

# CRS Report for Congress

## The Servicemembers Civil Relief Act (SCRA): Summary and Proposed Amendments

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# The Servicemembers Civil Relief Act (SCRA): Summary and Proposed Amendments

## Summary

Recognizing the special burdens that members of the military may encounter trying to meet their financial obligations while serving their country, in 1940 Congress passed the Soldiers' and Sailors' Civil Relief Act (SSCRA). The law was amended from time to time, ordinarily in response to military operations that required the activation of the Reserves. P.L. 108-189, the Servicemembers Civil Relief Act (SCRA), was enacted on December 19, 2003 as a modernization and restatement of the protections contained in the SSCRA. Much like with the SSCRA, the SCRA has been amended since its initial passage and proposed changes continue to be introduced in Congress. This report summarizes the rights granted to persons serving on active duty in the U.S. Armed Forces under the SCRA.

The SCRA provides protections for servicemembers in the event that their military service impedes their ability to meet financial obligations incurred before entry into active military service. Forgiving of all debts or the extinguishment of contractual obligations on behalf of servicemembers who have been called up for active duty are not required, nor is absolute immunity from civil lawsuits provided. Instead, the act suspends civil claims against servicemembers and protects them from default judgments. The SCRA includes provisions that prohibit the eviction of military members and their dependents from rental or mortgaged property; create a cap on interest at 6% on debts incurred prior to an individual entering active duty military service; protect against the cancellation of life insurance or the non-reinstatement of health insurance policies; allow some professionals to suspend malpractice or liability insurance while on active duty; and proscribe taxation in multiple jurisdictions and forced property sales in order to pay overdue taxes.

The rights and protections afforded servicemembers under the SCRA continues to draw the attention of Congress. In the 110<sup>th</sup> Congress, more than 20 bills have been introduced proposing amendments, covering such topics as housing, credit rating, service contracts, educational benefits, jurisdictional concerns, and child custody. Housing, including mortgage and foreclosure protections, and child custody are the two predominant themes of the proposed amendments.

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# The Servicemembers Civil Relief Act (SCRA): Summary and Proposed Amendments

## Introduction<sup>1</sup>

The Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) provided civil protections and rights to individuals based on their service in the U.S. armed forces. On December 19, 2003, Congress enacted P.L. 108-189, the Servicemembers Civil Relief Act (SCRA), in response to the increased utilization of Reserve and National Guard military units in the Global War on Terrorism, and as a modernization and restatement of the protections and rights previously available to servicemembers under the SSCRA.<sup>2</sup> Much like with the SSCRA, the SCRA has been amended since its initial passage and proposed changes continue to be introduced in Congress.

Congress has long recognized the need for protective legislation for servicemembers whose service to the nation compromises their ability to meet obligations and protect their legal interests. During the Civil War, Congress enacted an absolute moratorium on civil actions brought against soldiers and sailors. During World War I, Congress passed the Soldiers' and Sailors' Civil Relief Act of 1918,<sup>3</sup> which did not create a moratorium on legal actions against servicemembers, but instead directed trial courts to apply principles of equity to determine the appropriate action to take whenever a servicemember's rights were involved in a controversy. During World War II, Congress essentially reenacted the expired 1918 statute as the Soldiers' and Sailors' Civil Relief Act of 1940, and then amended it substantially in 1942 to take into account the new economic and legal landscape that had developed between the wars.<sup>4</sup> Congress enacted amendments on several occasions during

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<sup>1</sup> Portions of this report were originally prepared by Estela I. Velez Pollack, a former legislative attorney in the American Law Division.

<sup>2</sup> See H.Rept. 108-81, at 32 (April 30, 2003). See also, S.Rept. 108-197, at 9 (November 17, 2003) (stating that the military had activated approximately 300,000 Reserves since September 2001, and that a DOD survey indicated that the self-employed Reservists reported an average \$6,500 in lost income when mobilized or deployed).

<sup>3</sup> 40 Stat. 440 (1918).

<sup>4</sup> H.Rept. 108-81, at 33 (April 30, 2003) (quoting statement by Congressman Overton Brooks (D-LA) on the floor of the House during consideration of amendments to SSCRA: "This bill springs from the desire of the people of the United States to make sure as far as possible that men in service are not placed at a civil disadvantage during their absence. It springs from the inability of men who are in service to properly manage their normal business affairs while away. It likewise arises from the differences in pay which a soldier (continued...)

subsequent conflicts, including 2002 when the benefits of the SSCRA were extended to certain members of the National Guard.<sup>5</sup> In 2003, Congress enacted the SCRA as a modernization and restatement of the SSCRA and its protections.

The SCRA<sup>6</sup> is an exercise of Congress's power to raise and support armies (U.S. Const. Art. I, sec. 8, cl. 12) and to declare war (Art. I, sec. 8, cl. 11).<sup>7</sup> The purpose of the act is to provide for, strengthen, and expedite the national defense by protecting servicemembers, enabling them to "devote their entire energy to the defense needs of the Nation."<sup>8</sup> The SCRA protects servicemembers by temporarily suspending certain judicial and administrative proceedings and transactions that may adversely affect their legal rights during military service. Forgiving of all debts or the extinguishment of contractual obligations on behalf of servicemembers who have been called up for active duty is not required, nor is absolute immunity from civil lawsuits provided. Instead, it provides for the suspension of claims and protection from default judgments. In this way, it seeks to balance the interests of servicemembers and their creditors, spreading the burden of national military service to a broader portion of the citizenry.

Many of the SCRA provisions are especially beneficial for Reservists activated to respond to a national crisis, but many provisions are also useful for career military personnel.<sup>9</sup> One of the measures that affects many who are called to active duty is the cap on interest at an annual rate of 6% on debts incurred prior to a person's entry into active duty military service (Section 207). Other measures protect military families from being evicted from rental or mortgaged property (Sections 301 and 303); from cancellation of life insurance (Sections 402 through 409); from taxation in multiple jurisdictions (Sections 510 and 511); from foreclosure of property to pay

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<sup>4</sup> (...continued)

receives and what the same man normally earns in civil life." Cong. Rec. H.5553 (June 11, 1942)).

<sup>5</sup> P.L. 107-330, 116 Stat. 2820 (December 6, 2002) (Extending benefits of SSCRA to members of the National Guard called up by their respective state governors to support federal efforts during national emergencies (including the war against terrorism)).

<sup>6</sup> One of the amendments effected by P.L. 108-189 is the change in the name of the act from Soldiers' and Sailors' Civil Relief Act (SSCRA) to Servicemembers Civil Relief Act (SCRA). The name of the act was changed to the more inclusive SCRA "because soldiers, sailors, marines and airmen are collectively referred to as "servicemembers" in other statutes" (H.Rept. 108-89, at 35 (April 30, 2003)). Therefore, all of the historical and legal background of this act makes reference to SSCRA instead of SCRA. This report will use the current name of the act, SCRA, when making reference to any historical or legal background information.

<sup>7</sup> *Dameron v. Brodhead*, 345 U.S. 322 (1953).

<sup>8</sup> 50 U.S.C. app. § 502.

<sup>9</sup> See James P. Pottorff, *Contemporary Applications of the Soldiers' and Sailors' Civil Relief Act*, 132 MIL. L. REV. 115, 118 (1991) (noting that many protections are ordinarily unavailable to career servicemembers because they enter into most major legal and financial obligations, such as mortgages, while on active duty).

taxes that are due (Sections 501 and 511); and from losing certain rights to public land (Sections 501 through 508).

This report provides a section by section summary of SCRA, codified in 50 U.S.C. app. § 502 et seq., and considers recent proposals to amend it.

## Title I: General Provisions

**Definitions. Sec. 101** (50 U.S.C. app. § 511). For the purposes of the SCRA, the following definitions apply:

**‘Servicemember’.** Persons covered by the SCRA include members of the “uniformed services” found in 10 U.S.C. § 101(a)(5), which includes the Army, Navy, Air Force, Marine Corps, Coast Guard, and the commissioned corps of the National Oceanic and Atmospheric Administration and the Public Health Service.

**‘Military Service’.** “Military service” includes “active duty” as defined in 10 U.S.C. § 101(d)(1); National Guard service as service under a call to active service authorized by the President or the Secretary of Defense for a period more than 30 consecutive days under 32 U.S.C. § 502(f)<sup>10</sup> for purposes of responding to a national emergency declared by the President and supported by federal funds; for officers of the Public Health Service or the National Oceanic and Atmospheric Administration, “active service” (not further defined); and any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful case.<sup>11</sup>

“Active duty” for armed services is defined in 10 U.S.C. § 101(d)(1) as “full-time duty in the active military service of the United States ... [including] full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.”<sup>12</sup> “Active military service” is not further defined in Section 101 of Title 10, U.S. Code, although “active service” is given the meaning “service on active duty or full-time National Guard duty,” in § 101(d)(3).

Under the prior law the definition of “military service” included language referring to “periods of training or education under the supervision of the United

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<sup>10</sup> 32 U.S.C. § 502(f) states that under regulations from the Secretary of the Army or the Secretary of the Air Force, a member of the National Guard may be ordered to perform training or other duty in addition to the mandatory yearly training.

