Can be terminated without penalties if a service member is ordered to relocate to a location for more than 90 days that does not support the service. The cell phone service provider must allow the service member to keep his/her cell phone number if the period of relocation is for three years or less and the service member re-subscribes with the provider within 90 days of the end of the relocation period.

Resources

Please see the Air Force Legal Assistance website at <https://aflegalassistance.law.af.mil> for sample Lease Termination letters, Stay of Proceeding requests, and Interest Rate Adjustment Requests.