

A JUDGE'S GUIDE TO THE SERVICEMEMBERS CIVIL RELIEF ACT

by Mark E. Sullivan

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INTRODUCTION

You may from time to time encounter parties to a lawsuit who are on active duty in the armed forces. This Guide highlights some of the issues related to the impact of military service on civil litigation, financial obligations, mortgages, leases, and other matters. Its specific focus is on the Servicemembers Civil Relief Act (SCRA).

Congress initially passed legislation at the start of World War II called the Soldiers' and Sailors' Civil Relief Act (SSCRA) to provide protection to those called to those in the armed forces. Enacted in 1940, the SSCRA was updated after the Gulf War in 1991 but was still largely unchanged as of 2003. The SCRA was written to clarify the language of the SSCRA, to incorporate decades of court interpretation of the SSCRA and to update the SSCRA to reflect new developments in American life since 1940. The SCRA, signed into law December 19, 2003, not only protects those on active duty; it also affords protection for Reservists and members of the National Guard (when activated under Title 10, United States Code).

The current law is found at 50 U.S.C. App. § 501 *et seq.* Courts have generally construed the SSCRA liberally to protect those in uniform, and the same should be true with the SCRA. The U.S. Supreme Court has said that the statute should be read “with an eye friendly to those who dropped their affairs to answer their country's call.” *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948).

QUESTIONS & ANSWERS

1. Q. What are the purposes of the SCRA?

A. The Act's purposes are to enable servicemembers (SMs) to devote their entire energy to the defense needs of the Nation; and to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of SMs during their military service. 50 U.S.C. App. § 502.

2. Q. Who is covered under the SCRA?

A. Pursuant to 50 U.S.C. App. § 511, covered servicemembers include

>Those members of the Army, Navy, Air Force, Marine Corps and Coast Guard on active duty under 10 U.S.C. 101(d)(1);

>Members of the National Guard who are called to active duty as authorized by the President or the Secretary of Defense for over 30 consecutive days under 32 U.S.C. 502(f) to respond to a national emergency declared by the President and supported by federal funds; and

>Commissioned members of the Public Health Service and the National Oceanographic and Atmospheric Administration.

A SM is also covered for any period of time when he or she is absent from duty because of sickness, wounds, leave or other lawful cause (i.e., he is still a SM even in absent from active duty for one of the above

reasons). Under 50 U.S.C. App. § 516, the protections of the Act are extended to members of the National Guard and Reserve, from receipt of orders to report for duty to the date that they report. Covered individuals under certain sections of the SCRA include a SM's family members (such as a spouse or a child). In addition, if a SM has provided over half of a person's support for the 180 days immediately preceding an application for relief under the Act, that person is considered a dependent also.

3. Q. What tribunals are covered?

A. Under 50 U.S.C. App. § 511(5), any court or administrative agency of the United States, a state or a political subdivision thereof is covered. Does this mean the Michigan Department of Environmental Protection? The Cook County Board of Housing Appeals? The Zoning Commission of San Diego? The U.S. Department of the Interior? The answer is YES to all the above! Criminal proceedings are excluded. 50 U.S.C. App. § 512(b).

4. Q. What does the SCRA say about delay of judicial proceedings when the servicemember has not entered an appearance in the court proceeding?

A. 50 U.S.C. App. § 521 governs when the SM has made no appearance. When a judgment, order or adverse ruling is sought against a party who has not made an appearance, it is the duty of the court to determine whether that party is in the military. The SCRA states that either side or the court may apply for information as to military service to the Department of Defense (DOD), which must issue a statement as to military service. 50 U.S.C. App. § 582. The office in DOD to contact for information under the SCRA on whether a person is in the armed forces is:

Defense Manpower Data Center [Attn: Military Verification]
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593
[Telephone 703-696-6762 or -5790/ fax 703-696-4156]

Go to the DMDC website for SCRA inquiries, <https://www.dmdc.osd.mil/scra>, and enter the last name and Social Security number of the individual. These are mandatory entries; the form on the main page also asks for a first name, middle initial and date of birth (DOB), which will help with the search. Further information is available on the "Help" section of the above website.

To execute a report, click on the "Look Up" button, which will open up a second window holding the report generated by DMDC. If the individual is on active duty, the report will show his or her branch of service and beginning date of active duty status. If DMDC does not have information as to whether the individual is on active duty, the generated report will only list the supplied last name, first name and middle initial (if supplied), with the text:

"Based on the information you have furnished, the DMDC does not possess any information indicating that the individual is currently on active duty."

The report is signed by the DMDC Director.

If the Social Security number is unavailable, the requester may request by mail a manual search, using the DOB of the individual instead of the SSN. You must send a stamped, self-addressed envelope with your mail request.

If the court determines that the other party is in the military, then the court may not enter a default judgment against the SM without appointing an attorney for him or her. "Default judgment" means any order, ruling or decree which is adverse to the SM's interest. It does not refer solely to a final judgment on the merits for the claim or claims for relief involved in the lawsuit.

Then the court must decide on a stay of proceedings. In cases where the defendant is in military service, the court must stay the proceedings for at least 90 days (upon application of the SM or his attorney or on the court's own motion) if the court determines that:

- >there may be a defense to the action and a defense cannot be presented without the presence of the SM, or
- >after due diligence, counsel has been unable to contact the SM or otherwise determine if a meritorious defense exists.

If a judgment has been entered against the SM during his period of military service (or within 60 days after the end of service), the court must reopen the judgment to allow the SM to defend if:

- >he was materially affected due to military service in asserting a defense, and
- >he has a meritorious or legal defense to the action or some part of it, so long as
- >the application is filed within 90 days after the end of military service. 50 U.S.C. App. § 521(g).

A flow chart illustrating what happens when there is no appearance by the SM is found at ATCH 1 below. Reopening or vacating the judgment does not impair rights or title acquired by a bona fide purchaser for value under the default judgment.

5. Q. What does Section 522 of the Act say about a SM who has received notice of the action or proceeding?

A. When the SM has received notice of the action or proceeding and has filed an application for a stay (including an application filed within 90 days after the end of military service), 50 U.S.C. App. § 522 states that the court may (upon its own motion) and shall (upon the application of a SM) enter a stay of proceedings for at least 90 days if the motion includes the information required by the statute for the court to determine whether a stay is needed. This “90-day stay” (although it can be for a longer period of time) requires four elements; the checklist below shows the requirements:

SCRA Stay Request – a Checklist for the Initial 90-Day Stay

✓	Elements of a Valid 90-Day Stay Request. Does the request contain...
	<u>A statement</u> as to how the SM's current military duties materially affect his ability to appear...
	and stating a date when the SM will be available to appear?
	<u>A statement</u> from the SM=s commanding officer stating that the SM=s current military duty prevents appearance...
	and stating that military leave is not authorized for the SM at the time of the statement?

Caveat: There is no indication that a request must be in the form of an affidavit or, for that matter, in any particular format whatsoever. Apparently a letter, a formal memo or even an e-mail message would suffice.

A request for a stay does not constitute an appearance for jurisdictional purposes or a waiver of any defense, substantive or procedural. 50 U.S.C. App. §522(c).

The SM may request an additional stay based on the continuing effect of his military duty on his ability to appear. He may make this request at the time of his initial request or later on, when it appears that he is unavailable to defend or prosecute. The same information as given above is required. 50 U.S.C. App. § 522(d)(1).

6. Q. Do I have to appoint an attorney if I deny the additional stay request?

A. If the court refuses an additional stay, then the court must appoint an attorney to represent the SM in the action or proceeding. 50 U.S.C. App. § 522(d)(2).

Questions: What does this attorney do? Who pays him or her? How does the attorney get in touch with the unavailable defendant or plaintiff? How can the attorney hope to represent the SM with no information, preparation or input by the “involuntary client”? Is the attorney supposed to try the entire case in the SM’s absence? Whose malpractice policy is going to cover this nightmare? There are no answers in the SCRA.

Almost certainly the initial duty of the appointed attorney is to renew the request for a stay of proceedings. It will be virtually impossible for him or her to prepare and present the case without the assistance of the unavailable SM.

When can the judge terminate the appointment? While there is nothing written on this, the logical explanation is that the judge may terminate the appointment when there is no longer a need or a desire for the appointment. And that, in turn, means -

> NO NEED – either the case has concluded and there is no reason to continue the appointment, or else the original need for the appointment [default or denial of additional stay] no longer exists; --OR ELSE --

> NO DESIRE – the servicemember has signed a waiver (in at least 12-point typeface) specifying that he/she waives the appointment or continuation of the appointment.

7. Q. I understand that the initial 90-day stay is mandatory. What about an additional stay – is that in my discretion? What do I have to find in order to grant an additional stay?

A. The additional stay is discretionary; in order to allow the additional stay, the court must find that the member's ability to prosecute or defend is "materially affected" by reason of his or her active duty service. Once this finding of material effect is made, the member is entitled to a stay for such period as is necessary until the material effect is removed. While this is not explicitly stated in the SCRA, it was the rule with the SSCRA and most likely will be the rule under the current Act as well. Finally, since courts are reluctant to grant long-term stays of proceedings, they can and should require members to act in good faith and be diligent in their efforts to appear in court.

Here are some questions, ideas and comments which may be helpful in evaluating an additional stay request:

>How much leave has the servicemember accrued? Ask for a copy of his LES (Leave and Earnings Statement) to find out.

>What is the nature of the “military necessity” that prevents a hearing? Is the SM serving in Iraq, where he cannot be given leave and is facing hostile fire on a daily or weekly basis? Or is he serving as “backfill” at Ft. Bragg or Ft. Lewis so that others may deploy overseas, working a comfortable day shift of 7:30 – 4:30 with weekends off?

>Sometimes a SM exaggerates the amount of time needed to be in court. Often a court case can be heard and resolved in a few hours or a few days. What happens if the SM complains to his commander that he will need to be gone for 30 days to take care of his case back in court? The court can expect a letter from the commanding officer stating that the SM’s duty requirements prevent appearance and that he is not authorized

leave. Whenever possible, the court should state on the record what amount of time the proceeding is expected to take. When examining the statement of a commander regarding denial of leave, the court may wish to inquire as to how much leave was requested, what the leave request stated, and what was represented to the commander about the length of time that the court proceeding would require.

>Is the member's presence necessary?

- a. What about video depositions? Use of the Internet? Is anyone truly "unavailable" any more? In *Massey v. Kim*, 455 S.E.2d 306 (Ga. Ct. App. 1995), the SM asked for a stay of proceedings to delay pending discovery until the completion of his overseas tour of duty. The court denied his request, pointing out improvements in modern communications since the passage of the SSCRA. In *Keefe v. Spangenberg*, 533 F. Supp. 49 (W.D. Okla. 1981), the court denied the SM's stay request to delay discovery, indicating that the SM should appear by videotape deposition pursuant to Fed. R. Civ. P. 30(B)(4). One court specifically pointed out that "Court reporters may take depositions in Germany including videotape depositions for use in trials in this country." *In re Diaz*, 82 B.R. 162, 165 (Bankr. Ga. 1988).
- b. What about summary judgment based on affidavits?
- c. Can the matter be resolved on an interim basis with a temporary order? In *Shelor v. Shelor*, 383 S.E.2d 895 (Ga. 1989), the court determined that temporary modifications of child support, in general, do not materially affect the SM's rights since they are interlocutory and subject to modification. In *Lenser et al. v. McGowan et al.*, 2004 Ark. LEXIS 400, the court granted a stay of proceedings under the SCRA but issued a temporary custody order. The servicemember-father was temporarily caring for the child, there was no custody order, and he placed the child in the care of his own mother when he left Arkansas for Ft. Hood, Texas and subsequent deployment to Iraq. The Supreme Court upheld the trial judge's entry of a temporary custody order while, at the same time, staying the domestic relations case until the SM's return.
- d. When will the temporary exigency be over? There is nothing that prevents a judge from responding to the commanding officer to ask some questions that will help determine what can be done to move the case forward. For example, perhaps the SM can respond to discovery while he is unavailable for a court appearance.

8. Q. What is "material effect"?

A. There is no one definition of "material effect." The court should make a finding of "material effect" when a military member's ability to prosecute or defend a civil suit is impaired by military duties which prevent the member from appearing in court at the designated time and place, or from assisting in the preparation or presentation of the case. An adverse material effect might also be found when military service impairs substantially the member's ability to pay financial obligations.

9. Q. If the member isn't in court before me, how can I inquire into "material effect"?

A. If the court is not convinced of "material effect," it has the discretion to:

>Require an affidavit setting out all the facts and circumstances, usually executed by the member or the member's commander.

>Ask for a copy of the member's Leave and Earnings Statement (the military equivalent of a pay statement) to show his or her basic pay, Basic Allowance for Housing, Basic Allowance for Subsistence, other pay or

allowances, tax withholdings, voluntary allotments to pay bills or support, and *accrued leave*.