<sup>11</sup> See *Donahou v. Presidential Limousine & Auto Sales, Inc.*, 2007 U.S. Dist. LEXIS 30257 (W.D. Ark. April 24, 2007) (finding that individual who enlisted in the military through a delayed entry program is not in the “military service” while participating in the delayed entry program. Therefore a contract concluded while in the program is not covered because it is treated under the SCRA as a pre-service contract.).

<sup>12</sup> 10 U.S.C. § 2151 defines service school to include the following: The Army War College, The College of Naval Warfare, The Air War College, The Marine Corps War College, The United States Army Command and General Staff College, The College of Naval Command and Staff, The Air Command and Staff College, and The Marine Corps Command and Staff College.

States preliminary to induction into military service.” Under the SCRA, persons on active duty and attending a service school are covered, while persons attending training prior to entering active duty, such as officer candidates, may not be covered. It is unclear, for example, whether “active military service” under 10 U.S.C. § 101(d) covers training as a member of the Reserve Officer Training Corps<sup>13</sup> or attendance at a military academy.<sup>14</sup>

**‘Period of military service’.** A servicemember’s “period of military service” begins when he or she enters military service and ends on the date of release from military service or upon death during military service.

**‘Dependent’.** “Dependent” is defined as a servicemember’s spouse or child (as defined for purposes of veterans’ benefits, in 38 U.S.C. § 101<sup>15</sup>), or another individual for whom the servicemember provided more than one half of the support in the 180 days prior to an application for relief under the act. This language appears to codify courts’ treatment of the term “dependent” as relating to financial dependency rather than strict familial relationships.<sup>16</sup>

<sup>13</sup> See *Brown v. United States*, 151 F.3d 800 (8<sup>th</sup> Cir. 1998) (finding that senior ROTC training activities are “active military service” under the Veterans Benefits Act).

<sup>14</sup> The question does not appear to have been tested in court, possibly due to the unlikelihood that a person attending a service academy would be materially affected by such status. The law, 37 U.S.C. § 203, provides that cadets of the military academies receive compensation at a rate of 35% of the O-1 paygrade. Upon graduation and acceptance of their commission in the active military service, their pay increases to full O-1 paygrade. Therefore, it would be unlikely that a cadet would be able to claim that entering active duty had a material affect on his or her ability to pay preexisting debts. In contexts other than the SCRA, military cadets have been considered to be in active military service for some purposes. See *Collins v. United States*, 642 F.2d 217, 220-21 (7<sup>th</sup> Cir.), *cert. denied* 452 U.S. 964 (1981) (finding a cadet at the Air Force Academy to be on active duty for purposes of applying the Feres doctrine to prohibit his bringing suit against the government); *Porath v. McVey*, 884 S.W.2d 692 (Mo.App.S.D.1994) (West Point cadet was considered to be on active duty for the purpose of determining whether he was “emancipated” under state law, for child support purposes); *Minnich v. World War II Service Compensation Bd.*, 57 N.W.2d 803 (Iowa 1953) (plaintiff awarded military bonus for time during World War II as military cadet based on definition of “active duty” that included “active service” at an “armed forces school”).

<sup>15</sup> 38 U.S.C. § 101(4) defines child as a person who is unmarried and under the age of eighteen; who before attaining the age of eighteen became permanently incapable of self-support; or who after attaining the age of eighteen and until completion of education or training (but not after attaining the age of twenty-three) is pursuing a course of instruction at an approved educational institution; and who is a legitimate child, a legally adopted child, a stepchild who is a member of a veteran’s household or was a member at the time of the veteran’s death, or an illegitimate child but, as to the alleged father, only if acknowledged in writing signed by him, or if he has been judicially ordered to contribute to the child’s support or has been, before his death, judicially decreed the father of such child, or if he is otherwise shown by evidence to be the father of the said child.

<sup>16</sup> See, e.g., *Balconi v. Dvascas*, 507 N.Y.S. 2d 788 (N.Y. Civ. Ct. 1986)(finding ex-spouse of serviceman who relied on his child support payments to be a “dependent” within the meaning of the SCRA who could assert the protection against eviction).



**‘Court’.** The term “court” includes federal and state courts and administrative agencies, whether or not a court or agency of record.

**‘State’.** “State” includes commonwealth, territory, or possession of the United States and the District of Columbia.

**‘Secretary Concerned’.** With respect to a member of the armed forces, “secretary concerned” refers to the meaning in 10 U.S.C. § 101(a)(9)<sup>17</sup>; with respect to commissioned officers of the Public Health Service, the Secretary of Health and Human Services; and with respect to commissioned officers of the National Oceanic and Atmospheric Administration, the Secretary of Commerce.

**‘Motor Vehicle’.** “Motor vehicle” is a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads and highways, but does not include a vehicle operated only on a rail line (as defined in 49 U.S.C. § 30102(a)(6)).

**‘Judgment’.** “Judgment” includes any judgment, decree, order, or ruling, final or temporary.<sup>18</sup>

**Jurisdiction and applicability of act. Sec. 102** (50 U.S.C. app. § 512). The SCRA applies everywhere in the United States, including the District of Columbia, and in any territory “subject to the jurisdiction of” the United States. It applies to any civil judicial or administrative proceeding in any court or agency in any jurisdiction subject to the act. However, it does not apply to criminal proceedings.

**Protection of persons secondarily liable. Sec. 103** (50 U.S.C. app. § 513). Protection is extended to persons who share a debt with one or more covered servicemembers or have secondary liability as a “surety, guarantor, endorser, accommodation maker, co-maker, or other person who is or may be primarily or secondarily subject to the obligation or liability” at issue. If the SCRA provisions are invoked as to the servicemember, the court has discretion to grant a stay, postponement, or suspension of the proceedings against such persons, or to set aside or vacate a judgment. Whether a court grants such relief appears to be influenced by equitable considerations, including whether the servicemember is able to appear in court, whether the servicemember’s presence is necessary for the defense, and whether an unjust forfeiture could otherwise result. If the servicemember is only

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<sup>17</sup> 10 U.S.C. § 101(a)(9) defines “Secretary” as the Secretary of the Army with respect to Army matters; the Secretary of the Navy with respect to matters concerning the Navy, Marine Corps, and the Coast Guard when it is operating as a service of the Department of the Navy; the Secretary of the Air Force with respect to matters concerning the Air Force; and the Secretary of Homeland Security with respect to matters concerning the Coast Guard when it is not operating as a service in the Department of the Navy.

<sup>18</sup> P.L. 108-454, 118 Stat. 3598 (December 10, 2004) (The definition of the term “judgment” was added by Title VII of the Veterans Benefits Improvement Act of 2004, titled Improvements to Servicemembers Civil Relief Act).

nominally a party to the suit, as in cases of negligence where the insurance company might be considered the “true defendant,” the modern trend is to deny a stay.<sup>19</sup>

The act added the term “co-maker”<sup>20</sup> to the list of persons who may be entitled to a stay in an action which has been stayed with respect to a servicemember. This effectively codifies courts’ interpretations of the previous version of the SCRA.<sup>21</sup> However, it does not explicitly adopt the test some courts have used to determine whether a stay is appropriate.

Bail bondsmen who are unable to procure the appearance of the principal due to that person’s active duty service receive protection under the act. In such a case, the court hearing the charge may not enforce the bond during the period of military service of the accused, and has the discretion to return the bail in its entirety to the bail bondsman in the interest of equity and justice. While some courts have interpreted this subsection to allow for no discretion,<sup>22</sup> others have required sureties to make a further showing that the appearance of the principal was in fact prevented due to military service and that the surety made an effort to secure the appearance of the principal in court.<sup>23</sup>

Persons who are primarily or secondarily liable on the obligation of a person in military service may waive their rights under the SCRA, but such a waiver must be executed in a separate instrument from that which creates the obligation. If the individual executes the waiver and then enters active military service, the waiver as applied to the individual, or to the dependents of the person, is invalidated. In the event that the waiver is executed after the person receives orders to active duty, but before entering active service, the waiver remains valid.

**Extension of protections to citizens serving with allied forces. Sec. 104** ( 50 U.S.C. app. § 514). Citizens of the United States who serve in the armed forces of allies of the United States in the prosecution of a war or military action, as long as such service is similar to the service in the U.S. armed forces, are protected under the act.

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<sup>19</sup> See *Tabor v. Miller*, 369 F.Supp. 647 (D. Pa.), *aff’d*, 389 F.2d 645 (3d Cir.), *cert. denied sub nom Stearns v. Tabor*, 391 U.S. 915 (1968) (where servicemember did not claim he was precluded by service from appearing and his insurer had rejected an offer to settle within the limits of the policy, stay of proceedings was denied).

<sup>20</sup> A co-maker is “one of two or more persons who sign an instrument to indicate a promise to pay a financial obligation. Any co-maker may be sued for the entire amount of the indebtedness, although a co-maker who is forced to pay more than his or her share may seek contribution from the other co-makers.” MERRIAM-WEBSTER’S DICTIONARY OF LAW (2001).

<sup>21</sup> *Modern Industrial Bank v. Zaentz*, 29 N.Y.S.2d 969 (N.Y.Mun.Ct. 1941); *Modern Industrial Bank v. Grossman*, 40 N.Y.S.2d 628 (1943).

