Servicemembers Civil Relief Act: A Primer

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Servicemembers face a number of unique challenges as consumers. Not only are members of the military and their families, who are often young and financially inexperienced but who have a steady income, frequently the target of deceptive practices and scams, they also may be deployed and move around frequently on short notice, which creates additional hurdles when it comes to monitoring and safeguarding their finances.\(^1\) Unfortunately, there are only limited legal protections addressing servicemember concerns in the consumer protection realm, and many lie outside state attorney general enforcement jurisdiction. It is particularly important that state consumer protection enforcers be vigilant and attentive to military and veterans issues where we have jurisdiction, but also provide education, advocacy, and assistance to those who serve us and whom we trust to be mission ready and able to put their entire energy into defending the nation. While there are some state law protections designed to address consumer protection issues unique to servicemembers,\(^2\) the primary safeguards are on the federal level, perhaps the most substantive of which can be found in the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. §§ 3901 through 4043. As government regulators, having an understanding of SCRA’s provisions, as well as its limitations, is necessary as increasing numbers of consumer complaints in this area continue to be filed with our offices.\(^3\)

SCRA provides a number of substantive protections and rights, some of which have origin in earlier moratorium laws, which stayed actions against members of the military during war and go back as far as Ancient Greece.\(^4\) World War I saw the passage of the Soldiers’ and Sailors’ Civil

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2. *See, e.g.*, VA. CODE ANN. §§ 6.2-1816(21), 6.2-2215(15) (2016) (prohibiting licensed payday loan lenders from making payday loans, and licensed motor vehicle title loan lenders from making motor vehicle title loans, to a servicemember or their spouse or dependent under Virginia law).


Relief Act of 1918 in the United States which provided some of the protections of such a stay, but which also took into consideration creditors’ rights providing more flexible protections than a simple stay on litigation. As the statute expired after the end of World War I, Congress revived the protections in the midst of World War II in the Soldiers’ and Sailors’ Civil Relief Act of 1940. In 2003, that law underwent a number of revisions and was renamed the Servicemembers Civil Relief Act. SCRA does afford servicemembers who have notice of civil actions or proceedings the ability to stay those matters during military service or shortly after military service, but the stay is not automatic, requiring application by the servicemember, and is limited in duration. Current military duty must also be shown to materially affect the servicemember’s ability to appear in the proceedings.

SCRA affords other protections on debt-collection attempts against military members while in service. Under SCRA, for example, annual interest rates for debts incurred before entering military service cannot exceed 6% while serving. Additionally, property purchased by a servicemember after entering service cannot be repossessed for nonpayment, or the contract terminated or rescinded for any breach, without a valid court order. A servicemember and his or her dependents cannot be evicted from their primary residence for nonpayment of rent without a court order, regardless of contrary rental agreement language. If the ability of a servicemember or his or her dependents to pay rent is materially affected by military service, a court may grant a ninety-day delay in eviction proceedings or adjust terms to preserve the interests of all parties. No sale, foreclosure, or seizure of property for a breach of a pre-service mortgage obligation is valid if made during or within nine months after the servicemember’s period of active duty, unless pursuant to a valid court order. Servicemembers may terminate certain residential or vehicle leases without penalty because of active duty service and some cell phone contracts can be

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5 Id. at 748-49.  
6 Id. at 749 n.16.  
7 Id.  
9 Id. The United States Supreme Court has held that which party holds the burden of proving whether a servicemember was “materially affected” is to be determined on a case-by-case basis. See Boone v. Lightner, 319 U.S. 561, 569 (1943).  
10 § 3937 (the obligation must occur before the servicemember enters military service to receive the protection and should not to be confused with the 36% consumer credit interest rate cap for those in active duty found in the Military Lending Act at 10 U.S.C. § 987(b) and the corresponding regulation at 32 C.F.R. § 232.4). Annual interest rates on a mortgage incurred before active duty may not exceed 6% during military service and up to one year after service ends. § 3937(a)(1)(A).  
11 § 3952.  
12 § 3951. Note this protection applies only to residences for which the monthly rent is not more than $3,716.73 per month as of January 1, 2018. See Publication of Housing Price Inflation Adjustment, 83 Fed. Reg. 5409 (Feb. 1, 2018).  
13 § 3951.  
14 § 3953.
terminated without penalty, depending on the distance and duration of the servicemember’s relocation.\textsuperscript{15} And more generally, courts may not enter a judgment against certain servicemembers without first appointing an attorney to represent the servicemember, and, if a judgment is entered, the servicemember may have the opportunity to reopen the case to assert defenses, among other protections.\textsuperscript{16}