>Request a more specific affidavit detailing the member's efforts to appear in court, for example, and the next court date when he or she would be available.

Some courts require specific information whenever a stay application does not contain sufficient facts. One example is the set of questions used by the courts in Monterey County, California, to get information from the defendant's commander.¹ The author has added several additional inquiries, and these are formatted as interrogatories to the defendant (as opposed to questions by the court):

1. What have you done to obtain ordinary and/or emergency leave to attend any necessary hearings and/or trial in this court?
2. What results did these efforts produce?
3. How much leave did you request?
4. When did you request this leave?
5. Give the name, rank, title, address and commercial telephone number (if available) of the individual who denied your leave request.
6. Have you taken any leave in the last three months?
7. If so, how much and for what purpose?
8. How much leave do you currently have as reflected on your latest Leave and Earnings Statement (LES)?
9. Provide a copy of your last three Leave and Earnings Statements with your responses to these questions.
10. What have you done to obtain a transfer to a military installation near this court on either a temporary or permanent basis?
11. What results did these efforts produce?
12. When were you assigned to the present duty station?
13. When are you due to be transferred on normal rotation or reassignment?
14. To what station will you probably be transferred?
15. (If the SM is an enlisted person) What is the date of your present enlistment contract?
16. When does the enlistment expire?
17. Do you intent to re-enlist?
18. Does your service record contain a bar to re-enlistment?
19. Is there any likelihood that you will obtain an early release from active duty and, if so, when is this expected to occur?
20. State any and all reasons why you cannot respond to written interrogatories in this case.
21. State any and all reasons why you cannot respond to written document requests in this case, so long as the documents requested are readily available to you.
22. State any and all reasons why you cannot respond to written requests for admissions in this case.
23. Give the location (and distance) of the nearest legal assistance office (JAG office or staff judge advocate office) to you.
24. State your duty hours during the week.
25. State your duty hours on weekends.
26. State what means of communication are available between you and this court, specifically including telephone, e-mail, regular mail and videoteleconference (both individually and through your JAG office).

Note that members from all branches of military service, whether buck private or rear admiral, get thirty days of leave annually, accruing at the rate of 2.5 days per month (although military necessity may limit when the leave may be taken).

¹ Hooper, "The Soldiers' and Sailors' Civil Relief Act of 1940 as Applied in Support Litigation: A Support Attorney's Perspective," 112 MIL. L. REV. 93, 95-96 (1986).

Also keep in mind that members who are going through basic or advanced training may be unable to appear in court due to the training schedule; there are no extra days built into the schedule to accommodate court dates, depositions or family emergencies, and being gone from training frequently means that the trainee will have to repeat the same training program from the beginning.

10. Q. What does a motion for stay look like?

A. Here is an example of one:

.....

Sample motion for stay of proceedings under Servicemembers Civil Relief Act (SCRA)

[HEADING OF CASE]

MOTION FOR STAY OF PROCEEDINGS

Pursuant to the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. § 522, the defendant moves this court for [an initial 90-day stay of proceedings][a further stay of proceedings], showing that his ability to defend herein is materially affected by his military duties. In support of this motion and in compliance with the SCRA, the defendant has included --

As Encl #1, a letter or other communication that:

- >states how current military duty requirements materially affect the defendant=s ability to appear, and
- >gives a date when the defendant will be available to appear; and

As Encl #2, a letter or other communication from the defendant's commanding officer stating that:

- >the defendant's current military duty prevents his appearance, and
- >that military leave is not authorized for him at the time of the letter.

WHEREFORE the defendant prays that this court grant him a stay of proceedings until [date] and such other relief as is just and proper.

Date:

Janet A. Smith, Attorney for Defendant
 123 Bartlett Street, Salisbury, NC 26799
 919-555-1234

.....
 [Notes: While this motion is written by the defendant’s attorney, the SCRA mentions the “application of the servicemember,” which means the SM or his legal representative could file the motion, application, petition or other document requesting a stay of proceedings. The “SM’s legal representative” would be his lawyer (civilian or military attorney) or an individual who holds his power of attorney. It may be addressed to the court, the clerk, the presiding judge, the defendant=s attorney, or the opposing counsel.

The statute appears to call for two statements, but the information required may be conveniently combined into *one* statement if that comes from the SM’s commanding officer. While the examples here are two statements which give limited information, a good letter should set out the facts in detail -- not merely conclusions -- as to how the defendant=s military duties adversely affect his ability to prepare and present the case, including appearances at depositions, responses to interrogatories and document requests, and appearance at trial. Although not required by the SCRA, it is a wise idea to set out how much leave the defendant has accrued, whether he has asked for leave, how much leave was requested, and whether the request has been approved or denied, including who approved or denied it, the date of such action, the limitations, if any, on an approved

leave, etc. The purpose of this is to show that the defendant is exercising good faith and due diligence in his application for a stay, rather than using the stay request purely for tactical advantage.]

Encl #1

Sergeant Leopold Legume, SSN 123-45-6789
Company C, 3d Battalion
123d Underground Balloon Regiment
V Corps, U.S. Army
APO AE 91099

[date]

TO WHOM IT MAY CONCERN:

My current military duty requirements materially affect my ability to appear in the following manner: I am currently serving as a truck driver at Camp Bondsteel in Kosovo. My tour of duty is for 180 days, beginning November 1, 2008. I was recalled to active duty in the U.S. Army from my assignment in the Army Reserve, which is the 122d Transportation Battalion, Salisbury, North Carolina. I am in the field every day of the week, and I am unavailable to appear at my hearing on child support. I have asked for one week=s leave in order to fly back to North Carolina and attend the hearing. This was denied by my commander.

I need to be personally present in court on my hearing date of February 1, 2009, to testify as to my compensation, both civilian (before the Reserve call-up) and military (a substantial reduction from my civilian pay), my reasonable living expenses (before and after the call-up) and certain bills of the plaintiff that I have taken over at her request since the last child support order herein that would constitute grounds for a variance from the Child Support Guidelines. I will be available to appear on or after May 10, 2009.

[signature of defendant]

.....
Encl #2

Major Regina Richards, Commander
Company C, 3d Battalion
123d Underground Balloon Regiment
V Corps, U.S. Army
APO AE 91099

[date]

TO WHOM IT MAY CONCERN:

1. I am the commanding officer of SGT Leopold Legume, SSN 123-45-6789.
2. His current military duty prevents his appearance in court on February 1, 2008.
3. He has requested one week=s leave for this court appearance. I denied his request, and military leave is not authorized for him at this time.

[signature of commanding officer]
.....

11. Q. I'm a family court judge. I can't believe that Congress intended this law to allow indefinite delays – or even short ones – with regard to custody, child support and visitation cases. These are often urgent cases requiring immediate decisions.

A. Congress made no restrictions as to domestic cases in writing and passing the SCRA. And in January 2008, it passed the 2008 National Defense Authorization Act which emphasized that custody is included in the cases covered by Section 521 (basically, all “default cases,” where the SM has not entered an appearance) and those involving an initial stay request (for at least 90 days).

12. Q. Isn't there some overview of the “stay process” that will help me understand it?

A. Yes. At Question 5 above is a checklist for the initial stay when a SM has entered an appearance. ATCH 1 at the end of this paper is a flow chart for the procedure when the non-moving party has not entered an appearance. ATCH 2 is a flow chart on the “additional stay” issue (after the initial stay). ATCH 3 is a checklist for the judge on SCRA issues generally.

13. Q. Can a default judgment be entered against a servicemember in his absence?

A. Not unless the court follows the procedures set out in the SCRA. As noted above, when the SM *has not made an appearance*, 50 U.S.C. App. § 521 governs. The court must first determine whether an absent or defaulting party is in military service. Before entry of a judgment for the plaintiff, the plaintiff must file an affidavit that states “whether or not the defendant is in military service and showing necessary facts in support of the affidavit.” Criminal penalties are provided for filing a knowingly false affidavit.

14. Q. What if the affidavit shows that the party to be defaulted is in the armed forces?

A. When this happens, no default can be taken until the court has appointed an attorney to represent the member; see Question 4 above. If the court fails to appoint an attorney, then the judgment or decree is voidable. 50 U.S.C. App. § 521(b)(2).

15. Q. What does the court-appointed attorney do?

A. The role of the attorney is to protect the interests of the absent servicemember, much as a guardian *ad litem* protects the interests of a minor or incompetent party. This would include contacting the servicemember to advise that a default is about to be entered and to ask whether he or she party wants to request a stay of proceedings. No provision of the SCRA says who pays the appointed attorney. If that attorney cannot locate the SM, the actions of the attorney cannot waive any defense of the SM or otherwise bind him or her.

16. Q. Can I require a bond to be posted before entry of a default judgment?

A. Yes. If the court cannot determine whether the defendant is in military service, then the court may require the plaintiff to post a bond as a condition of entry of a default judgment. Should the defendant later be found to be a SM, the bond may be used to indemnify the defendant against any loss or damage which he or she may incur due to the default judgment (if it should be set aside later). 50 U.S.C. App. § 521(b)(3).

17. Q. What are the provisions for reopening a default judgment?

A. Servicemembers are further protected from default judgments under the SCRA. The purpose of this is to protect those in the military from having default judgements entered against them without their knowledge and without a chance to defend themselves. The SCRA allows a servicemember who has not entered an appearance in the proceeding to seek the reopening of a default judgment. The requirements are as follows:

- >The servicemember must apply to the trial court that rendered the original judgment of order.
- >The default judgment must have been entered when the member was on active duty in the military service or within 60 days thereafter.
- >The servicemember must apply for reopening the judgment while on active duty or within 90 days thereafter.
- >The servicemember must prove that, at the time the judgment was rendered, he was prejudiced in his ability to defend himself due to military service.
- >The servicemember must show that there is a meritorious or legal defense to the initial claim.

An important requirement of the reopening of a judgment is that the moving party has a meritorious or legal defense. Default judgments will not be set aside when a litigant's position lacks merit. Such a requirement avoids a waste of effort and resources in opening default judgments in cases where servicemembers have no defense to assert. As part of a well-drafted motion or petition to reopen a default judgment or order, the SM should clearly delineate his claim or defense so that the court will have sufficient facts upon which to base a ruling.

18. Q. Are there also provisions for staying the execution of a judgment?

A. Yes. In any action started against a SM before his period of military service, during it or within 90 after the end of service, when a SM's military duties materially affect his ability to comply with a court order or judgment, then the court may (on its own motion) and shall (on motion by the SM) –

- >stay the execution of any judgment or order entered against him, and
- >vacate or stay any attachment or garnishment of property, money or debts in the possession of the SM or a third party
- >regardless of whether it is before or after judgment. 50 U.S.C. App. § 524.

19. Q. What does the SCRA say about statutes of limitation?

A. The period of military service may not be included in computing any limitation period for filing suit, either by or against any SM. This also includes suit by or against the heirs, executors, administrators, or assigns of the member, when the claim accrues before or during the period of service. Thus this SCRA section tolls statutes of limitation during the military service of any military plaintiff or defendant. The statute does not, however, affect time periods within a suit, such as time periods to avoid motions to dismiss for failure to prosecute an action. Once military service is shown, the period of limitation is automatically tolled for the duration of the service. 50 U.S.C. App. § 526.

20. Q. Can a servicemember get out of a lease or rental agreement?

A. Yes. A substantial change from the old SSCRA is found in 50 U.S.C. App. § 534. Previously the statute allowed a servicemember to terminate a pre-service “dwelling, professional, business, agricultural, or similar” lease executed by or for the servicemember and occupied for those purposes by the servicemember or his dependents. It did not provide help for the SM on active duty who was required to move due to military orders. The new statute remedies these problems. Under the old SSCRA, a lease covering property used for dwelling, professional, business, agricultural or similar purposes could be terminated by a SM if two conditions were met:

>The lease/rental agreement was signed before the member entered active duty; and

>The leased premises had been occupied for one or more of the above purposes by the member or his or her dependents.

The new Act still applies to leases executed into prior to entry on active duty. It adds a new provision, however, extending coverage to leases entered into by active duty servicemembers who subsequently receive orders for a permanent change of station (PCS) or a deployment for 90 days or more.

The SCRA also adds a new provision allowing the termination of automobile leases (for business or personal use) by SMs and their dependents. Pre-service automobile leases may be canceled if the SM receives orders to active duty for a period of 180 days or more. Automobile leases entered into while the SM is on active duty may be terminated if he or she receives PCS orders to a location outside the continental United States or deployment orders for a period of 180 days or more. 50 U.S.C. App. § 535(b)(2).

21. Q. How does the servicemember go about terminating the lease?

A. To terminate the lease, the member must deliver written notice to the landlord with a copy of his military orders. Oral notice is not sufficient. In the case of a motor vehicle lease, the lessee must return the motor vehicle to the lessor and also must provide the above notice and a copy of his orders. The return of the vehicle must be within 15 days after the notice delivery. 50 U.S.C. App. § 535(c).