<sup>22</sup> See *United States v. Jeffries*, 140 F. 2d 745 (7<sup>th</sup> Cir. 1944).

<sup>23</sup> See *Ex parte Moore*, 12 So.2d 77 (Ala. 1943); *Cumbie v. State*, 367 S.W.2d 693 (Tex. Civ. App. 1963).

**Notification of benefits. Sec. 105** (50 U.S.C. app. § 515). Military authorities are required to provide servicemembers with written information of their rights and benefits under the SCRA.

**Extension of rights and protections to Reserves ordered to report for military service and to persons ordered to report for induction. Sec. 106** (50 U.S.C. app. § 516). Benefits under Titles I, II, and III of the SCRA are applicable to servicemembers during the period of time between the date they receive their induction or activation orders and the date they report for active duty. The coverage ends in the event the orders to active duty are revoked.

**Waiver of rights pursuant to written agreement. Sec. 107** (50 U.S.C. app. § 517). Servicemembers may waive some of the benefits of the SCRA by agreeing to modify or terminate a contract, lease or bailment, or an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage. In order for the waiver to be effective, it must be executed during or after the servicemember's period of active military service. The written agreement must specify the legal instrument to which the waiver applies and, if the servicemember is not a party to that instrument, the identity of the servicemember concerned. This section extends the protections to servicemembers covered under Section 106 of the act (reservists ordered into active duty and persons ordered to report for induction).

The act was amended in 2004 to include two additional requirements for a waiver to be effective.<sup>24</sup> The first requirement is that it must be executed separate from the legal instrument to which it applies. The second is that it must be in at least 12 point type.

**Exercise of rights under act not to affect certain future financial transactions. Sec. 108** (50 U.S.C. app. § 518). Servicemembers are protected from any penalty imposed solely due to their invocation of rights under the SCRA. In other words, a lender cannot revoke a covered person's credit card or exercise foreclosure rights because the servicemember requests the rate of interest be capped at 6% pursuant to the SCRA. It provides that no stay, postponement, or suspension of any tax, fine, penalty, insurance premium, or other civil obligation or liability applied for, or received by, a person in military service can be the sole basis for any of the following:

- (1) a determination by a lender (or other person) that the servicemember is unable to pay the civil obligation or liability;
- (2) a decision by a creditor to deny or to revoke credit; to change the terms of an existing credit arrangement; or to refuse to grant credit in substantially the amount, or on substantially the terms, requested;
- (3) an adverse creditworthiness report by, or to, a consumer credit information enterprise;
- (4) an insurer's refusal to sell insurance coverage;

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<sup>24</sup> P.L. 108-454, 118 Stat. 3598 (December 10, 2004).

(5) an annotation by the creditor or a person engaged in the practice of assembling or evaluating consumer credit information, to reference the servicemember's military status on his or her credit report; or,

(6) a change in the terms offered or conditions required for issuance of insurance.

Creditors may, however, take adverse action against a servicemember who fails to comply with obligations after they are adjusted by reason of the act. The act does not appear to preclude insurers or creditors from offering different terms or conditions, denying credit, or taking other adverse actions based solely on the servicemember's status in anticipation that the servicemember might later invoke a right under the act.

**Legal representatives.** **Sec. 109** (50 U.S.C. App. § 519). Legal representatives, such as attorneys or persons possessing a power of attorney, may assert the benefits of the act when acting on the servicemember's behalf.

## **Title II: General Relief**

Sections 201 through 207 describe the general relief available in most kinds of court actions. They serve to suspend civil liabilities of military personnel and preserve causes of action either for or against them.

**Protection of servicemembers against default judgments.** **Sec. 201** (50 U.S.C. app. § 521). In a civil lawsuit, the failure of the defendant to appear in court may result in the award of a default judgment on behalf of the plaintiff. When a default judgment is entered in favor of the plaintiff, it is done without consideration on the merits of the case. Under the act, servicemembers are protected from default judgments in civil actions, including any child custody proceeding, when they are unable to appear in court due to military service. An amendment to the act in 2008,<sup>25</sup> added language clarifying that civil lawsuits include child custody proceedings.

Before a court can grant a default judgment, a plaintiff must file an affidavit stating that the defendant is not on active duty in military service showing necessary facts to support the affidavit<sup>26</sup> or that the plaintiff was unable to determine whether or not the defendant is in military service. A false affidavit to that effect is punishable by imprisonment for up to one year, a fine of up to \$1,000, or both. The court, before entering a judgment, must also appoint an attorney to represent the person on active duty in order to protect his or her legal rights and interests. However, if the attorney appointed to the case cannot locate the servicemember, actions by the attorney would not waive any defenses or otherwise bind the servicemember. Additionally, if the court is unable to determine if a defendant is in military service, the court may require a bond which may later be used to indemnify the defendant if it is determined that he or she was in military service and the judgment against the defendant is set aside or vacated in part. Moreover, if a court

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<sup>25</sup> P.L. 110-181, 122 Stat. 128 (January 28, 2008).

<sup>26</sup> This requirement may be satisfied by a statement, declaration, verification, or certificate, in writing, under oath.

enters a default judgment against a servicemember, the court may set aside its judgment if the servicemember files a motion within 60 days after leaving active military service and can demonstrate that military service prejudiced his or her availability to appear in court (unless the default was based on a false affidavit by the plaintiff regarding military service of the defendant, in which case such a showing is unnecessary) and that there are meritorious or legal defenses to the suit.

This section does not provide a means to challenge judgments resulting from cases in which the servicemember made an appearance before the court. Some courts have found that a communication to the court regarding the servicemember's military status, and the resulting applicability of the SCRA to the suit, constitutes an appearance and bars asserting certain defenses,<sup>27</sup> such as a lack of jurisdiction, and negates the right to petition to have the judgment overturned. An informal communication, such as a letter or a telegram to the court asking for protection under the SCRA should not be counted as an appearance,<sup>28</sup> but some courts have found that a letter from a legal assistance attorney constitutes an appearance, waiving the servicemember's protection against a default judgment.<sup>29</sup> An appearance by defendant's counsel may also waive protection, unless the counsel was appointed pursuant to this section.

Subsection (h) contains a provision to protect the rights of a bona fide purchaser by stating that vacating, setting aside, or reversing any judgment under the act will not impair any right or title acquired by any bona fide purchaser for value under the judgment. Therefore, it may be impossible to recover property that had been attached to satisfy a default judgment, although the servicemember would have the right to damages for the value of the property.

**Stay of proceedings when servicemember has notice. Sec. 202** (50 U.S.C. app. § 522). A court must stay further proceedings in civil litigation, including any child custody proceeding, where the servicemember's ability to participate in the litigation, as either the plaintiff<sup>30</sup> or the defendant, is materially affected by absence due to military service. It applies to servicemembers who are in military service or within 90 days after termination or release from military service. An amendment to

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<sup>27</sup> See *Blankenship v. Blankenship*, 263 Ala. 297, 82 So. 2d 335 (1978); *Vara v. Vara*, 14 Ohio 2d 261, 171 N.E.2d 384 (1961); *Reynolds v. Reynolds*, 21 Cal. 2d 580, 134 P.2d 251 (1943).

<sup>28</sup> See *Kramer v. Kramer*, 668 S.W. 2d 457 (Tex. Ct. App. 1984) (letter from servicemember invoking the SCRA and requesting a stay did not constitute an "appearance" for the purpose of providing personal jurisdiction); see generally The Judge Advocate General's Legal Center & School, U.S. Army, JA 260, Servicemembers Civil Relief Act [§ 3-2][hereinafter "JA 260"].

<sup>29</sup> See *Skates v. Stockton*, 682 P.2d 304 (1984) (holding that a letter to the trial court from a legal assistance attorney requesting a stay constituted an appearance and therefore waived the servicemember's protections from a default judgment).

<sup>30</sup> P.L. 108-454, 118 Stat 3598 (December 10, 2004) (added the words "plaintiff or" before "defendant" in the introductory statement of the section. The former SSCRA contained both terms "plaintiff" and "defendant," but prior to the 2004 amendment to the SCRA, the term "plaintiff" had been omitted).

the act in 2008,<sup>31</sup> added language clarifying that civil lawsuits includes child custody proceedings.

The servicemember must set forth, in the application for a stay, facts stating the manner in which current military duty requirements materially affect the ability to appear and state a date when he or she will be able to appear. Additionally, the servicemember must submit a letter from his/her commanding officer certifying that leave is not authorized to attend proceedings at that time. While a stay is a reasonable imposition upon an individual citizen on behalf of those discharging their obligations to the common defense, it is not available to shield wrongdoing or lack of diligence or to postpone relief indefinitely, or to be used to stay proceedings in matters where the interests or safety of the general public may be at stake. Courts may deny a stay in cases involving purely legal issues or where the servicemember is not the true party in interest or in which presence of the individual is not essential.<sup>32</sup>

A request for a stay under this section does not constitute an appearance for jurisdictional purposes or a waiver of any substantive or procedural defense. Therefore, a servicemember may apply for relief without waiving the right, for example, to assert that the court has no jurisdiction in the case. Moreover, additional stays may be granted based on continuing material effect of military duty. If additional stays are denied, the court must appoint counsel to represent the servicemember. A servicemember who is unsuccessful in securing a stay under this section is precluded from seeking the protections against default judgments granted under Section 201. This section is inapplicable to Section 301 (protection from eviction or distress).

