

# Researching the Servicemembers Civil Relief Act

by Mari Cheney

If you are a civil attorney in Utah, you may have already encountered the Servicemembers Civil Relief Act (SCRA), *see* 50 U.S.C. app. §§ 501-96, if your client, opposing party, or a third party to your case is on active duty in the military or is otherwise affected by the SCRA. If you are new to the SCRA, this article will provide information about the basic provisions of the SCRA and secondary sources that provide detailed analysis and sample forms.

In 1941, a Salt Lake attorney outlined the important aspect of the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) (the predecessor of the SCRA) in two *Utah Bar Bulletin* articles. *See* D. Ray Owen, Jr., *The Soldiers' and Sailors' Civil Relief Act of 1940*, 11 UTAH B. BULL 1 (Jan.-Feb. 1941) and *The Soldiers' and Sailors' Civil Relief Act of 1940 Part II*, 11 Utah B. Bull 35 (Mar.-Apr., 1941). Owen detailed case law that attempted to resolve problems within the SSCRA, as well as application and scope.

Additionally, another article examining the SSCRA was published after Operation Desert Storm began in 1991. *See* Kevin R. Anderson & David K. Armstrong, *Soldiers' and Sailors' Civil Relief Act: A Legal Shield for Military Personnel*, UTAH B.J., (Apr. 1991), at 8. The authors highlighted important provisions in the SSCRA and recent amendments.

Below is a list of those important provisions as updated by the SCRA as well as citations to pertinent U.S. Supreme Court, Tenth Circuit Appellate, and Utah cases decided since 1991. *See* Servicemembers Civil Relief Act, 50 U.S.C. app. §§ 501-96 *et seq.* (updating and renaming the Soldiers' and Sailors' Civil Relief Act).

## Section 502: Purpose – Temporary Stay

Provides for a temporary stay in both judicial and administrative proceedings where servicemembers' civil rights may be adversely affected. *See id.* § 502.

## Section 511: Persons Benefited or Protected

Defines protections and benefits for men and women in "uniformed services," which include the armed forces and the commissioned corps of both the National Oceanic and Atmospheric Administration and the Public Health Service. *See* 10 U.S.C. §101. Besides active duty servicemembers, in some instances the SCRA also protects members of the National Guard called to active service and reserve members of a uniformed service. *See also* 50 U.S.C.

App. § 516. Dependents – including spouses and children – also benefit in some cases. *See United States v. Hampshire*, 95 F.3d 999 (10th Cir. 1996) (holding that defendant was not entitled to protections of the SSCRA when he went AWOL from the military because he was not longer on active duty as defined by this section).

## Section 517: Waiver of Rights

Describes how and when a servicemember may waive the SCRA's protections, including what waivers must be in writing. *See* 50 U.S.C. app. § 517.

## Section 518: Future Financial Transactions

Discusses when a stay cannot be the sole basis for creditors to deny or revoke credit or change the terms in a credit agreement. *See id.* § 518.

## Section 519: Legal Representatives

Defines the legal representative of the servicemember as either the member's attorney or a person with power of attorney. *See id.* § 519.

## Section 521: Default Judgments (Includes Child Custody Proceedings)

Requires the plaintiff to file a military service affidavit stating whether plaintiff has determined if a defendant is in military service. *See id.* § 521 (b)(1)(A). If the defendant is in military service, the court cannot enter judgment until the court appoints legal representation. *See id.* § 521 (b)(2). Additionally, the court shall grant a minimum 90-day stay if the court finds that there is a defense and the defendant needs to be present, or counsel cannot locate the servicemember or determine if there is a meritorious defense in the case. *See id.* § 521 (4)(d).

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Also provides that the servicemember may ask the court to reopen a case where default judgment was entered during military service or within 60 days after termination of military service where (a) the military service materially affected the servicemember's ability to defend herself, and (b) that a meritorious or legal defense exists. *See id.* § 521 (4)(g)(1). This application to reopen a case must be made within 90 days after termination of military service. *See id.* § 521 (4)(g)(2).

### Section 522: Stay of Proceedings (Includes Child Custody Proceedings)

Applies to servicemembers during military service or within 90 days after termination of military service where the servicemember has received notice of proceeding. *See id.* § 522 (a). Prior to a final judgment, the court shall stay the proceedings upon application by the servicemember where the servicemember provides (1) communication that details how current military status materially affects his or her ability to appear in court and the date he or she will be available to appear and (2) communication from the servicemember's commanding officer verifying current military status and that the servicemember is not authorized for leave. *See id.* § 522 (b); *see also Turner v. A. Passmore & Sons, Turner v. A. Passmore & Sons, Inc.*, 2009 U.S. App. LEXIS 17876

(10th Cir. Okla. Aug 4, 2009), (noting that a when a stay is granted under this section, "justice is best served by construing this court's stay order as having suspended all deadlines applicable to the appeal, including the cross-appeal deadline").

Also provides for application of additional stay and appointment of counsel if the court refuses to grant additional stay. *See Garramone v. Romo*, 94 F.3d 1446 (10th Cir. 1996) (declining to extend protections of this section where petitioner failed to request a stay); *Davis v. Davis*, 2001 UT App 225, 29 P.3d 676 (noting that final adjudication of child custody was stayed pursuant to the SSCRA).

### Section 526: Tolling of Statutes of Limitations

Dictates that military service may not be used in computing time for statutes of limitations including redemption of real property. *See* 50 U.S.C. app. § 526 (a); *see also Conroy v. Aniskoff*, 507 U.S. 511 (1993) (detailing the legislative history of the SSCRA and holding that the plain language of this section makes it clear that a servicemember's military service should not be included in calculating time as it relates to the redemption of real property); *Hamner v. BMY Combat Sys.*, 79 F.3d 1156, (10th Cir. 1996) (agreeing with prior decision that states "the [SSCRA] bars any period of military service from being included

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in computing a statute of limitations for or against a person in the military service.”)

