

LAW REVIEW 09047

(Web Only)

Improve The Servicemembers Civil Relief Act

In 1917, shortly after the United States entered World War I, Congress enacted the Soldiers' and Sailors' Civil Relief Act (SSCRA) to protect the civil rights and financial interests of those who were called to the colors, whether by draft, voluntary enlistment, or mobilization from the National Guard or Reserve. The original SSCRA expired in 1919, at the end of the period of emergency necessitated by World War I. Congress reenacted the law in 1940 and made it permanent after World War II.

The SSCRA served our nation well through two world wars, as well as the Korean War, the Vietnam War, and the 1990-91 Persian Gulf War. By the 1990s, some of the provisions of this law were outdated and needed rewriting. Judge advocates from the five-armed forces studied the SSCRA and drafted revisions. In 2003, Congress enacted their work product as the Servicemembers Civil Relief Act (SCRA).

The SCRA made major improvements in the SSCRA, but new problem areas continue to surface. This memorandum proposes seven SCRA amendments to address these problem areas.

In 1997, the Reserve Officers Association (ROA) initiated the "Law Review" column in its magazine and website. We invite your attention to <https://www.roa.org/page/lawcenter> You will find more than 600 articles, mostly about the SCRA, the Uniformed Services Employment and Reemployment Rights Act (USERRA), and other laws that are pertinent to the men and women of our nation's armed forces, and especially the National Guard and Reserve. This memorandum refers to some of these Law Review articles for further information about each of these proposals.

Amend the SCRA to clarify that the aggrieved servicemember has a private right of action.

A right without a remedy is of little value. The SCRA is most often enforced by means of private lawsuits, filed by servicemembers against landlords, creditors, insurers, and other parties that have violated this law. The SCRA neither expressly creates nor expressly precludes a private right of action. Most courts that have addressed this issue have found an implied private right of action. ROA proposes amending the SCRA to remove all doubt on this question—to expressly create a private right of action. Please see Law Review 0941 (September 2009).

Amend the SCRA to provide for the losing SCRA defendant to pay attorney fees for the prevailing SCRA plaintiff.

Servicemembers seeking to enforce their SCRA rights need legal representation and should not have to depend upon private attorneys to take these cases on a pro bono (no fee) basis. ROA proposes amending the SCRA to provide that the successful SCRA plaintiff shall obtain (in

addition to other relief) a court order requiring the losing SCRA defendant to pay the plaintiff's attorney fees. Such a provision will give attorneys an incentive to undertake these cases on behalf of servicemembers. [See Law Review 0942](#) (September 2009).

Amend the SCRA to forbid discrimination based on membership in a Reserve Component or the possibility of future utilization of SCRA rights.

Under section 518 of the SCRA (50 U.S.C. App. 518), it is unlawful for a creditor or other party to discriminate against or take an adverse action against a servicemember based on the servicemember having *applied for or received* a stay, postponement, or suspension under the SCRA. Under the current law, it is not unlawful for a creditor or potential creditor to deny credit based on the prospective borrower's membership in a Reserve Component and the possibility that the prospective borrower could be mobilized in the future and could apply for or receive a stay, postponement, or suspension. ROA proposes that Congress amend the SCRA to close this loophole. [See Law Review 0943](#) (September 2009).

Amend the SCRA to broaden the types of leases and contracts which the person entering active duty can terminate without penalty.

Under the SSCRA, since 1917, a person entering active duty has been permitted to terminate a lease on premises (apartment, house, office, farm, etc.). In 2003, Congress broadened this provision to enable the person entering active duty to terminate a vehicle lease. In 2008, Congress enacted a new provision to permit a servicemember to terminate a cell phone contract under certain circumstances.

There are many other kinds of leases and contracts that the person entering active duty may need to terminate. For example, we have heard from a Navy Reserve medical corps officer who is a physician in private practice. He is going on active duty for at least a year, and he is closing his private medical practice. He has a lease on an expensive medical device, with four years left to go on the lease, and the lessor will not let him out of the lease. The lessor insists that this physician pay another \$175,000 to lease a medical device—the physician will be on active duty in Afghanistan and does not need and cannot afford the device. Congress needs to amend the SCRA to include leases and contracts of this nature, in addition to leases of premises, vehicles, and cell phones. [Please see Law Review 0944](#) (September 2009).

Amend the SCRA to broaden the types of insurance that the servicemember is entitled to reinstate after returning from active duty.

Under section 594(a) of the SCRA [50 U.S.C. App. 594(a)], a person returning from active duty is entitled to reinstate *health insurance* that was in effect on the day before the person entered active duty and that was terminated during the time the person was on active duty. In a recent (2009) case, the United States District Court for the Northern District of Texas ruled that income-replacement insurance (compensating the insured for income lost when sickness

prevents the insured from working) is not *health insurance* for purposes of section 594(a).¹ As a result, a Marine Corps Reservist is losing out on more than \$450,000 in payments *because he was called to the colors* and deployed to Iraq in 2004-05. This is exactly the sort of harm that Congress enacted section 594(a) to prevent. Congress needs to amend the SCRA to clarify that the person returning from military service has the right to reinstate income-replacement insurance and other forms of insurance, as well as health insurance narrowly defined. [Please see Law Review 0945](#) (September 2009).

Amend the SCRA to make the right to a continuance and the protection against default judgment apply to arbitration proceedings.

The individual who is on active duty may be unable to respond promptly to a civil lawsuit or administrative proceeding, especially if the individual is deployed to a place like Iraq or Afghanistan. Since 1917, the SSCRA has given the individual in this situation some protection, including the right to a continuance and default judgment protection if military service interferes with a timely response. In 2003, Congress expanded these provisions to make them apply to administrative as well as judicial proceedings, but the provision has been held not to apply to *arbitration* proceedings. It should apply. [Please see Law Review 0839](#) (August 2008).

Amend the SCRA to forbid exorbitant overdraft fees and late fees for deployed servicemembers.

There have been instances where deployed servicemembers have been charged hundreds or thousands of dollars in overdraft fees or late fees for a low-dollar overdraft on a checking account or a late payment on a credit card. Such exorbitant fees should be forbidden. [Please see Law Review 0946](#).

If you have questions, suggestions, or comments, please contact Captain Samuel F. Wright, JAGC, USN (Ret.) (Director of the Servicemembers' Law Center) at swright@roa.org or 800-809-9448, ext. 730.

Update – March 2022²

Amend the SCRA to clarify that the aggrieved servicemember has a private right of action.

Under 50 U.S.C. § 4042(a) an aggrieved service member has a private right of action. The section states that any person aggrieved by a violation of chapter 50 may bring a civil action to (1) obtain any appropriate equitable or declaratory relief with respect to the violation; (2) recover all other appropriate relief, including monetary damages; and (3) be a representative party on behalf of members of a class or be a member of a class.³

¹*Lee v. Allied Pilots Ass'n*, Civ. Action No. 4:08-CV-542-Y, 2009 WL 2030424 (N.D. Tex. July 14, 2009).

²Update By Second Lieutenant Lauren Walker, USMC.

³50 U.S.C. § 4042(a).

Amend the SCRA to provide for the losing SCRA defendant to pay attorney fees for the prevailing SCRA plaintiff.

Under 50 U.S.C. § 4042(b) the court may award to a person aggrieved by a violation of chapter 50 who prevails in an action brought under subsection (a) (mentioned above) the costs of the action, including reasonable attorney fees.