**Fines and penalties under contracts. Sec. 203** (50 U.S.C. app. § 523). Whenever an action is stayed by the court pursuant to the SCRA, penalties that would otherwise accumulate against the person for failing to carry out the terms of the contract cannot be imposed during the period the stay remains in effect. In the absence of a stay, the court has discretion to relieve a servicemember of the obligations to pay fines or penalties for failing to carry out the terms of a contract if that person's ability to pay or to carry out the terms is impaired by military service.

**Stay or vacation of execution of judgments, attachments, and garnishments. Sec 204** (50 U.S.C. app. § 524). If a servicemember is materially affected by reason of service from complying with a court judgment or order, the court may, on its own motion, and will on the application of the servicemember, stay the execution of any judgment or order against the servicemember and vacate or stay an attachment or a garnishment of property, money, or debts in the possession of the person on active duty for actions or proceedings commenced against the

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<sup>31</sup> P.L. 110-181, 122 Stat. 128 (January 28, 2008).

<sup>32</sup> See *Posey v. Lake Pend Oreille Sch. Dist. No. 84*, 2007 U.S. Dist. LEXIS 7829 (D. Idaho February 2, 2007) (Defendants request for a stay of proceedings denied. Court denied request based on fact that the motion for summary judgment being considered, filed by the defense, had been fully briefed, and under advisement, prior to co-defendants activation to active duty).

servicemember. This section applies to actions brought against the servicemember before or during the period of military service or within 90 days after termination of service.

**Duration and term of stays; co-defendants not in service. Sec. 205** (50 U.S.C. app. § 525). Stays granted by courts under the SCRA can remain in effect for the entire period of a servicemember's military service plus 90 days, or any part thereof. As a practical matter, however, courts do not look favorably on protracted stays, and expect most military members to make themselves available to participate in proceedings within a reasonable period of time, especially during peacetime if the servicemember is not stationed abroad.<sup>33</sup> Suits against any co-defendants not in military service may proceed even if the suit has been stayed with respect to the person in the military. This section does not apply to Sections 202 (stays for actions for which the defendant has notice) and 701 (anticipatory relief). These sections contain their own rules for determining the maximum length of a stay.

**Statute of limitations. Sec. 206** (50 U.S.C. app. § 526). In cases in which a statute of limitations would prohibit any court action with respect to a lawsuit brought after expiration of the time specified by law, this section tolls (extends) the time period applicable to a covered servicemember by an amount of time equal to the person's period of military service.<sup>34</sup> That time is not counted in determining the servicemember's deadline for exercising the right to redeem real estate that has been sold or forfeited to enforce an obligation, tax, or assessment. The section applies not just to an action or proceeding in a court but also to any federal or state board, commission, or agency, and may be exercised by the servicemember's heirs, executors, administrators, or assigns, regardless of whether the right or cause of action arose prior to or during the person's period of military service.<sup>35</sup> It does not, however, apply to federal tax laws.

**Maximum rate of interest on debts incurred before military service. Sec. 207** (50 U.S.C. app. § 527). This section caps the maximum interest charged on any debt incurred by a servicemember individually or with the servicemembers' spouse jointly *prior* to entering active duty at a rate of interest no higher than six percent (6%) a year, if the servicemember's ability to pay is materially affected by

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<sup>33</sup> See Roger M. Baron, *The Staying Power of the Soldiers' and Sailors' Civil Relief Act*, 32 SANTA CLARA L. REV. 137 (1992).

<sup>34</sup> See *Bretherick v. Crittenden County*, 2007 U.S. Dist. LEXIS 20213 (E.D. Ark. March 21, 2007) (Stating that SCRA tolling provision is "crystal clear" in that the period of a servicemember's military service may not be included in computing any period limited by law).

<sup>35</sup> See *Giel v. Winter*, 503 F. Supp 2d 208 (D.D.C. 2007) (Former naval reserve officer appealed decision by the Board for the Correction of Naval Records denying his request for a special selection board remedy to reconsider promotion. Secretary of the Navy argued that claim was time-barred under the Administrative Procedure Act (APA). Court rejected argument finding that limitations period under the APA was tolled during active duty under the SCRA).

active duty status.<sup>36</sup> The interest above the 6% cap is to be forgiven by the creditor and does not accrue to be owed after the debtor's release from active duty. The monthly payments of an obligation or liability covered by this section is to be reduced by the amount in excess of the 6%, but the terms of the original obligation are to remain the same. A court may grant a creditor relief from this section if, in the opinion of the court, the ability of the servicemember to pay a interest rate in excess of 6% is not materially affected by the military service.

A servicemember who wrongly receives an adverse credit report or has his or her credit limit reduced or further credit denied after invoking the 6% interest cap provision may seek relief through the Fair Credit Reporting Act<sup>37</sup> (FCRA) provisions for "adverse actions" and consumer remedies for "willful or negligent noncompliance by credit reporting agencies upon consumer showing of causal connection between inaccurate credit report and denial of credit or other consumer benefit."<sup>38</sup>

Historically, federally guaranteed student loans were not eligible for the 6% interest rate cap. Section 428(d) of the Federal Family Education Loan Program, addressing applicability of usury laws, excluded the SCRA interest rate limitation on those loans.<sup>39</sup> P.L. 110-315, the Higher Education Opportunity Act, amended Section 428(d) to explicitly permit application of the SCRA interest rate cap on federally guaranteed student loans.<sup>40</sup> As of August 14, 2008, federally guaranteed student loans are treated like all other debts incurred prior to entering active duty. Loans disbursed prior to enactment of the amendment are not covered and therefore are not subject to the 6% interest rate limitation. Additionally, servicemembers currently on active duty that received loans prior to entering active duty will not be able to claim the 6% cap.

### **Title III: Rent, Installment Contracts, Mortgages, Liens, Assignments, Leases**

Sections 301 through 308 provide protections from eviction and loss of other benefits or rights due to the failure of a servicemember to meet payments on rent, loans, mortgages, or insurance policies. Unlike the other parts of the SCRA, the rights described in these sections can be asserted by a servicemember's dependents in their own right.

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<sup>36</sup> The 6% interest rate cap remains in effect during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage; or during the period of military service, in the case of any other obligation or liability (P.L. 110-289, 122 Stat. 2654 (July 30, 2008)).

<sup>37</sup> Fair Credit Reporting Act, 84 Stat. 1128, *codified at* 15 U.S.C. §§1681 *et seq.*

<sup>38</sup> See The Judge Advocate General's Legal Center & School, U.S. Army, JA 260, Servicemembers Civil Relief Act [§ 3-8].

<sup>39</sup> 20 U.S.C. § 1078(d).

<sup>40</sup> P.L. 110-315, 122 Stat. 3078 (August 14, 2008).



**Evictions and distress. Sec. 301** (50 U.S.C. app. § 531). Under this section, unless a court orders otherwise, a landlord or person with “paramount title” may not evict a servicemember during a period of military service or his or her dependents from a rented home (such as an apartment, a trailer, or a house) if the rent is \$2,400 per month or less. The rent ceiling is adjusted annually for inflation and in 2008 the amount is \$2831.13.<sup>41</sup> In a case where the landlord seeks a court order for the eviction of a servicemember or his or her dependents, the court is obligated to stay the proceedings for up to three months if the servicemember requests it. In the alternative, the court may adjust the obligation under the lease to preserve the interests of all the parties. Section 202 (stay of proceedings when servicemember has notice) of the act is not applicable to this section.

The section provides that anyone who knowingly takes part in an eviction in violation of this section can be punished by imprisonment for up to one year, a fine as provided in Title 18, U.S. Code, or both. Persons claiming relief under this section may collect consequential and punitive damages in cases involving wrongful eviction.

Additionally, courts are allowed to grant landlords, or other persons with “paramount title,” equitable relief in cases where a stay is granted. If the court orders payment, Subsection (d) authorizes the Secretary concerned to make an allotment from the servicemember’s military pay to satisfy the terms of the order.

**Protection under installment contracts for purchase or lease. Sec. 302** (50 U.S.C. app. § 532). Except by court order, no one who has collected a deposit as partial payment for property, where the remainder of the price is to be paid in installments, can repossess the property or cancel the sale, lease, or bailment because of the failure to meet the terms of the contract, if the buyer enters active duty military service after paying the deposit and subsequently breaches the terms of the contract. A violation of this section is punishable by imprisonment for up to one year, a fine as provided in Title 18, U.S. Code, or both. A court may order the cancellation of the installment sale, mandating the return of the property to the seller as well as the return of paid installments to the buyer, or the court may stay the proceedings. This section does not permit a servicemember unilaterally to terminate the contract, although the servicemember may be able to bring an action under Section 701 for relief.