The effective date of termination for premises rentals is determined as follows:

>For month-to-month premises rentals, termination becomes effective 30 days after the first date on which the next rental payment is due after the termination notice is delivered. For example, if the rent is due on the first of the month and the SCRA termination notice is mailed on 1 August, then the next rent payment would be due on 1 September. Thirty days after that date is 1 October, the effective date of termination.

>For all other premises rentals, termination becomes effective on the last day of the month after the month in which proper notice is delivered. For example: if the lease calls for a yearly rental and notice of termination is given on 20 July, the effective date of termination would be 31 August.

For motor vehicle leases, the termination is effective on the day on which the requirements above for notice delivery, orders and return of the vehicle are met. 50 U.S.C. App. § 535(d).

22. Q. Can a servicemember get a refund of his security deposit or prepaid rent?

A. If the rent was paid in advance, the landlord must refund the unearned portion. The member is required to pay rent only for those months before the lease is terminated. If a security deposit was required, it must be refunded to the member upon termination of the lease.

23. Q. Can I stop an eviction by a landlord?

A. Yes. The old SSCRA provided that, absent a court order, a landlord may not evict a servicemember or the dependents of a servicemember from a residential lease when the monthly rent was \$1200 or less. 50 U.S.C. App. § 531(a) modifies the former eviction protection section by barring evictions without a court order from premises occupied by servicemembers for which the monthly rent does not exceed \$2,400 for the year 2003. The Act also provides a formula to calculate the rent ceiling for future years. Using this formula, the 2007 monthly rent ceiling is \$2720.95. You can easily check this for the current year by doing an Internet search using “Servicemembers Civil Relief Act” and “maximum monthly rental amount” as the search terms.

24. Q. Does the Act apply to time payments or installment contracts?

A. It does. Military members who signed an installment contract for the purchase of real or personal property *before active duty* will be protected if their ability to make the payments is *materially affected* because of their active duty service. Remember--

>The member must have paid, before entry into active duty, a deposit or installment payment under the contract.

>If the member is not able to make payments because of his or her military duty, the SCRA applies.

>The vendor is thereafter prohibited from exercising any right or option under the contract, such as to rescind or terminate the contract or to repossess the property, unless authorized by a court order.

>The court may determine whether a member's financial condition is "materially affected" by comparing the member's financial condition before entry on active duty with his financial condition while on active duty.

25. Q. What about the interest rates on debts and mortgage payments -- do they go down when a person enters military service?

A. Yes. When an obligation was incurred before entry on active duty, the interest rate goes down to 6%, unless the creditor (bank, finance company, credit card issuer, etc.) can prove in court that the member's ability to pay was *not materially affected* by military service. The term "interest" includes service charges.

The new Act clarifies the rules on the 6% interest rate cap on pre-service loans and obligations by specifying that interest in excess of 6% per year *must be forgiven*. 50 U.S.C. App. § 527(a)(2). The absence of such language in the SSCRA had allowed some lenders to argue that interest in excess of 6% was merely deferred.

The SCRA also specifies that a SM must request this reduction in writing and include a copy of his/her military orders. 50 U.S.C. App. § 527(b)(1). Once the creditor receives notice, it must grant the relief effective as of the date the servicemember is called to active duty. The creditor must forgive any interest in excess of six percent with a resulting decrease in the amount of the periodic payment that the servicemember is required to make. 50 U.S.C. App. § 527(b)(2). The creditor may challenge the rate reduction if it can show that the SM's military service has not materially affected his or her ability to pay. 50 U.S.C. App. § 527(c).

26. Q. Are there protections against mortgage foreclosures?

A. The SCRA (50 U.S.C. App. § 533) protects members against foreclosures of mortgages, deeds of trust, and similar security devices, provided the following conditions are met:

- a. The relief is sought on an obligation secured by a mortgage, deed of trust, or similar security on either real or personal property;
- b. The obligation originated prior to entry upon active duty;
- c. The property was owned by the member or dependent before entry on active duty status;
- d. The property is still owned by the member or dependent at the time that relief is sought;
- e. The ability to meet the financial obligation is *materially affected* by the member's military service.
- f. The action is filed during, or within 90 days after, the SM's period of military service.

Courts can stay proceedings until members are available to answer, extend the mortgage maturity date to allow

reduced monthly payments, grant foreclosure subject to being reopened if challenged by a member, and extend the period of redemption by a period equal to the member's military service.

27. Q. Does the SCRA require that a breach have occurred before protections become available?

A. No. The Act doesn't require breach or default before offering protections to covered individuals. The anticipatory relief provision is set out in 50 U.S.C. App. §591:

ANTICIPATORY RELIEF.

(a) APPLICATION FOR RELIEF.—A servicemember may, during military service or within 180 days of termination of or release from military service, apply to a court for relief— (1) from any obligation or liability incurred by the servicemember before the servicemember's military service; or (2) from a tax or assessment falling due before or during the servicemember's military service.

These anticipatory relief provisions can be used to request relief from pre-service obligations, such as child support or alimony, when a prospective breach is likely. For example, when the SM is earning more in his civilian job before mobilization than he will be earning on active duty, and the civilian wage garnishment will terminate upon his call to active duty, the SM should use this section to request a reduction in child support or alimony and to request a new garnishment from DFAS (Defense Finance and Accounting Service) to pay the other party on a timely basis.

28. Q. Can the SM waive his rights?

A. This is covered in 50 U.S.C. App. § 517. A waiver of SCRA rights is only effective if it is made during the period of military service. In addition, the waiver should be in writing in at least 12-point type. If the court wants to have the SM execute a written waiver in connection with a stay of proceedings so that the case may go forward and there is a clear record that the SM has knowingly and voluntarily waived his or her rights under the SCRA, this form should suffice:

WAIVER OF RIGHT TO REQUEST STAY OF PROCEEDINGS

I acknowledge that I have the right to request a stay of proceedings in this case under the Servicemembers Civil Relief Act. The stay of proceedings, or continuance, would postpone a hearing in this case if it were granted.

I hereby waive and give up the right to a stay of proceedings. I want to proceed with this case.

(signature)

Date: _____

Printed Name

[here print acknowledgment and notarization if required]

29. Q. ARE THERE SCRA RESOURCES ON THE INTERNET?

A. Start with a visit to the home page of the Army JAG School, <http://www.jagcnet.army.mil/TJAGLCS>.

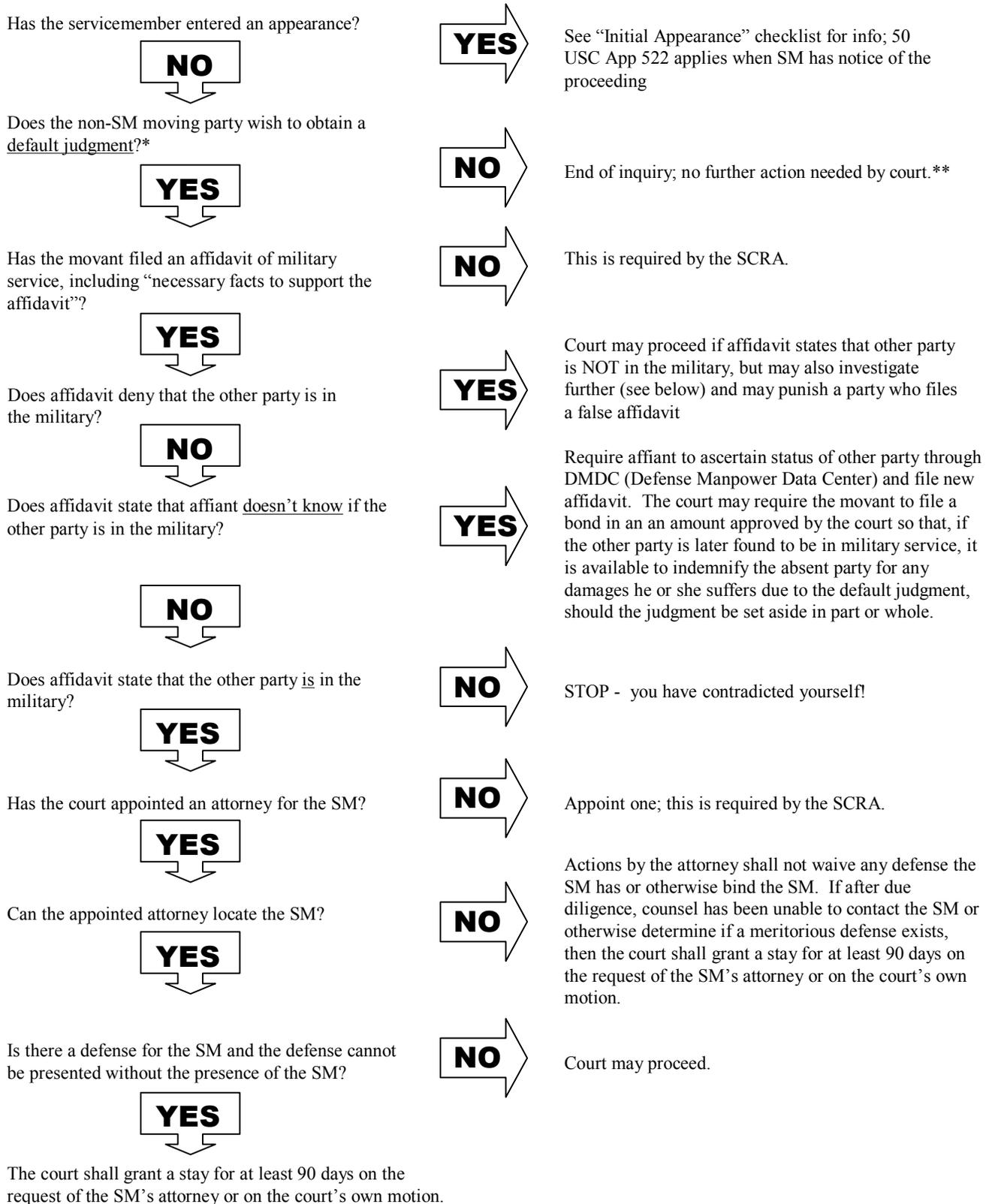
When you get there, click on "TJAGLCS Publications" on the left side, then scroll down to "Legal Assistance" and look for JA 260, "Servicemembers Civil Relief Act Guide," written by the faculty of the Army JAG School in 2006.

You should also visit the Servicemember's Civil Relief Act information center at the public preventive law page of the Army Judge Advocate General's Corps, found at <http://www.jagcnet.army.mil/legal>.

(rev. 3/27/07)

* * *

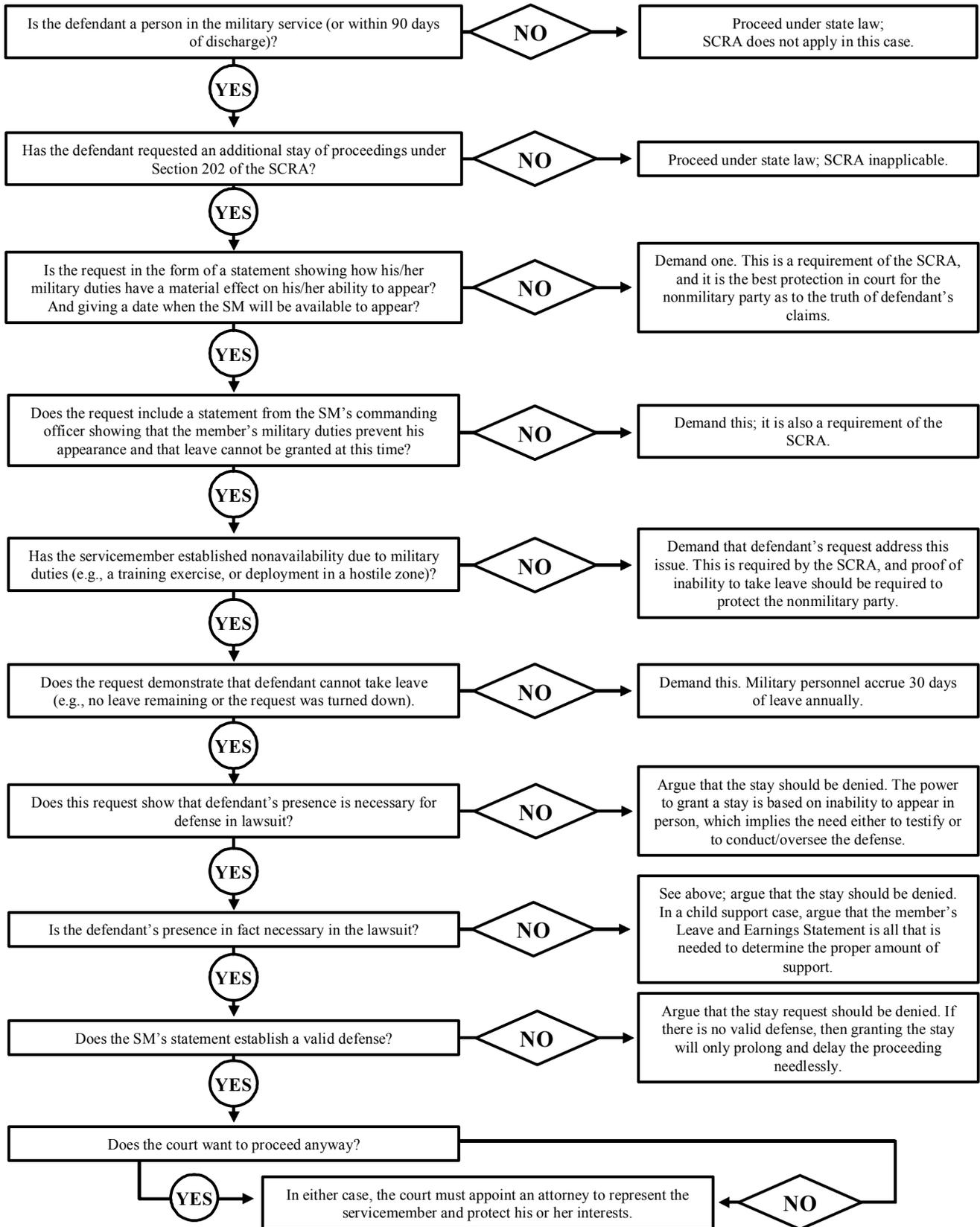
ATCH 1 - SCRA Flow Chart (no appearance by servicemember)



*The non-SM claimant may be either the plaintiff/petitioner or the defendant/respondent. A default judgment means any decree or order granting relief when the other side has not entered an appearance. Whether appearance means a specific appearance in the current proceeding before the court, or the lawsuit itself (irrespective of the stage of proceedings) depends on state law.

