

# LAW REVIEW 1085

## Improve the SCRA: Progress Made and What Remains To Be Done

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### 4.0--Soldiers' and Sailors' Civil Relief Act (SSCRA) and the Servicemembers' Civil Relief Act (SCRA) Generally

In 2008, ROA and the Reserve Enlisted Association (REA) jointly promulgated a "Top Ten Priorities List" for Reserve Component (RC) members. Number 9 on the list is "Improving the Servicemembers Civil Relief Act." In this article, I report on the progress that has been made and what remains to be done to accomplish this goal.

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 wartime emergency period. 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, it had become apparent that this law required a comprehensive rewrite. Judge advocates of all five armed forces studied the SSCRA and came up with a rewrite. In 2003, Congress enacted their work product as the Servicemembers Civil Relief Act (SCRA). This law is codified in title 50 Appendix, United States Code, sections 501-596 (50 U.S.C. App. 501-596).

The enactment of the SCRA brought several major improvements in this law. For example, the SSCRA gave the person entering active duty the right to terminate a lease of premises (apartment, house, office, etc.). The SCRA expanded this right to include the right to terminate a lease of a vehicle. Vehicle leases were not contemplated in 1917. In 2008, Congress amended the SCRA to give the person entering active duty the right to terminate a cell phone contract under certain circumstances.

On October 13, 2010, President Obama signed into law the Veterans' Benefits Act of 2010 (VBA-2010), Public Law 111-275. Section 303 of VBA-2010 significantly strengthened the SCRA enforcement mechanism, adding provisions for enforcement by the United States Attorney General and for substantial civil and criminal penalties, including imprisonment for up to one year for individuals who willfully violate SCRA requirements. This 2010 amendment also explicitly provides a private right of action to enforce the SCRA and for a court to order a creditor, landlord, or other SCRA violator to pay the service member's legal fees if the member retained an attorney to enforce his or her SCRA rights. Please see Law Review 1082, available at [www.roa.org/law\\_review](http://www.roa.org/law_review).

Section 301 of VBA-2010 improved the SCRA provision on terminating a lease on premises and vehicles upon call to the colors, and section 302 improved upon the SCRA provision about terminating a cell phone contract. Please see Law Reviews 1079 and 1081.

In Law Review 0947, I suggested SCRA improvements. Here are the suggestions that have not yet been implemented.

### **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). 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 override agreements to submit future disputes to binding arbitration.**

The SCRA should explicitly preclude the application of boilerplate agreements to submit future disputes to binding arbitration. Arbitrators are supposed to apply substantive laws like the SCRA, but often they do not, and there is often no remedy when an arbitrator ignores the law.

For example, when a National Guard member or Reservist is called to active duty and has thereby suffered a substantial loss of income, the service member is entitled under the SCRA to have the interest rate on pre-existing financial obligations (credit cards, auto loans, etc.) reduced to 6% during the active duty period. But if you have agreed to binding arbitration, the arbitrator may ignore this clear legal requirement and continue the interest rate at the higher contracted level, and there likely is no remedy.

Moreover, the arbitration agreement often requires both parties (the creditor and the debtor) to share in the costs of the arbitration, including the arbitrator's fee, and to pay this money up front. This requirement often places the entire process beyond the financial ability of the service member to participate. Thus, as with the Uniformed Services Employment and Reemployment Rights Act (USERRA), we favor a provision explicitly making unenforceable agreements to submit future disputes to binding arbitration. Please see Law Review 0847 (October 2008).

**ACTION ITEM**

As we prepare for the start of the 112<sup>th</sup> Congress, please contact your United States Representative and your two United States Senators and ask them to introduce and/or support legislation along these lines.