**Mortgages and trust deeds. Sec. 303** (50 U.S.C. app. § 533). This section covers servicemembers who, prior to a period of active military service, entered into a property transaction subject to a mortgage, a trust deed, or other security loan. If the servicemember is unable to make payments on the loan due to military service, the provision prevents the vendor from exercising any right or option under the contract to rescind or terminate, to resume possession of the property for nonpayment of any installment due, or to breach the terms, except by action in a court of

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<sup>41</sup> Publication of Housing Price Inflation Adjustment Under 50 U.S.C. App. Section 531, 73 Fed. Reg. 6,485 (February 4, 2008) (The Secretary of Defense is required to publish annually in the *Federal Register* the rent ceiling amount adjusted for inflation.).

competent jurisdiction, until nine months after the term of active duty terminates.<sup>42</sup> A sale, foreclosure, or seizure of property during a servicemember's period of military service is prohibited unless under a court order issued prior to foreclosure on the property, or if made pursuant to an agreement under Section 107 of the act.

If the servicemember breaches the terms of a mortgage, trust deed, or other loan, the court may stay any proceedings brought by the lender to enforce the terms of the agreement. The court may also order any other disposition of the property that it decides is fair to both the borrower and the lender. Property repossessed or other action taken without benefit of a court order is punishable by imprisonment up to one year, a fine as provided by Title 18, U.S. Code, or both, and may subject the creditor to a suit for wrongful conversion. In addition, where a covered person can show oppression, fraud, or malice on the part of the creditor, consequential and punitive damages, among other remedies, may be awarded.

**Settlement of stayed cases relating to personal property. Sec. 304** (50 U.S.C. app. § 534). If a court stays an action for foreclosure on property, repossession, or the cancellation of a sales contract against a servicemember, the court can appoint three disinterested persons to appraise the property and, on the basis of the appraisal, order the amount of the servicemember's equity to be paid back to the person on active duty in military service as a condition for allowing the foreclosure, repossession, or cancellation.

**Termination of residential or motor vehicle leases. Sec. 305** (50 U.S.C. app. § 535). Military persons who live in rental property are allowed to terminate leases entered into prior to a period of active service. It applies to: (1) property leased for a dwelling or for professional, business, or farm use, or other similar purpose, where the person leasing the property later enters active duty in military service, or where the servicemember executes the lease while in military service and thereafter receives military orders for a permanent change of duty station (PCS) or to deploy with a military unit for a period of at least 90 days; and (2) motor vehicle leases for personal or business transportation where the person later enters active military service of not less than 180 days or where the servicemember executes the lease while in military service and thereafter receives PCS orders outside of the continental United States or to deploy with a military unit for at least 180 days. Servicemembers who rent premises are advised to ensure the rental agreement contains a "military" clause to allow for early termination of a lease in case of military orders to deploy.<sup>43</sup> In 2004 the right to terminate leases was expanded to include joint leases.<sup>44</sup> The added language specifies that any lease terminated pursuant to this section also terminates any obligation a dependent of the lessee may have under the lease.

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<sup>42</sup> P.L. 110-289, 122 Stat. 2654 (July 30, 2008). The nine-month provision on the prohibition of foreclosure against a servicemember is set to expire on December 31, 2010; at that point the period prohibiting foreclosure will revert to 90 days.

<sup>43</sup> See The Judge Advocate General's Legal Center & School, U.S. Army, JA 260, Servicemembers Civil Relief Act [§ 4-7].

<sup>44</sup> P.L. 108-454, 118 Stat. 3598 (December 10, 2004).

The servicemember may terminate a property lease by delivering by hand, private business carrier, or mailing return receipt requested, a written notice and a copy of the his or her's military orders to the lessor or its agent. With regard to a motor vehicle lease, the servicemember must return the motor vehicle to the lessor or its agent no later than 15 days after the date of delivery of the written notice. As for a residential lease, if the lease called for monthly rent, then cancellation takes effect thirty days after the next due date for rent *following* the day the written notice is sent. For all other property leases, the cancellation is considered effective at the end of the month following the month in which the written notice is sent. Any unpaid rent prior to the effective cancellation must be paid to the landlord on a prorated basis. The servicemember is entitled to a refund of any prepaid rent for time after the lease is canceled within 30 days of the termination of the lease. A court can make adjustments if the landlord petitions the court for an "equitable offset" prior to the date the lease is effectively canceled.<sup>45</sup> For motor vehicle leases, the cancellation is considered effective on the day on which the vehicle is returned to the lessor. The lessor cannot impose early termination fees, but the servicemember is still responsible for any taxes, summonses, title and registration fees, and any other obligation and liability under the lease, including reasonable fees for excessive wear, use, and mileage.

Anybody who knowingly seizes personal effects, a security deposit, or any other property belonging to a person who has lawfully canceled a lease pursuant to this section is subject to punishment. Anyone who seizes or otherwise interferes with the removal of property in order to satisfy a claim for rent due for any time after the date of the effective cancellation of the lease may be punished by imprisonment for up to one year, a fine as provided in Title 18, U.S. Code, or both.

**Protection of life insurance policy. Sec. 306** (50 U.S.C. app. § 536). If a person entering military service has used a life insurance policy as collateral to secure a debt, they are protected from foreclosure on the policy to satisfy the debt unless the assignee first obtains a court order, except where the assignee is the insurance company itself (in which case the debt amounts to a policy loan). A court may refuse to grant the order if it determines that the servicemember's ability to repay is materially affected by military service. This rule applies during the entire time the insured is on active duty plus one year. The rule does not apply in three cases: (1) if the insured gives his or her written permission to let a creditor make a claim against the policy in order to satisfy the debt involved; (2) if any premiums required under the life insurance policy are due and unpaid (excluding premiums guaranteed under Title IV of this act); or (3) if the person whose life is insured has died. Anyone who knowingly takes or attempts action contrary to this section shall be punished by imprisonment for up to a year, or a fine as provided in title 18, U.S. Code, or both.

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<sup>45</sup> An "equitable offset" may allow the landlord to retain part or all of the amount of rent remaining on the lease as well as the security deposit, to compensate for unreasonable expenses incurred as the result of early lease termination. *Omega Industries, Inc., v. Raffaele*, 894 F.Supp. 1425 (D. Nev. 1995).

**Enforcement of storage liens. Sec. 307** (50 U.S.C. app. § 537). A servicemember with property or effects subject to a lien, including liens for storage, repair or cleaning of property, is protected from foreclosure or enforcement of the lien during the period of military service plus three months *unless* a court finds that the servicemember's ability to meet the obligation is not materially affected by military service. A court can also stay the proceedings in these types of enforcement actions or order some other disposition of the case it deems equitable to the parties. This section does not affect the scope of Section 303 (mortgages and trust deeds). Anyone who knowingly takes any action contrary to the provisions is punishable by imprisonment up to one year, a fine as provided by title 18, U.S. Code, or both.

**Extension of protections to dependents. Sec. 308** (50 U.S.C. app. § 538). The benefits of the rules provided under Title III (50 U.S.C. app. §§ 531 to 537) of the SCRA are extended to dependents of active duty personnel in their own right. A dependent must petition a court for permission to take advantage of those rules, and the court is not required to grant permission if it determines that the ability of the applicant dependent to comply with the terms of the obligation, contract, lease, or bailment has not been materially impaired by the military service of the person upon whom the applicant is dependent.

## **Title IV: Life Insurance**

Title IV provides relief from insurance premiums and guarantees servicemembers continued coverage under certain commercial life insurance policies.

**Definitions. Sec. 401** (50 U.S.C. app. § 541). For the purposes of Title IV of the SCRA, the following definitions apply:

**'Policy'.** 'Policy' includes any individual contract for whole, endowment, universal, or term life insurance (other than group term life insurance), or benefit similar to life insurance that comes from membership in any fraternal or beneficial association and has to satisfy all of the following conditions:

- (1) the policy does not include a provision limiting the amount of insurance coverage based on the insured's military service;
- (2) the policy does not require the insured to pay higher premiums if he or she is in military service;
- (3) the policy does not include a provision that limits or restricts coverage if the insured person engages in any activity required by military service; and
- (4) the policy has to be "in force" (premiums have to be paid on time before any benefit guaranteed by these sections of the law can be claimed) for at least 180 days before the insured enters military service.

**'Premium'.** 'Premium' is the amount specified in the policy to be paid to keep the policy in force.

**'Insured'.** 'Insured' is defined as a servicemember who owns a life insurance policy.

**'Insurer'.** 'Insurer' includes any firm, corporation, partnership, association, or business that can, by law, provide insurance and issue contracts or policies.

**Insurance rights and protections. Sec. 402** (50 U.S.C. app. § 542). Either the person insured, an insured's legal representative, or, when the insured person is outside the United States, a beneficiary of the insurance policy must apply for protection of a covered policy under the act. The written application must be submitted to the insurer with a copy sent to the Secretary of Veterans Affairs. The total amount of policies covered are limited to the greater of \$250,000, or an amount equal to the maximum limit of the Servicemember's Group Life Insurance(SGLI). In 2005, the maximum limit of SGLI was increased to \$400,000 thereby raising the maximum amount of covered policies.<sup>46</sup>

**Application for insurance protection. Sec. 403** (50 U.S.C. app. § 543). In order to invoke protection for the policies covered under this part of the SCRA, the servicemember, his or her legal representative, or beneficiary must submit an application in writing identifying the policy and insurer, with an acknowledgment that the insured's rights under the policy are subject to and modified by the provisions of Title IV of this act. The Secretary of Veterans Affairs may require the parties to provide additional information as necessary. The insurer then reports the action to the Department of Veterans Affairs as required by regulation (found in 38 C.F.R. Part 7).<sup>47</sup> By making an application for the protection guaranteed by these sections of the law, the insurer and insured are deemed to have accepted any necessary modifications to the terms of the life insurance policy.