** "Court" also means administrative agency.

ATCH 2 - SCRA Flow Chart for "Additional Stay"



The Servicemembers Civil Relief Act: A Judge's Checklist

The SCRA is located at 50 U.S.C. Appendix § 501 *et seq.* In using this checklist, keep in mind the purpose of the Act: to enable servicemembers (SMs) to devote their entire energy to the defense needs of the nation, and to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of SMs during their military service. 50 U.S.C. App. § 502

✓ **Who is covered?** (50 U.S.C. App. § 511) Those covered include:

- o Members of the Army, Navy, Air Force, Marine Corps and Coast Guard on active duty under 10 U.S.C. 101(d)(1)
- o National Guard members called to active duty by President or Secretary of Defense for over 30 days under 32 U.S.C. 502(f) (national emergency declared by the President and supported by federal funds)
- o Commissioned members of the Public Health Service and the National Oceanographic and Atmospheric Administration

✓ **Default situation** – (50 U.S.C. App. § 521). When no appearance by SM (servicemember), you -

- o1. Must require affidavit of military status by moving party (who may check on whether missing party is in military service by requesting check of records by Dept. of Defense *)
- o2. Must appoint an attorney before entry of judgment if the non-moving party is in military
- o3. Must grant a stay of proceedings for at least 90 days when non-moving party is in military if -
 - a. there may be a defense, and presence of SM is needed to make it, OR
 - b. with due diligence, appointed attorney can't contact client or otherwise determine whether defense exists

✓ **Use of bond?** (50 U.S.C. App. § 521(b)(3))

- o As condition of entry of default judgment, require bond if you cannot determine whether defendant is in military service.
- o Bond may be used to indemnify non-moving party against loss/damage from default judgment (if later set aside) should he/she later be found to be in the military.

✓ **Request for stay** – SM or attorney requests suspension of case (50 U.S.C. App. § 522)

- o Grant stay of proceedings (discretionary on court's own motion, mandatory on SM's motion) for at least 90 days if motion includes-
 1. Statement as to how the SM's current military duties materially affect his ability to appear, and that
 2. stating a date when the SM will be available to appear, and
 3. Statement from the SM's commanding officer that SM's current military duty prevents his appearance, and
 4. military leave is not authorized for the SM at the time of the statement

✓ **Grant additional stay (beyond initial 90 days)?**

- o Yes if continuing material effect of military duty on SM's ability to appear.
- o Same information required as above.

✓ **Deny additional stay?**

- o Only if you appoint attorney to represent the SM in the action or proceeding (50 U.S.C. App. § 522(d)(2)).
- o Expect attorney to renew stay request since he/she cannot prepare, present case without assistance from the unavailable SM.

✓ **Unsure whether to grant or deny additional stay?**

- o Ask for a copy of the SM's current LES (Leave and Earnings Statement), issued twice a month, to see how much leave SM has accrued, used in the past few months.
- o Propound questions from the court to SM's commanding officer as to duty hours, days for the SM, his or her availability to attend court or to participate by telephone, Internet or videoteleconference

* Upon application by either side or the court, the military service must issue a statement as to military service. 50 U.S.C. App. § 582. Contact: Defense Manpower Data Center, 1600 Wilson Blvd., Suite 400, Attn: Military Verification, Arlington, VA 22209-2593, [telephone 703-696-6762 or -5790/fax 703-696-4156]

✓ **Execution of orders, judgments** (50 U.S.C. App. § 524)

- o Must stay execution of any judgment, order entered against SM if the SM shows military duties materially affect his/her ability to comply with court decree
- o Also vacate or stay any attachment or garnishment of property, money or debts in possession of the SM or third party

✓ **Anticipatory relief** (50 U.S.C. App. § 591)

- o Grant relief from obligation or liability incurred by SM before his/her military service
- o Also for tax or assessment falling due before or during the SM's military service

✓ **Reopen judgment** (50 U.S.C. App. § 521(g))

- o Must reopen order, judgment against SM if –
 1. SM was materially affected due to military service in asserting defense, and
 2. He/she has meritorious defense

✓ **Are waivers allowed?** (50 U.S.C. App. § 517)

- o Only effective if made during period of military service.
- o Usually must be in writing (and, in most cases, in 12-point font or larger).

✓ **Don't penalize SM in stay request.** (50 U.S.C. App. § 522(c))

- o Request for stay does not constitute appearance for jurisdictional purposes
- o Also doesn't constitute waiver of any defense, substantive or procedural

✓ **Statute of limitations** (50 U.S.C. App. § 526)

- o Period of military service may not be included in computing any limitation period for filing suit, either by or against SM.

✓ **Protect against mortgage foreclosure** (50 U.S.C. App. § 533)

- o Court may stay foreclosure proceedings until SM can answer, extend mortgage maturity date to allow reduced monthly payments, grant foreclosure subject to being reopened if challenged by SM, or extend the period of redemption by period equal to the SM's military service.

- o Conditions for above: if –

1. Relief is sought on security interest in real/personal property
2. Obligation originated before active duty
3. Property owned by SM or dependent before active duty
4. Property still owned by SM or dependent
5. Ability to meet financial obligation is materially affected by SM's military service
6. Action is filed during (or within 90 days after) SM's military service. (50 U.S.C. App. § 533)

✓ **Protect SM-tenant.** (50 U.S.C. App. § 531-532, 535)

- o Allow SM to terminate leases upon entry on active duty or receipt of military orders for deployment (not less than 90 days) or transfer to another base.
- o Grant a stay of eviction upon application by SM-tenant who shows that ability to pay rent is materially affected by military service. (50 U.S.C. App. § 531(b))
- o If the rent is paid in advance, require landlord to refund unearned portion. The servicemember is required to pay rent only for those months before the lease is terminated. (50 U.S.C. App. § 535(f))
- o It is a misdemeanor for a landlord to seize, hold or detain the security deposit or personal property of a SM or dependent when there is a lawful lease termination under the SCRA, or to knowingly interfere with the removal of said property because of a claim for rent after the termination date. A security deposit must be refunded to the SM upon termination of the lease. 50 U.S.C. App. § 535(h)(1).

* * *

Formerly Soldiers and Sailors Civil Relief Act (SSCRA)

On December 19, 2003, the President of the United States signed into law H.R. 100, the Servicemembers Civil Relief Act. This law completely rewrites the [Soldiers and Sailors Civil Relief Act of 1940](#), expanding many of the previous law's civil protections.

Following is the text of the law, in detail:

TITLE I--GENERAL PROVISIONS

[Sec. 101.](#) Definitions.

[Sec. 102.](#) Jurisdiction and applicability of Act.

[Sec. 103.](#) Protection of persons secondarily liable.

[Sec. 104.](#) Extension of protections to citizens serving with allied forces.

[Sec. 105.](#) Notification of benefits.

[Sec. 106.](#) Extension of rights and protections to Reserves ordered to report for military service and to persons ordered to report for induction.

[Sec. 107.](#) Waiver of rights pursuant to written agreement.

[Sec. 108.](#) Exercise of rights under Act not to affect certain future financial transactions.

[Sec. 109.](#) Legal representatives.

TITLE II--GENERAL RELIEF

[Sec. 201.](#) Protection of servicemembers against default judgments.

[Sec. 202.](#) Stay of proceedings when servicemember has notice.

[Sec. 203.](#) Fines and penalties under contracts.

[Sec. 204.](#) Stay or vacation of execution of judgments, attachments, and garnishments.

[Sec. 205.](#) Duration and term of stays; codefendants not in service.

[Sec. 206.](#) Statute of limitations.

[Sec. 207.](#) Maximum rate of interest on debts incurred before military service.

TITLE III--RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES

[Sec. 301.](#) Evictions and distress.

[Sec. 302.](#) Protection under installment contracts for purchase or lease.

[Sec. 303.](#) Mortgages and trust deeds.

[Sec. 304.](#) Settlement of stayed cases relating to personal property.

[Sec. 305.](#) Termination of residential or motor vehicle leases.

[Sec. 306.](#) Protection of life insurance policy.

[Sec. 307.](#) Enforcement of storage liens.

[Sec. 308.](#) Extension of protections to dependents.

TITLE IV--LIFE INSURANCE

[Sec. 401.](#) Definitions.

[Sec. 402.](#) Insurance rights and protections.

[Sec. 403.](#) Application for insurance protection.

[Sec. 404.](#) Policies entitled to protection and lapse of policies.

[Sec. 405.](#) Policy restrictions.

[Sec. 406.](#) Deduction of unpaid premiums.

[Sec. 407.](#) Premiums and interest guaranteed by United States.

[Sec. 408.](#) Regulations.

[Sec. 409.](#) Review of findings of fact and conclusions of law.

TITLE V--TAXES AND PUBLIC LANDS

[Sec. 501.](#) Taxes respecting personal property, money, credits, and real property.

[Sec. 502.](#) Rights in public lands.

[Sec. 503.](#) Desert-land entries.

[Sec. 504.](#) Mining claims.

[Sec. 505.](#) Mineral permits and leases.

[Sec. 506.](#) Perfection or defense of rights.

[Sec. 507.](#) Distribution of information concerning benefits of title.

[Sec. 508.](#) Land rights of servicemembers.

[Sec. 509.](#) Regulations.

[Sec. 510.](#) Income taxes.

[Sec. 511.](#) Residence for tax purposes.

TITLE VI--ADMINISTRATIVE REMEDIES

[Sec. 601.](#) Inappropriate use of Act.

[Sec. 602.](#) Certificates of service; persons reported missing.

[Sec. 603.](#) Interlocutory orders.

TITLE VII--FURTHER RELIEF

[Sec. 701.](#) Anticipatory relief.

[Sec. 702.](#) Power of attorney.

[Sec. 703.](#) Professional liability protection.

[Sec. 704.](#) Health insurance reinstatement.

[Sec. 705.](#) Guarantee of residency for military personnel.

[Sec. 706.](#) Business or trade obligations.

Section 101 – Definitions

For the purposes of this Act:

(1) **SERVICEMEMBER**- The term `servicemember' means a member of the uniformed services, as that term is defined in [section 101\(a\)\(5\)](#) of title 10, United States Code.

(2) **MILITARY SERVICE**- The term `military service' means--

(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard--

(i) active duty, as defined in [section 101\(d\)\(1\)](#) of title 10, United States Code, and

(ii) in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under [section 502\(f\)](#) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds;

(B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(3) **PERIOD OF MILITARY SERVICE**- The term `period of military service' means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

(4) **DEPENDENT**- The term `dependent', with respect to a servicemember, means--

(A) the servicemember's spouse;

(B) the servicemember's child (as defined in [section 101\(4\)](#) of title 38, United States Code); or

(C) an individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief under this Act.

(5) **COURT**- The term `court' means a court or an administrative agency of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record.

(6) **STATE**- The term `State' includes--

(A) a commonwealth, territory, or possession of the United States; and

(B) the District of Columbia.

(7) SECRETARY CONCERNED- The term `Secretary concerned'--

(A) with respect to a member of the armed forces, has the meaning given that term in [section 101](#)(a)(9) of title 10, United States Code;

(B) with respect to a commissioned officer of the Public Health Service, means the Secretary of Health and Human Services; and

(C) with respect to a commissioned officer of the National Oceanic and Atmospheric Administration, means the Secretary of Commerce.