### **Section 527: Maximum Rate of Interest on Debts**

Pertains to debt incurred prior to military service: that no debt should incur more than 6% interest during military service and one year after for mortgages and trust deeds. *See* 50 U.S.C. app. § 527 (a) (1).

### **Section 531: Eviction and Distress**

Protects servicemembers from eviction during military service if the premises were intended to be occupied primarily as a residence and monthly rent does not exceed \$2,932.31. *See* 74 Fed. Reg. 8068 (Feb. 23, 2009), available at <http://www.gpo.gov/fdsys/pkg/FR-2009-02-23/pdf/E9-3703.pdf>.

### **Section 533: Mortgages and Trust Deeds**

Prohibits the sale, foreclosure, or seizure of property owned prior to military service where the sale, foreclosure, or seizure occurs during military service or within nine months after unless approved by court order or the servicemember has waived rights under section 517. *See* 50 U.S.C. app. § 533 (c).

### **Section 535: Termination of Leases**

Covers both residential and motor vehicle leases, *see id.* § 535 (b), and allows the lessee to terminate a lease after the beginning of military service or the date of military orders, *see id.* § 535 (a) (1).

### **Section 593: Professional Liability Protection**

Applies to servicemembers who were health care, legal, or other professionals prior to being ordered to active duty. *See id.* § 593 (a). The servicemember may apply for a suspension of coverage and insurance providers cannot require premium payments during that time. *See id.* § 593(b).

### **Section 595: Residency**

Guarantees residence or domicile for voting purposes. *See id.* § 595; *Fox v. Mandelbaum*, 16 F.3d 416, (10th Cir. 1994) (remanding to lower court to make a determination about diversity jurisdiction based on plaintiff’s statement about his domicile and residence during military service); 50 U.S.C. app. § 571, Residence for Tax Purposes; *Fatt v. Utah State Tax Commission*, 884 P.2d 1233 (holding that “persons entering the service carry with them the same tax immunity which they previously enjoyed in their home state”).

### **Utah Law**

It is also important to note that in Utah, the legislature during the

2009 legislative session enacted Utah Code section 30-3-40, *Custody and parent-time when one parent is a service member*, during the 2009 legislative session. The new law provides guidelines for both custodial and noncustodial parents who are servicemembers where no parenting plan or other agreement is in place to provide for the care of children in the servicemember’s absence.

For example, if the noncustodial parent is deployed, the servicemember’s parent time may still be exercised through a family member “with a close and substantial relationship” with the child. *See* Utah Code Ann. § 30-3-40(2) (b). If the custodial parent is deployed and the noncustodial parent will not make arrangements for care, the custodial parent can make arrangements for childcare while deployed but the care must not interfere with the noncustodial parent’s parent time. *See id.* § 30-3-40(2) (a) (ii).

### **Secondary Sources**

There are a variety of general and subject-specific secondary sources related to the SCRA that provide more information about the SCRA as well as sample language to include in forms. Some of this information can be found online.

American Bar Association, *The Judge Advocate General’s School Guide to the Servicemembers Civil Relief Act* (2007).

Excellent and brief guide to the SCRA that includes analysis of general provisions, procedural protections, and specific explanations of taxation and voting rights and financial protections. Also includes analysis of SCRA’s specific provisions on evictions, leases, installment contracts, and mortgages. Each section provides citations to pertinent case law. The authors also highlight terms that may be ambiguous, as the terms have been interpreted in various ways in different jurisdictions.

Contains a sample letter to a creditor asking for a reduction in interest to 6% (Appendix B).

A similar guide – dated one year earlier – is available online at [http://www.servicemembers.gov/documents/jag\\_article.pdf](http://www.servicemembers.gov/documents/jag_article.pdf).

R. Chuck Mason, *The Servicemembers Civil Relief Act (SCRA): Does It Provide for a Private Cause of Action?*, Congressional Research Service Report for Congress, March 23, 2009, available at [http://assets.opencrs.com/rpts/R40456\\_20090323.pdf](http://assets.opencrs.com/rpts/R40456_20090323.pdf).

Examines the U.S. District Court split in whether there is a private cause of action under the SCRA.

Judge Advocate General’s Corps, U.S. Army, Legal Services, available at <https://www.jagcnet.army.mil/legal>.

Provides general information about the SCRA and guidance on a variety of issues the servicemember will face, including family law issues, landlord and tenant disputes, and contract issues.

Judge Advocate General's Legal Center and School, *available at* <https://www.jagcnet.army.mil/8525736A005BC8F9>.

Provides links to publications that include *Army Lawyer* and *Military Law Review*. Also links to the Legal Center and School's publication database, which has a number of SCRA-related guides.

Mark E. Sullivan, *The Military Divorce Handbook: A Practical Guide to Representing Military Personnel & Their Families* (2006).

Practical manual for attorneys who represent servicemembers or spouses going through a divorce. Includes tips on locating

and serving servicemembers, including members located overseas. Also includes a sample motion for stay under SCRA and a domicile checklist for servicemembers and spouses. Provides information on parent time, custody, and alimony issues that may arise during a military divorce.

Besides a wealth of information in the appendices, includes a CD-ROM with sample language and forms.

U.S. Department of Justice, Safeguarding the Rights of Servicemembers and Veterans, *available at* <http://www.servicemembers.gov>.

DOJ-specific information about cases the department has filed on behalf of servicemembers to enforce civil rights under various Acts, including the SCRA. Includes links to SCRA guides and complaints filed by the DOJ.

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