**Policies entitled to protection and lapse of protections. Sec. 404** (50 U.S.C. app. § 544). The Secretary of Veterans Affairs determines whether a policy is entitled to the protection guaranteed by these sections, and is responsible for notifying the insurer and the insured as to his determination. Once the policy is deemed qualified for protection, it may not lapse or otherwise be terminated or be forfeited for the nonpayment of a premium, or interest or indebtedness on a premium. This protection applies during the time the insured person is in military service and for two years after he or she leaves military service.

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<sup>46</sup> P.L. 109-80, 119 Stat. 2045 (September 30, 2005) (increased the maximum SGLI benefit to \$400,000).

<sup>47</sup> Title 38, Part 7, of the *Code of Federal Regulations*, revised as of July 1, 2007, addresses Soldiers' and Sailors' Civil Relief not Servicemembers Civil Relief and cites 50 U.S.C. app 511, 540-547 as authority. SCRA as enacted by P.L. 109-183 does not contain a Section 540 and includes two additional Sections 548 and 549 that are not referenced in the regulations. The authority for the Secretary of Veterans Affairs to promulgate regulations to carry out the provisions of the Title are now contained in 50 U.S.C. app § 548, and judicial review of decisions by the Secretary, previously not included in the SSCRA, is found in 50 U.S.C. app § 549.

**Policy restrictions. Sec. 405** (50 U.S.C. app. § 545). The approval of the Secretary of Veterans Affairs is necessary for a policy holder to make certain withdrawals and other payments or credits under a policy protected by this part of the SCRA. If such approval is not obtained, rather than paying dividends to the insured or reinvesting them to purchase additional coverage, the insurer must add dividends to the value of the policy to be treated as a credit. The insured is not permitted to take out loans against the policy or cash it in while it is protected without the approval of the Secretary of Veterans Affairs. However, the insured retains the right to modify the designation of beneficiaries.

**Deduction of unpaid premiums. Sec. 406** (50 U.S.C. app. § 546). If a covered policy matures due to the death of the insured, the insurance company may reduce its settlement with the beneficiaries by the amount of any unpaid premiums (plus interest). If the rate of interest is not specified in the policy, it will be the same rate applied to policy loans in other policies issued at the time when the insured's policy was issued. Deductions must be reported to the Secretary of Veterans Affairs.

**Premiums and interest guaranteed. Sec. 407** (50 U.S.C. app. § 547). In the event the insured fails to pay all of the premiums owed on a policy at the time the guarantee period expires and the cash surrender value of the policy is less than the amount due, the United States will pay the unpaid premiums and may then attempt to collect the amount from the insured. (Any funds collected from the insured are added to appropriations for the payment of guaranteed premiums under this part of the SCRA). If the unpaid premiums do not exceed the policy's cash surrender value, the insurer will treat them as a policy loan. Moreover, any money paid by the government to an insurance provider under this section is a debt owed by the insured to the government and may not be discharged by bankruptcy.

**Regulations. Sec. 408** (50 U.S.C. app. § 548). The Secretary of Veterans Affairs will promulgate regulations to carry out the provisions of the article.

**Review of findings of fact and conclusions of law. Sec. 409** (50 U.S.C. app § 549). The findings of fact and conclusions made by the Secretary in administering these sections are subject to review by the Board of Veterans' Appeals and the U.S. Court of Appeals for Veterans' Claims. Judicial review is permitted only to the extent provided by chapter 72 of Title 38, U.S. Code.

## **Title V: Taxes and Public Lands**

The fifth broad category of provisions of the SCRA provides certain rights regarding public lands and relieves servicemembers from having to pay certain taxes to multiple jurisdictions. It also prevents the attachment of certain personal or real property in order to satisfy tax liens.

**Taxes respecting personal property, money, credits, and real property. Sec. 501** (50 U.S.C. app. § 561). Personal property (including motor vehicles) belonging to a person in military service, as well as real property used by the servicemember as a home, a business, or for agriculture, as long as the property continues to be occupied by the servicemember's family or employees, cannot be

sold to collect unpaid taxes or assessments, except income taxes, without a court order. A court may stay an action to force the sale of property belonging to a person in military service for the collection of unpaid taxes if it finds that the debtor's ability to pay the taxes is materially affected by his or her military service. In the event a servicemember's property is sold to satisfy tax liabilities, the servicemember has the right to redeem the property up to six months after the person leaves military service. This section may not be construed to shorten any period of redemption provided by state law. If a servicemember fails to pay a tax or assessment on property covered by this section when due, the amount unpaid and due shall accrue interest at 6%, but no other penalties or interest may be assessed. Additionally, joint ownership of all forms of personal and real property by a servicemember and his or her dependents are covered by this section.

**Rights in public lands. Sec. 502** (50 U.S.C. app. § 562). Servicemembers cannot be deemed to have forfeited any right (including mining and mineral leasing rights) they had to use public lands of the United States prior to entering military service based on absence from the land or failure to perform required maintenance or other improvements. Holders of permits and licenses who subsequently enter military service may suspend the licenses for the duration of military service plus six months, allowing the servicemember to obtain a reduction or cancellation of fees for the duration of that time.

**Desert-land entries. Sec. 503** (50 U.S.C. app. § 563). Servicemembers with claims to desert lands prior to entering military service may not have those claims contested or cancelled (1) for failing to expend required amounts in improvements annually, (2) failing to effect the reclamation of the claim during the period of service, or (3) during hospitalization or rehabilitation due to an injury or disability incurred in the line of duty. The protection is in force during and for six months after he or she leaves military service or is released from hospitalization. To qualify for this protection, notice must be given to the appropriate land office within six months after entering military service.

**Mining claims. Sec. 504** (50 U.S.C. app. § 564). Certain requirements for maintaining a mining claim are suspended during the holder's period of active military service and for six months after or is released from hospitalization because of wounds or disability suffered while in the line of duty. During this period, the mining claim cannot be forfeited due to nonperformance of the requirements of the lease. To qualify for this protection, the servicemember must notify the appropriate claims office of commencement of military service within 60 days after the end of the assessment year in which the service began.

**Mineral permits and leases. Sec. 505** (50 U.S.C. app. § 565). Any person who holds a permit or a lease under the federal mineral leasing laws who enters military service is allowed to suspend all operations during military service (plus six months), in which case the period of service is not counted as part of the term of the person's permit or license but the holder is not required to pay rentals or royalties during that time. However, to qualify for these privileges, the person has to notify the Bureau of Land Management that he or she has entered military service within six months after entering.

**Perfection or defense of rights. Sec. 506** (50 U.S.C. app. § 566). Nothing in Title V of the SCRA prevents a person in military service from taking any action authorized by law or regulations of the Department of the Interior to assert, perfect, or protect the rights covered in those sections. A servicemember may submit any evidence required to assert this right in the form of affidavits or notarized documents. Affidavits provided pursuant to this section are subject to 18 U.S.C. § 1001.

**Distribution of information concerning benefits of title. Sec. 507** (50 U.S.C. app. § 567). The Secretary concerned is responsible for providing military authorities with information about the benefits of this Title (except those pertaining to taxation) for distribution among servicemembers and shall provide application forms to be used by applicants requesting relief.

**Land rights of servicemembers. Sec. 508** (50 U.S.C. app. § 568). Protection of land rights under this Title are extended to servicemembers under the age of 21. Any residency requirements related to the establishment of a residence within a limited time will be suspended for six months after release from military service.

**Regulations. Sec. 509** (50 U.S.C. app. § 569). The Secretary of the Interior has the authority to issue regulations necessary to carry out Title V of the act, other than the sections that deal with taxes (Sections 501, 510, and 511).

**Income taxes. Sec. 510** (50 U.S.C. app. § 570). The collection of income taxes (excluding Social Security (FICA) taxes) owed by a servicemember, either before or after entering service, may be deferred during the period of service, and for up to six months after, if his or her ability to pay the taxes is materially affected by military service. No interest or other penalty may be imposed on a debt deferred under this section. The statute of limitations for paying the debt is tolled for the length of the person's period of service plus nine months.

**Residence for tax purposes. Sec. 511** (50 U.S.C. app. § 571). In order to prevent multiple state taxation on the property and income of military personnel serving within various tax jurisdictions by reason of military service, this section provides that servicemembers neither lose nor acquire a state of domicile or residence for taxation purposes when they serve at a duty station outside their home state in compliance with military orders. A servicemember who conducts other business while in military service may be taxed by the appropriate jurisdiction for resulting income. This section does not protect the income of a spouse or other military dependant from taxation. However, a tax jurisdiction cannot include the military compensation earned by nonresident servicemembers to compute the tax liability imposed on the non-military income earned by the servicemember or spouse. Personal property of a servicemember will not be subject to taxation by a jurisdiction other than his or her domicile or residence while serving at a duty station outside of his or her home state. However, relief from personal property taxes does not depend on whether the property is taxed by the state of domicile. Property used for business is not exempt from taxation. An Indian servicemember whose legal residence or domicile is a Federal Indian reservation will only pay taxes under the laws of the Federal Indian reservation and not to the state where the reservation is located.