(8) MOTOR VEHICLE- The term `motor vehicle' has the meaning given that term in [section 30102](#)(a)(6) of title 49, United States Code.

Section 102 - Jurisdiction and applicability of Act

a) JURISDICTION- This Act applies to--

(1) the United States;

(2) each of the States, including the political subdivisions thereof; and

(3) all territory subject to the jurisdiction of the United States.

(b) APPLICABILITY TO PROCEEDINGS- This Act applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act. This Act does not apply to criminal proceedings.

(c) COURT IN WHICH APPLICATION MAY BE MADE- When under this Act any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court which would otherwise have jurisdiction over the matter.

Section 103 - Protection of persons secondarily liable

(a) EXTENSION OF PROTECTION WHEN ACTIONS STAYED, POSTPONED, OR SUSPENDED- Whenever pursuant to this Act a court stays, postpones, or suspends (1) the enforcement of an obligation or liability, (2) the prosecution of a suit or proceeding, (3) the entry or enforcement of an order, writ, judgment, or decree, or (4) the performance of any other act, the court may likewise grant such a stay, postponement, or suspension to 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 the performance or enforcement of which is stayed, postponed, or suspended.

(b) VACATION OR SET-ASIDE OF JUDGMENTS- When a judgment or decree is vacated or set aside, in whole or in part, pursuant to this Act, the court may also set aside or vacate, as the case may be, the judgment or decree as to a surety, guarantor, endorser, accommodation maker, co-maker, or other person who is or may be primarily or secondarily liable on the contract or liability for the enforcement of the judgment or decree.

(c) BAIL BOND NOT TO BE ENFORCED DURING PERIOD OF MILITARY SERVICE- A court may not enforce a bail bond during the period of military service of the principal on the bond when military service prevents the surety from obtaining the attendance of the principal. The court may discharge the surety and exonerate the bail, in accordance with principles of equity and justice, during or after the period of military service of the principal.

(d) WAIVER OF RIGHTS-

(1) WAIVERS NOT PRECLUDED- This Act does not prevent a waiver in writing by a surety, guarantor, endorser, accommodation maker, co-maker, or other person (whether primarily or secondarily liable on an obligation or liability) of the protections provided under subsections (a) and (b). Any such waiver is effective only if it is executed as an instrument separate from the obligation or liability with respect to which it applies.

(2) WAIVER INVALIDATED UPON ENTRANCE TO MILITARY SERVICE- If a waiver under paragraph (1) is executed by an individual who after the execution of the waiver enters military service, or by a dependent of an individual who after the execution of the waiver enters military service, the waiver is not valid after the beginning of the period of such military service unless the waiver was executed by such individual or dependent during the period specified in [section 106](#).

Section 104 - Extension of protections to citizens serving with allied forces

A citizen of the United States who is serving with the forces of a nation with which the United States is allied in the prosecution of a war or military action is entitled to the relief and protections provided under this Act if that service with the allied force is similar to military service as defined in this Act. The relief and protections provided to such citizen shall terminate on the date of discharge or release from such service.

Section 105 - Notification of benefits

The Secretary concerned shall ensure that notice of the benefits accorded by this Act is provided in writing to persons in military service and to persons entering military service.

Section 106 -Extension of rights and protections to Reserves ordered to report for military service and to persons ordered to report for induction

(a) RESERVES ORDERED TO REPORT FOR MILITARY SERVICE- A member of a reserve component who is ordered to report for military service is entitled to the rights and protections of this title and titles II and III during the period beginning on the date of the member's receipt of the order and ending on the date on which the member reports for military service (or, if the order is revoked before the member so reports, or the date on which the order is revoked).

(b) PERSONS ORDERED TO REPORT FOR INDUCTION- A person who has been ordered to report for induction under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) is entitled to the rights and protections provided a servicemember under this title and titles II and III during the period beginning on the date of receipt of the order for induction and ending on the date on which the person reports for induction (or, if the order to report for induction is revoked before the date on which the person reports for induction, on the date on which the order is revoked).

Section 107 - Waiver of rights pursuant to written agreement

(a) IN GENERAL- A servicemember may waive any of the rights and protections provided by this Act. In the case of a waiver that permits an action described in subsection (b), the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the servicemember is not a party to that instrument, the servicemember concerned.

(b) ACTIONS REQUIRING WAIVERS IN WRITING- The requirement in subsection (a) for a written waiver applies to the following:

(1) The modification, termination, or cancellation of--

(A) a contract, lease, or bailment; or

(B) an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.

(2) The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that--

(A) is security for any obligation; or

(B) was purchased or received under a contract, lease, or bailment.

(c) COVERAGE OF PERIODS AFTER ORDERS RECEIVED- For the purposes of this section--

(1) a person to whom section 106 applies shall be considered to be a servicemember; and

(2) the period with respect to such a person specified in subsection (a) or (b), as the case may be, of [section 106](#) shall be considered to be a period of military service.

Section 108 - Exercise of rights under Act not to affect certain future financial transactions

Application by a servicemember for, or receipt by a servicemember of, a stay, postponement, or suspension pursuant to this Act in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability of that servicemember shall not itself (without regard to other considerations) provide the 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 in accordance with its terms.

(2) With respect to a credit transaction between a creditor and the servicemember--

(A) a denial or revocation of credit by the creditor;

(B) a change by the creditor in the terms of an existing credit arrangement; or

(C) a refusal by the creditor to grant credit to the servicemember in substantially the amount or on substantially the terms requested.

(3) An adverse report relating to the creditworthiness of the servicemember by or to a person engaged in the practice of assembling or evaluating consumer credit information.

(4) A refusal by an insurer to insure the servicemember.

(5) An annotation in a servicemember's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information, identifying the servicemember as a member of the National Guard or a reserve component.

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

Section 109 - Legal representatives

(a) REPRESENTATIVE- A legal representative of a servicemember for purposes of this Act is either of the following:

(1) An attorney acting on the behalf of a servicemember.

(2) An individual possessing a power of attorney.

(b) APPLICATION- Whenever the term `servicemember' is used in this Act, such term shall be treated as including a reference to a legal representative of the servicemember.

Section 201 - Protection of servicemembers against default judgments

(a) APPLICABILITY OF SECTION- This section applies to any civil action or proceeding in which the defendant does not make an appearance.

(b) AFFIDAVIT REQUIREMENT-

(1) PLAINTIFF TO FILE AFFIDAVIT- In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit--

(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

(2) APPOINTMENT OF ATTORNEY TO REPRESENT DEFENDANT IN MILITARY SERVICE- If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

(3) DEFENDANT'S MILITARY STATUS NOT ASCERTAINED BY AFFIDAVIT- If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act.

(4) SATISFACTION OF REQUIREMENT FOR AFFIDAVIT- The requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

(c) PENALTY FOR MAKING OR USING FALSE AFFIDAVIT- A person who makes or uses an affidavit permitted under subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection (b)(4)) knowing it to be false, shall be fined as provided in [title 18, United States Code](#), or imprisoned for not more than one year, or both.

(d) STAY OF PROCEEDINGS- In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that--

(1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or

(2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(e) INAPPLICABILITY OF SECTION 202 PROCEDURES- A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 202.

(f) SECTION 202 PROTECTION- If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of proceeding under [section 202](#).

(g) VACATION OR SETTING ASIDE OF DEFAULT JUDGMENTS-

(1) AUTHORITY FOR COURT TO VACATE OR SET ASIDE JUDGMENT- If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the servicemember, reopen the judgment for the purpose of allowing the servicemember to defend the action if it appears that--

(A) the servicemember was materially affected by reason of that military service in making a defense to the action; and

(B) the servicemember has a meritorious or legal defense to the action or some part of it.

(2) TIME FOR FILING APPLICATION- An application under this subsection must be filed not later than 90 days after the date of the termination of or release from military service.

(h) PROTECTION OF BONA FIDE PURCHASER- If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of this Act, that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

Section 202 - Stay of proceedings when servicemember has notice

(a) **APPLICABILITY OF SECTION-** This section applies to any civil action or proceeding in which the defendant at the time of filing an application under this section--

(1) is in military service or is within 90 days after termination of or release from military service; and

(2) has received notice of the action or proceeding.

(b) **STAY OF PROCEEDINGS-**

(1) **AUTHORITY FOR STAY-** At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.

(2) **CONDITIONS FOR STAY-** An application for a stay under paragraph (1) shall include the following:

(A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.

(B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

(c) **APPLICATION NOT A WAIVER OF DEFENSES-** An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).

(d) **ADDITIONAL STAY-**

(1) **APPLICATION-** A servicemember who is granted a stay of a civil action or proceeding under subsection (b) may apply for an additional stay based on continuing material affect of military duty on the servicemember's ability to appear. Such an application may be made by the servicemember at the time of the initial application under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.

(2) **APPOINTMENT OF COUNSEL WHEN ADDITIONAL STAY REFUSED-** If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

(e) COORDINATION WITH SECTION 201- A servicemember who applies for a stay under this section and is unsuccessful may not seek the protections afforded by [section 201](#).

(f) INAPPLICABILITY TO SECTION 301- The protections of this section do not apply to [section 301](#).

Section 203 - Fines and penalties under contracts

(a) PROHIBITION OF PENALTIES- When an action for compliance with the terms of a contract is stayed pursuant to this Act, a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

(b) REDUCTION OR WAIVER OF FINES OR PENALTIES- If a servicemember fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if--

(1) the servicemember was in military service at the time the fine or penalty was incurred; and

(2) the ability of the servicemember to perform the obligation was materially affected by such military service.

Section 204 - Stay or vacation of execution of judgments, attachments, and garnishments

(a) COURT ACTION UPON MATERIAL AFFECT DETERMINATION- If a servicemember, in the opinion of the court, is materially affected by reason of military service in complying with a court judgment or order, the court may on its own motion and shall on application by the servicemember--

(1) stay the execution of any judgment or order entered against the servicemember; and

(2) vacate or stay an attachment or garnishment of property, money, or debts in the possession of the servicemember or a third party, whether before or after judgment.

(b) APPLICABILITY- This section applies to an action or proceeding commenced in a court against a servicemember before or during the period of the servicemember's military service or within 90 days after such service terminates.

Section 205 - Duration and term of stays; codefendants not in service

(a) PERIOD OF STAY- A stay of an action, proceeding, attachment, or execution made pursuant to the provisions of this Act by a court may be ordered for the period of military service and 90 days thereafter, or for any part of that period. The court may set the terms and amounts for such installment payments as is considered reasonable by the court.

(b) CODEFENDANTS- If the servicemember is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under this Act, the plaintiff may proceed against those other defendants with the approval of the court.

(c) INAPPLICABILITY OF SECTION- This section does not apply to sections [202](#) and [701](#).

Section 206 - Statute of limitations

(a) TOLLING OF STATUTES OF LIMITATION DURING MILITARY SERVICE- The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

(b) REDEMPTION OF REAL PROPERTY- A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

(c) INAPPLICABILITY TO INTERNAL REVENUE LAWS- This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

Section 207 - Maximum rate of interest on debts incurred before military service

(a) INTEREST RATE LIMITATION-

(1) LIMITATION TO 6 PERCENT- An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent per year during the period of military service.

(2) FORGIVENESS OF INTEREST IN EXCESS OF 6 PERCENT- Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.

(3) PREVENTION OF ACCELERATION OF PRINCIPAL- The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made.

(b) IMPLEMENTATION OF LIMITATION-

(1) WRITTEN NOTICE TO CREDITOR- In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.

(2) LIMITATION EFFECTIVE AS OF DATE OF ORDER TO ACTIVE DUTY- Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with subsection (a), effective as of the date on which the servicemember is called to military service.

(c) CREDITOR PROTECTION- A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of the servicemember's military service.

(d) INTEREST- As used in this section, the term `interest' includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.

Section 301 - Evictions and distress

(a) COURT-ORDERED EVICTION-

(1) IN GENERAL- Except by court order, a landlord (or another person with paramount title) may not--

(A) evict a servicemember, or the dependents of a servicemember, during a period of military service of the servicemember, from premises--

(i) that are occupied or intended to be occupied primarily as a residence; and

(ii) for which the monthly rent does not exceed \$2,400, as adjusted under paragraph (2) for years after 2003; or

(B) subject such premises to a distress during the period of military service.

(2) HOUSING PRICE INFLATION ADJUSTMENT-

(A) For calendar years beginning with 2004, the amount in effect under paragraph (1)(A)(ii) shall be increased by the housing price inflation adjustment for the calendar year involved.

(B) For purposes of this paragraph--

(i) The housing price inflation adjustment for any calendar year is the percentage change (if any) by which--

(I) the CPI housing component for November of the preceding calendar year, exceeds

(II) the CPI housing component for November of 1984.