While a 2010 amendment to SCRA expressly provided for a private right of action and United States Attorney General enforcement, SCRA does not grant state attorneys general enforcement authority.\textsuperscript{17} However, some states have passed laws fully incorporating SCRA into state law with state attorney general enforcement.\textsuperscript{18} Other states may be more limited in their ability to enforce SCRA protections,\textsuperscript{19} though may be able to allege that conduct that is a violation of SCRA also violates other law as an unfair or deceptive act or practice.\textsuperscript{20} Significantly, there have been pushes for additional reforms to SCRA that need to be assessed on an ongoing basis.\textsuperscript{21} Given state jurisdictional limitations and some differing interpretations of the law’s breadth,\textsuperscript{22} we, as government regulators, need to be conscientious and fairhanded in the actions we pursue and the remedies we seek.\textsuperscript{23}

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\footnote{15}§§ 3955, 3956.
\footnote{16}§ 3931(a)(2). SCRA also provides, for instance, that a servicemember’s residency for state, federal, or local voting purposes is unaffected by absence from one’s usual voting state due solely to military service. See § 4025.
\footnote{18}See, e.g., BURNS IND. CODE ANN. § 10-16-20-1 to -5 (2018) (incorporating SCRA and providing civil penalties and injunctive relief among other remedies to the Attorney General of Indiana).
\footnote{19}See, e.g., VA. CODE ANN. §§ 8.01-428(a), 8.01-15.2(A) (granting authority to Virginia courts to set aside default judgments against active duty servicemembers, and requiring a military service affidavit before obtaining a default judgment).
\footnote{20}Willful failure to notify a court that a defendant is a known servicemember prior to obtaining a default judgment against the individual, for instance, arguably may be an unfair practice under other consumer protection law. It is also worth noting that creditors cannot require servicemembers to waive the right to legal recourse under SCRA as it is prohibited by the Military Lending Act at 10 U.S.C. § 987, enforceable by the federal Consumer Financial Protection Bureau.
\footnote{21}See, e.g., Pomerance, supra note 4, at 751 (among other things, calling “for a new section within the SCRA tolling expiration of a military member’s licenses and certifications if military duties materially affect the servicemember’s opportunity to renew these important documents”).
\footnote{22}Notwithstanding Boone, supra note 9, courts have made conflicting holdings with regard to the burden of proof on whether a servicemember was “materially affected.” Compare Wilson v. Butler, 584 So. 2d 414, 416 (1991) (placing burden on servicemember), with Reynolds v. Haulcroft, 205 Ark. 760, 763 (1943) (placing burden on the party resisting a stay).
\footnote{23}This is true particularly where we may see criticism of enforcement choices and interpretations of SCRA provisions. See, e.g., Kirk D. Jensen, Regulatory Theory and the Enforcement of the Financial Protections of the Servicemembers Civil Relief Act, 55 SANTA CLARA L. REV. 53, 87 (2015) (arguing “government agencies have focused exclusively on short-term benefits to servicemembers, without apparent regard to the costs to, and burdens on, creditors or to potential long-term costs to servicemembers” and have an aggressively expansive interpretation of SCRA).
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As consumer protection enforcers, let’s continue to put a spotlight on and do what we can to address issues unique to servicemembers and their families. We must be especially vigilant in enforcing the consumer protection laws, including SCRA where we have authority under state law, to provide a safeguard for the men and women serving our nation.