“Tax jurisdiction” is defined to include “a State or a political subdivision of a State,” which would include the District of Columbia and any commonwealth, territory or possession of the United States (Sec. 101(6)). “Taxation” includes licenses, fees, or excises imposed on an automobile that is also subject to licensing, fees or excise in the servicemember’s state of residence. “Personal property” includes intangible and tangible property including motor vehicles.

## **Title VI: Administrative Remedies**

Title VI provides courts the authority to deny remedies that would abuse the purpose of the SCRA, indicates how a servicemember’s military and financial status can be established in court, and covers other procedural requirements.

**Inappropriate use of act. Sec. 601** (50 U.S.C. app. § 581). A court may deny a servicemember the protections of the act with respect to a transfer it finds was made with the intent to exploit the provisions of the act, in order to delay enforcement of the contract, to obtain reduced interest rates, or to avoid obligations with respect to property that was the subject of the transaction.

**Certificates of service; persons reported missing. Sec. 602** (50 U.S.C. app. § 582). A certificate signed by the Secretary concerned serves as prima facie evidence in an action under the SCRA that the individual is in the military service, date of induction or discharge, person’s residence at time of induction, rank and rate of pay, and other facts relevant to asserting rights under the SCRA. A servicemember who is missing in action is presumed to continue in military service until he or she is accounted for or his or her death has been reported to the Department of Defense or determined by a court or board with the authority to make such determination.

**Interlocutory orders. Sec. 603** (50 U.S.C. app. § 583). Courts may revoke, modify, or extend any interlocutory orders they issued pursuant to the SCRA.

## **Title VII: Further Relief**

Title VII of the SCRA provides a means for servicemembers to petition for relief without having to wait until a creditor brings an enforcement action against them. It also treats powers of attorney and provides relief from liability insurance premiums for servicemembers who need to maintain such policies for their civilian occupations.

**Anticipatory relief. Sec. 701** (50 U.S.C. app. § 591). A servicemember may initiate an action for relief prior to defaulting on any pre-service obligation or liability, including tax obligations, rather than waiting for the creditor to commence proceedings. Dependents do not have independent protection under this section as they do for the provisions of Title III.

Courts may grant the following relief:

(1) if the obligation involves payments of installments for the purchase of real estate (like a mortgage), the court can stay enforcement of

the obligation by adding a period of time, no greater than the period of military service, to the remaining life of the contract, subject to the payment of the balance of principal and accumulated interest that remains unpaid at the termination of the applicant's military service, in equal installments over the duration of the extended life of the contract; and

(2) for any other type of obligation, liability, tax, or assessment, the court can stay enforcement, for a period of time equal to the petitioner's period of military service, subject to payment of the balance of principal due plus accumulated interest in equal installments over the duration of the stay.

If a stay has been granted under this section, no fine or penalty can be imposed for its duration as long as the servicemember complies with the terms and conditions of the stay. This provision allows servicemembers who are not yet in default on an obligation, but whose ability to make payments is materially affected by military service, to petition the court in effect to rewrite the contract by extending its life, allowing the servicemember to pay down the amount in arrears with equal installments over a longer of period of time. The servicemember must resume making regular payments on the debt after leaving active duty, in addition to the payments to make up for the smaller payments he or she made while on active duty.

**Power of attorney. Sec. 702** (50 U.S.C. app. § 592). A valid power of attorney for a person who is declared to be missing in action is automatically extended. Unless the document explicitly states that it is to expire, even in the event the person who executed it becomes missing in action, the document continues in force for the entire period the person remains in a missing status. It is limited to documents that designate the servicemember's spouse, parent, or named relative as the servicemember's attorney in fact.

**Professional liability protection. Sec. 703** (50 U.S.C. app. § 593). Certain persons who, prior being called to active duty, were furnishing health-care or legal services or any other services which the Secretary of Defense determines to be professional services and who had in effect a professional liability (*i.e.*, malpractice) insurance policy, may suspend payment of premiums on their liability insurance while they serve on active duty without losing any coverage. The section covers insurance policies that, according to their terms, would not continue to cover claims arising prior to a lapse in coverage unless the insured continues to pay premiums.

**Definitions.** "Profession" is defined in Subsection (i) to include "occupation." Similarly, the expression "professional" includes the term "occupational." Subsection (i) also defines "active duty," adopting the definition used in Section 101 of Title 10, U.S. Code. However, the provision is further limited to persons called to active duty (other than for training) under 10 U.S.C. §§ 688 (retired members of regular armed forces, members of the Retired Reserves, and members of the Fleet Reserve or Fleet Marine Corps Reserve); 12301(a) (activation of Reserves during war or national emergency declared by Congress); 12301(g) (member of Reserve component in captive status); 12302 (Ready Reserve); 12304 (Selected Reserve and certain Individual Ready Reserve members called to active duty other than during war or national emergency); 12306 (Standby Reserve); 12307 (Retired Reserve); and,

if any of the preceding sections are invoked, Section 12301(d) (volunteer member of a Reserve component).

***Suspension of coverage.*** Professional liability insurance policies covered by this section are suspended from the time the insurer receives a request for protection until the insured requests in writing to have the policy reinstated. In the case of a joint insurance policy, no suspension of coverage is required for the policyholders who are not called to active duty. For example, if several physicians jointly purchase a group policy of malpractice insurance, and only one of them is called to active duty, the coverage of those not called to active duty need not be suspended by the insurer.

***Premiums.*** The insurer may not charge premiums for coverage that is suspended. The insurer must either refund any amount already paid for coverage that is suspended or, if the insured professional person chooses, apply the amount toward payment of any premium that comes due after coverage is reinstated.

***Liability during suspension.*** The insurer is not obligated to pay any claim that is based on a professional's actions (or inaction) during a period when a policy is suspended. In the case of claims involving obligations imposed by state law on a professional person to assure that his or her patients or clients will receive professional assistance in his or her absence to serve on active duty, the section clarifies that the failure of the professional person to satisfy such an obligation will generally be considered to be a breach that occurred *before* the professional person began active duty. In such a situation, the insurer would be liable for the claim. In the event a claim arises while the patient is receiving alternate care as arranged by the servicemember for patients during his or her absence, the insurer would not be liable for the claim.

***Actions against policy holder during suspension of coverage.*** In the event a malpractice suit (or administrative action) is filed during the period when the insurance is suspended, the litigation will be stayed until the end of the suspension period. The stay only applies where the malpractice is alleged to have occurred before the suspension began, and would thus be covered by the policy. Litigation stayed under this rule is deemed to be filed on the date the suspended insurance is reinstated. The period of any stay granted under this provision is not counted when computing whether or not the relevant statute of limitations has run.

In the event that a professional person whose malpractice insurance coverage has been suspended should die during the period of the suspension, any stay of litigation or administrative action against the person under this section is lifted. In addition, the insurer providing the coverage that was suspended is to be liable under the policy just as if the deceased person had died while covered by the policy but before the claim was filed.

***Reinstatement of coverage.*** The insurer is required to reinstate the insurance coverage on the date the servicemember transmits a written request for reinstatement, which must occur within 30 days after the covered servicemember is released from active duty. The insurer must notify the policy-holder of the due date for payment of any premium required for reinstatement of the policy, and that the

premium must be paid within 30 days after the notice is received by the professional person. The section also limits the premium that the insurer can charge for reinstated coverage to the rate that would have applied if the servicemember had not been deployed. The insurer is not allowed to recoup missing premiums by charging higher rates for reinstated coverage, but it may charge higher rates for reinstated coverage if it raised the rates for all policyholders with similar coverage, if the servicemember would have had to pay a higher premium even if he or she had not suspended coverage.

**Health insurance reinstatement. Sec. 704** (50 U.S.C. app. § 594). This section grants servicemembers who were called to military service as described in § 703(a)(1) the right, upon termination or release from military service, to reinstatement of any health insurance policy that was in effect on the day before the servicemember entered military service, and that terminated at any time during his or her service. No new exclusions from coverage or waiting periods for reinstatement of coverage may be imposed with respect to conditions arising prior to or during the servicemember's period of military service, if such an exclusion or waiting period would not have applied during regular coverage and the condition has not been determined to be a disability incurred in the line of duty under 38 U.S.C. § 105. The section does not apply to employer-sponsored health insurance plans covered by the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA).<sup>48</sup> Insurance plans covered by USERRA are subject to similar protections under 38 U.S.C. § 4317. Servicemembers must apply for reinstatement within 120 days of termination or release from active duty.

In 2006, language was added limiting premium increases on a health insurance policy covered by the section.<sup>49</sup> The amount of the premium may not be increased on a policy being reinstated for the balance of the period for which the coverage would have continued had it not be terminated, above an amount that would have been charged before termination. In the event that the premiums for similarly covered individuals increased during the terminated period, the increased premium may be assessed to the servicemember upon reinstatement of the policy.