(ii) The term 'CPI housing component' means the index published by the Bureau of Labor Statistics of the Department of Labor known as the Consumer Price Index, All Urban Consumers, Rent of Primary Residence, U.S. City Average.

(3) PUBLICATION OF HOUSING PRICE INFLATION ADJUSTMENT- The Secretary of Defense shall cause to be published in the Federal Register each year the amount in effect under paragraph (1)(A)(ii) for that year following the housing price inflation adjustment for that year pursuant to paragraph (2). Such publication shall be made for a year not later than 60 days after such adjustment is made for that year.

(b) STAY OF EXECUTION-

(1) COURT AUTHORITY- Upon an application for eviction or distress with respect to premises covered by this section, the court may on its own motion and shall, if a request is made by or on behalf of a servicemember whose ability to pay the agreed rent is materially affected by military service--

(A) stay the proceedings for a period of 90 days, unless in the opinion of the court, justice and equity require a longer or shorter period of time; or

(B) adjust the obligation under the lease to preserve the interests of all parties.

(2) RELIEF TO LANDLORD- If a stay is granted under paragraph (1), the court may grant to the landlord (or other person with paramount title) such relief as equity may require.

(c) PENALTIES-

(1) MISDEMEANOR- Except as provided in subsection (a), a person who knowingly takes part in an eviction or distress described in subsection (a), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES AND RIGHTS- The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion (or wrongful eviction) otherwise available under the law to the

person claiming relief under this section, including any award for consequential and punitive damages.

(d) RENT ALLOTMENT FROM PAY OF SERVICEMEMBER- To the extent required by a court order related to property which is the subject of a court action under this section, the Secretary concerned shall make an allotment from the pay of a servicemember to satisfy the terms of such order, except that any such allotment shall be subject to regulations prescribed by the Secretary concerned establishing the maximum amount of pay of servicemembers that may be allotted under this subsection.

(e) LIMITATION OF APPLICABILITY- [Section 202](#) is not applicable to this section.

Section 302 - Protection under installment contracts for purchase or lease

(a) PROTECTION UPON BREACH OF CONTRACT-

(1) PROTECTION AFTER ENTERING MILITARY SERVICE- After a servicemember enters military service, a contract by the servicemember for--

(A) the purchase of real or personal property (including a motor vehicle); or

(B) the lease or bailment of such property, may not be rescinded or terminated for a breach of terms of the contract occurring before or during that person's military service, nor may the property be repossessed for such breach without a court order.

(2) APPLICABILITY- This section applies only to a contract for which a deposit or installment has been paid by the servicemember before the servicemember enters military service.

(b) PENALTIES-

(1) MISDEMEANOR- A person who knowingly resumes possession of property in violation of subsection (a), or in violation of [section 107](#) of this Act, or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES AND RIGHTS- The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

(c) AUTHORITY OF COURT- In a hearing based on this section, the court--

(1) may order repayment to the servicemember of all or part of the prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

(2) may, on its own motion, and shall on application by a servicemember when the servicemember's ability to comply with the contract is materially affected by military service, stay the proceedings for a period of time as, in the opinion of the court, justice and equity require; or

(3) may make other disposition as is equitable to preserve the interests of all parties.

Section 303 - Mortgages and trust deeds

(a) MORTGAGE AS SECURITY- This section applies only to an obligation on real or personal property owned by a servicemember that--

(1) originated before the period of the servicemember's military service and for which the servicemember is still obligated; and

(2) is secured by a mortgage, trust deed, or other security in the nature of a mortgage.

(b) STAY OF PROCEEDINGS AND ADJUSTMENT OF OBLIGATION- In an action filed during, or within 90 days after, a servicemember's period of military service to enforce an obligation described in subsection (a), the court may after a hearing and on its own motion and shall upon application by a servicemember when the servicemember's ability to comply with the obligation is materially affected by military service--

(1) stay the proceedings for a period of time as justice and equity require, or

(2) adjust the obligation to preserve the interests of all parties.

(c) SALE OR FORECLOSURE- A sale, foreclosure, or seizure of property for a breach of an obligation described in subsection (a) shall not be valid if made during, or within 90 days after, the period of the servicemember's military service except--

(1) upon a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court; or

(2) if made pursuant to an agreement as provided in section 107.

(d) PENALTIES-

(1) MISDEMEANOR- A person who knowingly makes or causes to be made a sale, foreclosure, or seizure of property that is prohibited by subsection (c), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES- The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including consequential and punitive damages.

Section 304 - Settlement of stayed cases relating to personal property

(a) APPRAISAL OF PROPERTY- When a stay is granted pursuant to this Act in a proceeding to foreclose a mortgage on or to repossess personal property, or to rescind or terminate a contract for the purchase of personal property, the court may appoint three disinterested parties to appraise the property.

(b) EQUITY PAYMENT- Based on the appraisal, and if undue hardship to the servicemember's dependents will not result, the court may order that the amount of the servicemember's equity in the property be paid to the servicemember, or the servicemember's dependents, as a condition of foreclosing the mortgage, repossessing the property, or rescinding or terminating the contract.

Section 305 - Termination of residential or motor vehicle leases

(a) TERMINATION BY LESSEE- The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after--

(1) the lessee's entry into military service; or

(2) the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.

(b) COVERED LEASES- This section applies to the following leases:

(1) LEASES OF PREMISES- A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if--

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit for a period of not less than 90 days.

(2) LEASES OF MOTOR VEHICLES- A lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation if--

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days); or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station outside of the continental United States or to deploy with a military unit for a period of not less than 180 days.

(c) MANNER OF TERMINATION-

(1) IN GENERAL- Termination of a lease under subsection (a) is made--

(A) by delivery by the lessee of written notice of such termination, and a copy of the servicemember's military orders, to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee); and

(B) in the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee), not later than 15 days after the date of the delivery of written notice under subparagraph (A).

(2) DELIVERY OF NOTICE- Delivery of notice under paragraph (1)(A) may be accomplished--

(A) by hand delivery;

(B) by private business carrier; or

(C) by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and depositing the written notice in the United States mails.

(d) EFFECTIVE DATE OF LEASE TERMINATION-

(1) LEASE OF PREMISES- In the case of a lease described in subsection (b)(1) that provides for monthly payment of rent, termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered. In the case of any other lease described in subsection (b)(1), termination of the lease under subsection (a) is effective on the last day of the month following the month in which the notice is delivered.

(2) LEASE OF MOTOR VEHICLES- In the case of a lease described in subsection (b)(2), termination of the lease under subsection (a) is effective on the day on which the requirements of subsection (c) are met for such termination.

(e) ARREARAGES AND OTHER OBLIGATIONS AND LIABILITIES- Rents or lease amounts unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. In the case of the lease of a motor vehicle, the lessor may not impose an early termination charge, but any taxes, summonses, and title and registration fees and any other obligation and liability of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

(f) RENT PAID IN ADVANCE- Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent) within 30 days of the effective date of the termination of the lease.

(g) RELIEF TO LESSOR- Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.

(h) PENALTIES-

(1) MISDEMEANOR- Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES- The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential or punitive damages.

Section 306 - Protection of life insurance policy

(a) ASSIGNMENT OF POLICY PROTECTED- If a life insurance policy on the life of a servicemember is assigned before military service to secure the payment of an obligation, the assignee of the policy (except the insurer in connection with a policy loan) may not exercise, during a period of military service of the servicemember or within one year thereafter, any right or option obtained under the assignment without a court order.

(b) EXCEPTION- The prohibition in subsection (a) shall not apply--

(1) if the assignee has the written consent of the insured made during the period described in subsection (a);

(2) when the premiums on the policy are due and unpaid; or

(3) upon the death of the insured.

(c) ORDER REFUSED BECAUSE OF MATERIAL AFFECT- A court which receives an application for an order required under subsection (a) may refuse to grant such order if the court determines the ability of the servicemember to comply with the terms of the obligation is materially affected by military service.

(d) TREATMENT OF GUARANTEED PREMIUMS- For purposes of this subsection, premiums guaranteed under the provisions of title IV of this Act shall not be considered due and unpaid.

(e) PENALTIES-

(1) MISDEMEANOR- A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES- The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

Section 307 - Enforcement of storage liens

(a) LIENS-

(1) LIMITATION ON FORECLOSURE OR ENFORCEMENT- A person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement.

(2) LIEN DEFINED- For the purposes of paragraph (1), the term `lien' includes a lien for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason.

(b) STAY OF PROCEEDINGS- In a proceeding to foreclose or enforce a lien subject to this section, the court may on its own motion, and shall if requested by a servicemember whose ability to comply with the obligation resulting in the proceeding is materially affected by military service--

(1) stay the proceeding for a period of time as justice and equity require; or

(2) adjust the obligation to preserve the interests of all parties.

The provisions of this subsection do not affect the scope of [section 303](#).

(c) PENALTIES-

(1) MISDEMEANOR- A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in [title 18, United States Code](#), or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES- The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful

conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

Section 308 - Extension of protections to dependents

Upon application to a court, a dependent of a servicemember is entitled to the protections of this title if the dependent's ability to comply with a lease, contract, bailment, or other obligation is materially affected by reason of the servicemember's military service.

Section 401 - Definitions

For the purposes of this title:

(1) POLICY- The term `policy' means any individual contract for whole, endowment, universal, or term life insurance (other than group term life insurance coverage), including any benefit in the nature of such insurance arising out of membership in any fraternal or beneficial association which--

(A) provides that the insurer may not--

(i) decrease the amount of coverage or require the payment of an additional amount as premiums if the insured engages in military service (except increases in premiums in individual term insurance based upon age); or

(ii) limit or restrict coverage for any activity required by military service; and

(B) is in force not less than 180 days before the date of the insured's entry into military service and at the time of application under this title.

(2) PREMIUM- The term `premium' means the amount specified in an insurance policy to be paid to keep the policy in force.

(3) INSURED- The term `insured' means a servicemember whose life is insured under a policy.

(4) INSURER- The term `insurer' includes any firm, corporation, partnership, association, or business that is chartered or authorized to provide insurance and issue contracts or policies by the laws of a State or the United States.

Section 402 - Insurance rights and protections

(a) RIGHTS AND PROTECTIONS- The rights and protections under this title apply to the insured when--

(1) the insured,

(2) the insured's legal representative, or

(3) the insured's beneficiary in the case of an insured who is outside a State, applies in writing for protection under this title, unless the Secretary of Veterans Affairs determines that the insured's policy is not entitled to protection under this title.

(b) NOTIFICATION AND APPLICATION- The Secretary of Veterans Affairs shall notify the Secretary concerned of the procedures to be used to apply for the protections provided under this title. The applicant shall send the original application to the insurer and a copy to the Secretary of Veterans Affairs.

(c) LIMITATION ON AMOUNT- The total amount of life insurance coverage protection provided by this title for a servicemember may not exceed \$250,000, or an amount equal to the Servicemember's Group Life Insurance maximum limit, whichever is greater, regardless of the number of policies submitted.

Section 403 - Application for insurance protection

(a) APPLICATION PROCEDURE- An application for protection under this title shall--

(1) be in writing and signed by the insured, the insured's legal representative, or the insured's beneficiary, as the case may be;

(2) identify the policy and the insurer; and

(3) include an acknowledgement that the insured's rights under the policy are subject to and modified by the provisions of this title.

(b) ADDITIONAL REQUIREMENTS- The Secretary of Veterans Affairs may require additional information from the applicant, the insured and the insurer to determine if the policy is entitled to protection under this title.

(c) NOTICE TO THE SECRETARY BY THE INSURER- Upon receipt of the application of the insured, the insurer shall furnish a report concerning the policy to the Secretary of Veterans Affairs as required by regulations prescribed by the Secretary.

(d) POLICY MODIFICATION- Upon application for protection under this title, the insured and the insurer shall have constructively agreed to any policy modification necessary to give this title full force and effect.

Section 404 - Policies entitled to protection and lapse of policies

(a) DETERMINATION- The Secretary of Veterans Affairs shall determine whether a policy is entitled to protection under this title and shall notify the insured and the insurer of that determination.

(b) LAPSE PROTECTION- A policy that the Secretary determines is entitled to protection under this title shall not lapse or otherwise terminate or be forfeited for the nonpayment of a premium, or interest or indebtedness on a premium, after the date on which the application for protection is received by the Secretary.

(c) TIME APPLICATION- The protection provided by this title applies during the insured's period of military service and for a period of two years thereafter.

Section 405 - Policy restrictions

(a) DIVIDENDS- While a policy is protected under this title, a dividend or other monetary benefit under a policy may not be paid to an insured or used to purchase dividend additions without the approval of the Secretary of Veterans Affairs. If such approval is not obtained, the dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with the insurer.

(b) SPECIFIC RESTRICTIONS- While a policy is protected under this title, cash value, loan value, withdrawal of dividend accumulation, unearned premiums, or other value of similar character may not be available to the insured without the approval of the Secretary. The right of the insured to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this title.

Section 406 - Deduction of unpaid premiums

(a) SETTLEMENT OF PROCEEDS- If a policy matures as a result of a servicemember's death or otherwise during the period of protection of the policy under this title, the insurer in making settlement shall deduct from the insurance proceeds the amount of the unpaid premiums guaranteed under this title, together with interest due at the rate fixed in the policy for policy loans.

(b) INTEREST RATE- If the interest rate is not specifically fixed in the policy, the rate shall be the same as for policy loans in other policies issued by the insurer at the time the insured's policy was issued.

(c) REPORTING REQUIREMENT- The amount deducted under this section, if any, shall be reported by the insurer to the Secretary of Veterans Affairs.

Section 407 - Premiums and interest guaranteed by United States

(a) GUARANTEE OF PREMIUMS AND INTEREST BY THE UNITED STATES-

(1) GUARANTEE- Payment of premiums, and interest on premiums at the rate specified in [section 406](#), which become due on a policy under the protection of this title is guaranteed by the United States. If the amount guaranteed is not paid to the

insurer before the period of insurance protection under this title expires, the amount due shall be treated by the insurer as a policy loan on the policy.

(2) POLICY TERMINATION- If, at the expiration of insurance protection under this title, the cash surrender value of a policy is less than the amount due to pay premiums and interest on premiums on the policy, the policy shall terminate. Upon such termination, the United States shall pay the insurer the difference between the amount due and the cash surrender value.

(b) RECOVERY FROM INSURED OF AMOUNTS PAID BY THE UNITED STATES-

(1) DEBT PAYABLE TO THE UNITED STATES- The amount paid by the United States to an insurer under this title shall be a debt payable to the United States by the insured on whose policy payment was made.

(2) COLLECTION- Such amount may be collected by the United States, either as an offset from any amount due the insured by the United States or as otherwise authorized by law.

(3) DEBT NOT DISCHARGEABLE IN BANKRUPTCY- Such debt payable to the United States is not dischargeable in bankruptcy proceedings.

(c) CREDITING OF AMOUNTS RECOVERED- Any amounts received by the United States as repayment of debts incurred by an insured under this title shall be credited to the appropriation for the payment of claims under this title.

Section 408 – Regulations

The Secretary of Veterans Affairs shall prescribe regulations for the implementation of this title.

Section 409 - Review of findings of fact and conclusions of law

The findings of fact and conclusions of law made by the Secretary of Veterans Affairs in administering this title are subject to review on appeal to the Board of Veterans' Appeals pursuant to [chapter 71](#) of [title 38](#), United States Code, and to judicial review only as provided in [chapter 72](#) of such title.

Section 501 - Taxes respecting personal property, money, credits, and real property

(a) APPLICATION- This section applies in any case in which a tax or assessment, whether general or special (other than a tax on personal income), falls due and remains unpaid before or during a period of military service with respect to a servicemember's--

(1) personal property (including motor vehicles); or

(2) real property occupied for dwelling, professional, business, or agricultural purposes by a servicemember or the servicemember's dependents or employees--

(A) before the servicemember's entry into military service; and

(B) during the time the tax or assessment remains unpaid.

(b) SALE OF PROPERTY-

(1) LIMITATION ON SALE OF PROPERTY TO ENFORCE TAX ASSESSMENT- Property described in subsection (a) may not be sold to enforce the collection of such tax or assessment except by court order and upon the determination by the court that military service does not materially affect the servicemember's ability to pay the unpaid tax or assessment.

(2) STAY OF COURT PROCEEDINGS- A court may stay a proceeding to enforce the collection of such tax or assessment, or sale of such property, during a period of military service of the servicemember and for a period not more than 180 days after the termination of, or release of the servicemember from, military service.

(c) REDEMPTION- When property described in subsection (a) is sold or forfeited to enforce the collection of a tax or assessment, a servicemember shall have the right to redeem or commence an action to redeem the servicemember's property during the period of military service or within 180 days after termination of or release from military service. This subsection may not be construed to shorten any period provided by the law of a State (including any political subdivision of a State) for redemption.

(d) INTEREST ON TAX OR ASSESSMENT- Whenever a servicemember does not pay a tax or assessment on property described in subsection (a) when due, the amount of the tax or assessment due and unpaid shall bear interest until paid at the rate of 6 percent per year. An additional penalty or interest shall not be incurred by reason of nonpayment. A lien for such unpaid tax or assessment may include interest under this subsection.

(e) JOINT OWNERSHIP APPLICATION- This section applies to all forms of property described in subsection (a) owned individually by a servicemember or jointly by a servicemember and a dependent or dependents.

Section 502 - Rights in public lands

(a) RIGHTS NOT FORFEITED- The rights of a servicemember to lands owned or controlled by the United States, and initiated or acquired by the servicemember under the laws of the United States (including the mining and mineral leasing laws) before military service, shall not be forfeited or prejudiced as a result of being absent from the land, or by failing to begin or complete any work or improvements to the land, during the period of military service.

(b) TEMPORARY SUSPENSION OF PERMITS OR LICENSES- If a permittee or licensee under the Act of June 28, 1934 ([43 U.S.C. 315](#) et seq.), enters military service, the permittee or licensee may suspend the permit or license for the period of military service and for 180 days after termination of or release from military service.

(c) REGULATIONS- Regulations prescribed by the Secretary of the Interior shall provide for such suspension of permits and licenses and for the remission, reduction, or refund of grazing fees during the period of such suspension.

Section 503 - Desert-land entries

(a) DESERT-LAND RIGHTS NOT FORFEITED- A desert-land entry made or held under the desert-land laws before the entrance of the entryman or the entryman's successor in interest into military service shall not be subject to contest or cancellation--

(1) for failure to expend any required amount per acre per year in improvements upon the claim;

(2) for failure to effect the reclamation of the claim during the period the entryman or the entryman's successor in interest is in the military service, or for 180 days after termination of or release from military service; or

(3) during any period of hospitalization or rehabilitation due to an injury or disability incurred in the line of duty.

The time within which the entryman or claimant is required to make such expenditures and effect reclamation of the land shall be exclusive of the time periods described in paragraphs (2) and (3).

(b) SERVICE-RELATED DISABILITY- If an entryman or claimant is honorably discharged and is unable to accomplish reclamation of, and payment for, desert land due to a disability incurred in the line of duty, the entryman or claimant may make proof without further reclamation or payments, under regulations prescribed by the Secretary of the Interior, and receive a patent for the land entered or claimed.

(c) FILING REQUIREMENT- In order to obtain the protection of this section, the entryman or claimant shall, within 180 days after entry into military service, cause to be filed in the land office of the district where the claim is situated a notice communicating the fact of military service and the desire to hold the claim under this section.

Section 504 - Mining claims

(a) REQUIREMENTS SUSPENDED- The provisions of section 2324 of the Revised Statutes of the United States ([30 U.S.C. 28](#)) specified in subsection (b) shall not apply to a servicemember's claims or interests in claims, regularly located and

recorded, during a period of military service and 180 days thereafter, or during any period of hospitalization or rehabilitation due to injuries or disabilities incurred in the line of duty.

(b) REQUIREMENTS- The provisions in section 2324 of the Revised Statutes that shall not apply under subsection (a) are those which require that on each mining claim located after May 10, 1872, and until a patent has been issued for such claim, not less than \$100 worth of labor shall be performed or improvements made during each year.

(c) PERIOD OF PROTECTION FROM FORFEITURE- A mining claim or an interest in a claim owned by a servicemember that has been regularly located and recorded shall not be subject to forfeiture for nonperformance of annual assessments during the period of military service and for 180 days thereafter, or for any period of hospitalization or rehabilitation described in subsection (a).

(d) FILING REQUIREMENT- In order to obtain the protections of this section, the claimant of a mining location shall, before the end of the assessment year in which military service is begun or within 60 days after the end of such assessment year, cause to be filed in the office where the location notice or certificate is recorded a notice communicating the fact of military service and the desire to hold the mining claim under this section.

Section 505 - Mineral permits and leases

(a) SUSPENSION DURING MILITARY SERVICE- A person holding a permit or lease on the public domain under the Federal mineral leasing laws who enters military service may suspend all operations under the permit or lease for the duration of military service and for 180 days thereafter. The term of the permit or lease shall not run during the period of suspension, nor shall any rental or royalties be charged against the permit or lease during the period of suspension.

(b) NOTIFICATION- In order to obtain the protection of this section, the permittee or lessee shall, within 180 days after entry into military service, notify the Secretary of the Interior by registered mail of the fact that military service has begun and of the desire to hold the claim under this section.

(c) CONTRACT MODIFICATION- This section shall not be construed to supersede the terms of any contract for operation of a permit or lease.

Section 506 - Perfection or defense of rights

(a) RIGHT TO TAKE ACTION NOT AFFECTED- This title shall not affect the right of a servicemember to take action during a period of military service that is authorized by law or regulations of the Department of the Interior, for the perfection, defense, or further assertion of rights initiated or acquired before entering military service.

(b) AFFIDAVITS AND PROOFS-

(1) IN GENERAL- A servicemember during a period of military service may make any affidavit or submit any proof required by law, practice, or regulation of the Department of the Interior in connection with the entry, perfection, defense, or further assertion of rights initiated or acquired before entering military service before an officer authorized to provide notary services under [section 1044a](#) of title 10, United States Code, or any superior commissioned officer.

(2) LEGAL STATUS OF AFFIDAVITS- Such affidavits shall be binding in law and subject to the same penalties as prescribed by [section 1001](#) of title 18, United State Code.

Section 507 - Distribution of information concerning benefits of title

(a) DISTRIBUTION OF INFORMATION BY SECRETARY CONCERNED- The Secretary concerned shall issue to servicemembers information explaining the provisions of this title.

(b) APPLICATION FORMS- The Secretary concerned shall provide application forms to servicemembers requesting relief under this title.

(c) INFORMATION FROM SECRETARY OF THE INTERIOR- The Secretary of the Interior shall furnish to the Secretary concerned information explaining the provisions of this title (other than sections [501](#), [510](#), and [511](#)) and related application forms.

Section 508 - Land rights of servicemembers

(a) NO AGE LIMITATIONS- Any servicemember under the age of 21 in military service shall be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including mining and mineral leasing laws, as those servicemembers who are 21 years of age.

(b) RESIDENCY REQUIREMENT- Any requirement related to the establishment of a residence within a limited time shall be suspended as to entry by a servicemember in military service until 180 days after termination of or release from military service.

(c) ENTRY APPLICATIONS- Applications for entry may be verified before a person authorized to administer oaths under [section 1044a](#) of title 10, United States Code, or under the laws of the State where the land is situated.

Section 508 - Land rights of servicemembers

(a) NO AGE LIMITATIONS- Any servicemember under the age of 21 in military service shall be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including mining and mineral leasing laws, as those servicemembers who are 21 years of age.

(b) RESIDENCY REQUIREMENT- Any requirement related to the establishment of a residence within a limited time shall be suspended as to entry by a servicemember in military service until 180 days after termination of or release from military service.

(c) ENTRY APPLICATIONS- Applications for entry may be verified before a person authorized to administer oaths under [section 1044a](#) of title 10, United States Code, or under the laws of the State where the land is situated.

Section 509 – Regulations

The Secretary of the Interior may issue regulations necessary to carry out this title (other than sections [501](#), [510](#), and [511](#)).

Section 510 - Income taxes

(a) DEFERRAL OF TAX- Upon notice to the Internal Revenue Service or the tax authority of a State or a political subdivision of a State, the collection of income tax on the income of a servicemember falling due before or during military service shall be deferred for a period not more than 180 days after termination of or release from military service, if a servicemember's ability to pay such income tax is materially affected by military service.

(b) ACCRUAL OF INTEREST OR PENALTY- No interest or penalty shall accrue for the period of deferment by reason of nonpayment on any amount of tax deferred under this section.

(c) STATUTE OF LIMITATIONS- The running of a statute of limitations against the collection of tax deferred under this section, by seizure or otherwise, shall be suspended for the period of military service of the servicemember and for an additional period of 270 days thereafter.

(d) APPLICATION LIMITATION- This section shall not apply to the tax imposed on employees by section 3101 of the Internal Revenue Code of 1986.

Section 511 - Residence for tax purposes

(a) RESIDENCE OR DOMICILE- A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal

property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(b) MILITARY SERVICE COMPENSATION- Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) PERSONAL PROPERTY-

(1) RELIEF FROM PERSONAL PROPERTY TAXES- The personal property of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2) EXCEPTION FOR PROPERTY WITHIN MEMBER'S DOMICILE OR RESIDENCE- This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's domicile or residence.

(3) EXCEPTION FOR PROPERTY USED IN TRADE OR BUSINESS- This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) RELATIONSHIP TO LAW OF STATE OF DOMICILE- Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(d) INCREASE OF TAX LIABILITY- A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(e) FEDERAL INDIAN RESERVATIONS- An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(f) DEFINITIONS- For purposes of this section:

(1) PERSONAL PROPERTY- The term 'personal property' means intangible and tangible property (including motor vehicles).