**Guarantee of residency for military personnel. Sec. 705** (50 U.S.C. app. § 595). Military personnel are not deemed to have changed their state residence or domicile for the purpose of voting for any federal, state, or local office, solely because of their absence from the respective state in compliance with military or naval orders.

**Business or trade obligations. Sec. 706** (50 U.S.C. app. § 596). The assets of a servicemember are protected from attachments to satisfy business debts for which the servicemember is personally liable, as long as the assets sought to be attached are not held in connection with the business. The obligor would have the right to apply to the court for a modification of the servicemember's relief where warranted by equitable considerations.

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<sup>48</sup> P.L. 103-353, 108 Stat. 3161 (1994), *codified at* 38 U.S.C. §§ 4301 *et seq.*

<sup>49</sup> P.L. 109-233, 120 Stat. 397 (June 15, 2006).

## The SCRA in the 110<sup>th</sup> Congress

The economic and financial burdens servicemembers experience continue to draw the attention of Congress. In the 110<sup>th</sup> Congress, more than 20 bills have been introduced proposing amendments to the SCRA, covering such topics as housing, credit rating, service contracts, educational benefits, jurisdictional concerns, and child custody. Housing, including mortgage and foreclosure protections, and child custody are the two most common themes of the proposed amendments.

**Housing.** In response to subprime mortgage concerns and the increasing number of foreclosures, numerous proposals aimed at protecting servicemembers have been introduced in Congress. Proposals range from rent and mortgage relief to extending protections against foreclosure.

A proposed addition to Title III would create a new section addressing rent and mortgage relief for members of the Reserve components.<sup>50</sup> Covered individuals would not be required to pay rent under a lease if the member is assigned duty at a location “sufficiently distant” from the property and unable to reside at that property. The bill does not define the term “sufficiently distant,” and it is unclear how a determination would be made as to what is in fact sufficiently distant to qualify for the benefit or how a disputed claim would be resolved. Additionally, the proposed section would not require covered individuals to make any payment of principal or interest on the mortgage during the period of military service. All excused payments would be appended to the end of the term of the mortgage in the same amount as originally due.

The overall scope of the mortgage provisions contained in the SCRA are limited to mortgages that originate before the servicemember entered military service. Expansion of mortgage benefits appear unlikely to benefit career military members. In contrast, a proposed modification to the maximum interest rate protection contained in Section 207 would apply to all servicemembers.<sup>51</sup> The language in the bill would effectively remove the requirement that the debts be incurred prior to the period of military service and specifically identifies mortgages as being covered by the maximum interest rate of 6%. While Section 207 is titled, “Maximum rate of interest on debts incurred before military service,” the bill removes the language requiring the debt to have been incurred prior to entering military service. The amendment does not change the title of Section 207, however.

**Child custody.** Early in the second session of the 110<sup>th</sup> Congress, P.L. 110-181 was enacted clarifying that child custody proceedings are covered under the SCRA provisions against default judgments and the right to request a stay of proceedings.<sup>52</sup> Multiple bills have been introduced that would expand the language

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<sup>50</sup> H.R. 1511, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007).

<sup>51</sup> S. 2764, 110<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2008).

<sup>52</sup> See 50 U.S.C. app §§ 521, 522.

related to child custody proceedings, specifically creating a new section addressing child custody within Title II of the SCRA.<sup>53</sup>

Under proposed amendments, servicemembers deployed in support of a contingency operation are protected from changes in child custody orders. Courts are prohibited from modifying or amending any previous judgment or order, or issuing a new order that changes a custody arrangement existing at the start of the deployment. However, courts may enter a temporary custody order if it is in the best interest of the child. If a temporary order is entered, upon completion of the deployment the custody order that was in effect immediately preceding the date of deployment is reinstated.<sup>54</sup> If a motion for change of custody is filed upon completion of a deployment, the absence of the member by reason of the previous deployment may not be considered by the court in determining the best interest of the child.

While the proposed amendments would create a new section under Title II, it appears that it could conflict with the previous amendment clarifying that Sections 521 and 522 apply to child custody proceedings. The protection against default judgments contained in Section 521 would not conflict with the proposed amendment, in that a court is unable to enter a permanent change in custody while a servicemember is deployed in support of a contingency operation. Any temporary orders entered while the servicemember is deployed would revert to the order that existed on the date of deployment, and, therefore, would not be considered a default judgment. However, it is unclear if a servicemember may request a stay under Section 522 in order to prevent the court from entering a temporary order changing child custody under the new section.

**Jurisdiction and civil enforcement.** Section 102 establishes that the act applies to any judicial or administrative proceeding commenced in any court of the United States, each of the states, and all territory subject to the jurisdiction of the United States. An application for relief, when no proceeding has already commenced, may be made to any court having jurisdiction over the matter. However, a recent opinion from the United States District Court for the Northern District of Texas questioned the proper forum as well as the right of an individual to file a cause of action under the SCRA.

In *Batie v. Subway Real Estate Corp.*,<sup>55</sup> a servicemember alleged that Subway Corporation violated the SCRA by evicting him from two commercial spaces while deployed to Afghanistan.<sup>56</sup> After obtaining declaratory judgments in the State of

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<sup>53</sup> See, e.g., H.R. 5658, 110<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2008); H.R. 6048, 110<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2008); S. 1658, 110<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2008).

<sup>54</sup> The language of the proposed amendments are similar except that S. 1658 does not contain language allowing the court to avoid reinstating the previous child custody order if it isn't in the best interest of the child.

<sup>55</sup> *Batie v. Subway Real Estate Corp.*, 2008 U.S. Dist. LEXIS 11458 (N.D. Tex. February 15, 2008).

<sup>56</sup> The servicemember claimed Subway violated SCRA procedures, in two different (continued...)

Texas courts, Subway evicted the servicemember from two commercial spaces under lease. Batie filed suit in the federal district court seeking relief from the declaratory judgments Subway obtained in the state courts and for compensatory and punitive damages for the violations of the SCRA. The U.S. district court, in determining if it should uphold the state court declaratory judgment stated, “Congress envisioned that state courts — not federal district courts — would decide claims involving SCRA’s tenant protections during eviction proceedings.”<sup>57</sup> In declining to overturn the declaratory judgment, the court construed Section 102(b) to mean that jurisdiction is not exclusive in federal court and that the act does not compel federal adjudication of all cases implicating the statute’s provisions. Denying the claim for compensatory and punitive damages, the court cited failure of the servicemember to cite any provisions in the SCRA authorizing damages.<sup>58</sup> Further, the court found that, even if the servicemember maintains the SCRA as a basis for damages, “there is no provision in SCRA that authorizes a private cause of action to remedy violations of the statute.”<sup>59</sup> The servicemember’s claims were dismissed by the court.

S. 2787, The National Defense Authorization Act for Fiscal Year 2009, sponsored by Senator Levin, would establish a new title addressing civil liability and enforcement of the SCRA, which would partially address some of the issues raised in *Batie*.<sup>60</sup> The bill would authorize the Attorney General to file a civil action in any appropriate United States District Court when a reasonable belief exists that an individual or group is engaged in, or has engaged in, a pattern or practice of conduct in violation of the SCRA. An action may also be filed if a denial of protections raises an issue of general public importance. The language establishes that authorized relief includes monetary damages, including actual and punitive damages, to a servicemember, dependent, or any other person protected by the act. The court may also impose a civil penalty to “vindicate the public interest.” Covered individuals are authorized to intervene in a civil action brought by the Attorney General, and the court may receive damages and reasonable attorney’s fees and costs associated with the claim.

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<sup>56</sup> (...continued)

proceedings before state courts, by failing to: (1) properly serve plaintiff; (2) appoint an attorney for plaintiff; (3) notify the court of plaintiff’s status as a U.S. serviceman or his deployment abroad; (4) apprise plaintiff of the eviction notice; and (5) stay proceedings pending plaintiff’s return from deployment.

<sup>57</sup> *Batie* at 15.

<sup>58</sup> Sections addressing rent, installment, contracts, mortgages, liens, assignments, and leases under Title III do contain language discussing consequential and punitive damages as an appropriate form of a remedy, though none of these sections would apply to a commercial lease or eviction from commercial space.

<sup>59</sup> *Contra Linscott v. Vector Aero.*, 2006 U.S. Dist. LEXIS 6287 (D. Or. January 31, 2006) (finding an inferred private cause of action in § 537 of the SCRA); *Cathey v. First Republic Bank*, 2001 U.S. Dist. LEXIS 13195 (W.D. La. August 13, 2001) (holding that provisions of SSCRA provided a private cause of action); *Moll v. Ford Consumer Fin. Co.*, 1998 U.S. Dist. LEXIS 3638 (N.D. Ill. March 16, 1998) (holding § 526 of SSCRA (6% interest cap) authorized a private cause of action).

<sup>60</sup> S. 2787, 110<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2008).

While the proposed language doesn't explicitly state that a private cause of action exists under the act, it does provide for intervention when the case has been filed by the Attorney General. The amendment clearly states that damages, including actual and punitive damages, are authorized forms of relief in a civil action filed by the Attorney General. It is unclear if courts would construe this to mean that damages are available for all violations of the SCRA, not only those under Title III, through a private cause of action.