(2) TAXATION- The term 'taxation' includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

(3) TAX JURISDICTION- The term 'tax jurisdiction' means a State or a political subdivision of a State.

Section 601 - Inappropriate use of Act

If a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred or acquired with the intent to delay the just enforcement of such right by taking advantage of this Act, the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition.

Section 602 - Certificates of service; persons reported missing

(a) PRIMA FACIE EVIDENCE- In any proceeding under this Act, a certificate signed by the Secretary concerned is prima facie evidence as to any of the following facts stated in the certificate:

- (1) That a person named is, is not, has been, or has not been in military service.
- (2) The time and the place the person entered military service.
- (3) The person's residence at the time the person entered military service.
- (4) The rank, branch, and unit of military service of the person upon entry.
- (5) The inclusive dates of the person's military service.
- (6) The monthly pay received by the person at the date of the certificate's issuance.
- (7) The time and place of the person's termination of or release from military service, or the person's death during military service.

(b) CERTIFICATES- The Secretary concerned shall furnish a certificate under subsection (a) upon receipt of an application for such a certificate. A certificate appearing to be signed by the Secretary concerned is prima facie evidence of its contents and of the signer's authority to issue it.

(c) TREATMENT OF SERVICEMEMBERS IN MISSING STATUS- A servicemember who has been reported missing is presumed to continue in service until accounted for. A requirement under this Act that begins or ends with the death of a servicemember does not begin or end until the servicemember's death is reported to, or determined by, the Secretary concerned or by a court of competent jurisdiction.

Section 603 - Interlocutory orders

An interlocutory order issued by a court under this Act may be revoked, modified, or extended by that court upon its own motion or otherwise, upon notification to affected parties as required by the court.

Section 701 - Anticipatory relief

(a) APPLICATION FOR RELIEF- A servicemember may, during military service or within 180 days of termination of or release from military service, apply to a court for relief--

(1) from any obligation or liability incurred by the servicemember before the servicemember's military service; or

(2) from a tax or assessment falling due before or during the servicemember's military service.

(b) TAX LIABILITY OR ASSESSMENT- In a case covered by subsection (a), the court may, if the ability of the servicemember to comply with the terms of such obligation or liability or pay such tax or assessment has been materially affected by reason of military service, after appropriate notice and hearing, grant the following relief:

(1) STAY OF ENFORCEMENT OF REAL ESTATE CONTRACTS-

(A) In the case of an obligation payable in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, the court may grant a stay of the enforcement of the obligation--

(i) during the servicemember's period of military service; and

(ii) from the date of termination of or release from military service, or from the date of application if made after termination of or release from military service.

(B) Any stay under this paragraph shall be--

(i) for a period equal to the remaining life of the installment contract or other instrument, plus a period of time equal to the period of military service of the servicemember, or any part of such combined period; and

(ii) subject to payment of the balance of the principal and accumulated interest due and unpaid at the date of termination or release from the applicant's military service or from the date of application in equal installments during the combined period at the rate of interest on the unpaid balance prescribed in the contract or other instrument evidencing the obligation, and subject to other terms as may be equitable.

(2) STAY OF ENFORCEMENT OF OTHER CONTRACTS-

(A) In the case of any other obligation, liability, tax, or assessment, the court may grant a stay of enforcement--

(i) during the servicemember's military service; and

(ii) from the date of termination of or release from military service, or from the date of application if made after termination or release from military service.

(B) Any stay under this paragraph shall be--

(i) for a period of time equal to the period of the servicemember's military service or any part of such period; and

(ii) subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination or release from military service, or the date of application, in equal periodic installments during this extended period at the rate of interest as may be prescribed for this obligation, liability, tax, or assessment, if paid when due, and subject to other terms as may be equitable.

(c) AFFECT OF STAY ON FINE OR PENALTY- When a court grants a stay under this section, a fine or penalty shall not accrue on the obligation, liability, tax, or assessment for the period of compliance with the terms and conditions of the stay.

Section 702 - Power of attorney

(a) AUTOMATIC EXTENSION- A power of attorney of a servicemember shall be automatically extended for the period the servicemember is in a missing status (as defined in section 551(2) of title 37, United States Code) if the power of attorney--

(1) was duly executed by the servicemember--

(A) while in military service; or

(B) before entry into military service but after the servicemember--

(i) received a call or order to report for military service; or

(ii) was notified by an official of the Department of Defense that the person could receive a call or order to report for military service;

(2) designates the servicemember's spouse, parent, or other named relative as the servicemember's attorney in fact for certain, specified, or all purposes; and

(3) expires by its terms after the servicemember entered a missing status.

(b) LIMITATION ON POWER OF ATTORNEY EXTENSION- A power of attorney executed by a servicemember may not be extended under subsection (a) if the document by its terms clearly indicates that the power granted expires on the date specified even though the servicemember, after the date of execution of the document, enters a missing status.

Section 703 - Professional liability protection

(a) APPLICABILITY- This section applies to a servicemember who--

(1) after July 31, 1990, is ordered to active duty (other than for training) pursuant to [sections 688](#), [12301\(a\)](#), [12301\(g\)](#), [12302](#), [12304](#), [12306](#), or [12307](#) of title 10, United States Code, or who is ordered to active duty under section [12301\(d\)](#) of such title during a period when members are on active duty pursuant to any of the preceding sections; and

(2) immediately before receiving the order to active duty--

(A) was engaged in the furnishing of health-care or legal services or other services determined by the Secretary of Defense to be professional services; and

(B) had in effect a professional liability insurance policy that does not continue to cover claims filed with respect to the servicemember during the period of the servicemember's active duty unless the premiums are paid for such coverage for such period.

(b) SUSPENSION OF COVERAGE-

(1) SUSPENSION- Coverage of a servicemember referred to in subsection (a) by a professional liability insurance policy shall be suspended by the insurance carrier in accordance with this subsection upon receipt of a written request from the servicemember by the insurance carrier.

(2) PREMIUMS FOR SUSPENDED CONTRACTS- A professional liability insurance carrier--

(A) may not require that premiums be paid by or on behalf of a servicemember for any professional liability insurance coverage suspended pursuant to paragraph (1); and

(B) shall refund any amount paid for coverage for the period of such suspension or, upon the election of such servicemember, apply such amount for the payment of any premium becoming due upon the reinstatement of such coverage.

(3) NONLIABILITY OF CARRIER DURING SUSPENSION- A professional liability insurance carrier shall not be liable with respect to any claim that is based on professional conduct (including any failure to take any action in a professional capacity) of a servicemember that occurs during a period of suspension of that servicemember's professional liability insurance under this subsection.

(4) CERTAIN CLAIMS CONSIDERED TO ARISE BEFORE SUSPENSION- For the purposes of paragraph (3), a claim based upon the failure of a professional to make adequate provision for a patient, client, or other person to receive professional services or other assistance during the period of the professional's active duty service shall be considered to be based on an action or failure to take action before the beginning of the period of the suspension of professional liability insurance under

this subsection, except in a case in which professional services were provided after the date of the beginning of such period.

(c) REINSTATEMENT OF COVERAGE-

(1) REINSTATEMENT REQUIRED- Professional liability insurance coverage suspended in the case of any servicemember pursuant to subsection (b) shall be reinstated by the insurance carrier on the date on which that servicemember transmits to the insurance carrier a written request for reinstatement.

(2) TIME AND PREMIUM FOR REINSTATEMENT- The request of a servicemember for reinstatement shall be effective only if the servicemember transmits the request to the insurance carrier within 30 days after the date on which the servicemember is released from active duty. The insurance carrier shall notify the servicemember of the due date for payment of the premium of such insurance. Such premium shall be paid by the servicemember within 30 days after receipt of that notice.

(3) PERIOD OF REINSTATED COVERAGE- The period for which professional liability insurance coverage shall be reinstated for a servicemember under this subsection may not be less than the balance of the period for which coverage would have continued under the insurance policy if the coverage had not been suspended.

(d) INCREASE IN PREMIUM-

(1) LIMITATION ON PREMIUM INCREASES- An insurance carrier may not increase the amount of the premium charged for professional liability insurance coverage of any servicemember for the minimum period of the reinstatement of such coverage required under subsection (c)(3) to an amount greater than the amount chargeable for such coverage for such period before the suspension.

(2) EXCEPTION- Paragraph (1) does not prevent an increase in premium to the extent of any general increase in the premiums charged by that carrier for the same professional liability coverage for persons similarly covered by such insurance during the period of the suspension.

(e) CONTINUATION OF COVERAGE OF UNAFFECTED PERSONS- This section does not--

(1) require a suspension of professional liability insurance protection for any person who is not a person referred to in subsection (a) and who is covered by the same professional liability insurance as a person referred to in such subsection; or

(2) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.

(f) STAY OF CIVIL OR ADMINISTRATIVE ACTIONS-

(1) STAY OF ACTIONS- A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a servicemember whose professional liability insurance coverage has been suspended under subsection (b) shall be stayed until the end of the period of the suspension if--

(A) the action was commenced during the period of the suspension;

(B) the action is based on an act or omission that occurred before the date on which the suspension became effective; and

(C) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional liability negligence or other professional liability of the servicemember.

(2) DATE OF COMMENCEMENT OF ACTION- Whenever a civil or administrative action for damages is stayed under paragraph (1) in the case of any servicemember, the action shall have been deemed to have been filed on the date on which the professional liability insurance coverage of the servicemember is reinstated under subsection (c).

(g) EFFECT OF SUSPENSION UPON LIMITATIONS PERIOD- In the case of a civil or administrative action for which a stay could have been granted under subsection (f) by reason of the suspension of professional liability insurance coverage of the defendant under this section, the period of the suspension of the coverage shall be excluded from the computation of any statutory period of limitation on the commencement of such action.

(h) DEATH DURING PERIOD OF SUSPENSION- If a servicemember whose professional liability insurance coverage is suspended under subsection (b) dies during the period of the suspension--

(1) the requirement for the grant or continuance of a stay in any civil or administrative action against such servicemember under subsection (f)(1) shall terminate on the date of the death of such servicemember; and

(2) the carrier of the professional liability insurance so suspended shall be liable for any claim for damages for professional negligence or other professional liability of the deceased servicemember in the same manner and to the same extent as such carrier would be liable if the servicemember had died while covered by such insurance but before the claim was filed.

(i) DEFINITIONS- For purposes of this section:

(1) ACTIVE DUTY- The term `active duty' has the meaning given that term in [section 101\(d\)\(1\)](#) of title 10, United States Code.

(2) PROFESSION- The term `profession' includes occupation.

(3) PROFESSIONAL- The term `professional' includes occupational.

Section 704 - Health insurance reinstatement

(a) REINSTATEMENT OF HEALTH INSURANCE- A servicemember who, by reason of military service as defined in [section 703\(a\)\(1\)](#), is entitled to the rights and

protections of this Act shall also be entitled upon termination or release from such service to reinstatement of any health insurance that--

(1) was in effect on the day before such service commenced; and

(2) was terminated effective on a date during the period of such service.

(b) NO EXCLUSION OR WAITING PERIOD- The reinstatement of health care insurance coverage for the health or physical condition of a servicemember described in subsection (a), or any other person who is covered by the insurance by reason of the coverage of the servicemember, shall not be subject to an exclusion or a waiting period, if--

(1) the condition arose before or during the period of such service;

(2) an exclusion or a waiting period would not have been imposed for the condition during the period of coverage; and

(3) if the condition relates to the servicemember, the condition has not been determined by the Secretary of Veterans Affairs to be a disability incurred or aggravated in the line of duty (within the meaning of [section 105](#) of title 38, United States Code).

(c) EXCEPTIONS- Subsection (a) does not apply to a servicemember entitled to participate in employer-offered insurance benefits pursuant to the provisions of [chapter 43](#) of title 38, United States Code.

(d) TIME FOR APPLYING FOR REINSTATEMENT- An application under this section must be filed not later than 120 days after the date of the termination of or release from military service.

Section 705 - Guarantee of residency for military personnel

For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 ([2 U.S.C. 431](#))) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence--

(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

(2) be deemed to have acquired a residence or domicile in any other State; or

(3) be deemed to have become a resident in or a resident of any other State.

Section 706 - Business or trade obligations

(a) AVAILABILITY OF NON-BUSINESS ASSETS TO SATISFY OBLIGATIONS- If the trade or business (without regard to the form in which such trade or business is carried out) of a servicemember has an obligation or liability for which the servicemember is personally liable, the assets of the servicemember not held in connection with the trade or business may not be available for satisfaction of the obligation or liability during the servicemember's military service.

(b) RELIEF TO OBLIGORS- Upon application to a court by the holder of an obligation or liability covered by this section, relief granted by this section to a servicemember may be modified as justice and equity require.