

**LAW REVIEW 14008**  
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**SCRA and Disability Income Replacement Insurance**

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**4.0—SCRA generally**

**Q: I am on active duty in the Army as a physician and I am currently serving overseas. I served on active duty in the Army more than 30 years ago, and then I got out and went to medical school. After more than two decades of medical practice, I decided to rejoin the Army. I understand that I cannot qualify for military retirement, because I will have to retire by reason of age long before I have 20 years of service for either regular or reserve retirement. I understood all that when I signed up.**

**Many years ago, long before I ever thought of rejoining the Army, I purchased an insurance policy that promises to pay me if I become disabled and thereby unable to practice medicine prior to my 65<sup>th</sup> birthday. I completed paying the premiums on this policy many years ago.**

**I only recently became aware that the 15-page insurance policy contains a paragraph about military service. The paragraph provides that if I go on active duty in the armed forces of the United States or any other nation the insurance policy will be suspended, and that no benefits will be paid for any disability incurred while I am on active duty, whether or not the disability results from an act of war or terrorism. For example, if I were to suffer a stroke next week I would receive no benefits under this paid-up policy, simply because I am currently serving our country in uniform. This is not fair.**

**Is this military exclusion paragraph valid and enforceable?**

**A: Yes. I have carefully reviewed the Servicemembers Civil Relief Act (SCRA)<sup>1</sup>, and there is no provision in that law that would render this paragraph invalid or unenforceable. The fact that you and I don't like the paragraph does not render it invalid.**

The SCRA has lots of great provisions to protect the rights and interests of those who lay aside their civilian lives to answer the country's call, voluntarily or involuntarily. But there is no general principle that if a contract clause harms service members it is invalid. Making such clauses unlawful would require a statutory amendment, and such an amendment probably would not help you because when Congress amends laws it normally makes the amendment prospective and not retroactive.

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<sup>1</sup> The SCRA is codified in title 50 Appendix, United States Code, sections 501-597b (50 U.S.C. 501-597b). Congress enacted the SCRA in 2003, as a long-overdue rewrite of the Soldiers' and Sailors' Civil Relief Act, which was originally enacted in 1917, shortly after the United States entered World War I.

In order for us to determine whether it is worthwhile to seek a statutory amendment, we need to know if this is a widespread problem. I would like to hear from other readers who may have been affected by this or similar contractual provisions.

**Q: I think that my insurance agent, who sold me this policy, should have alerted me to this clause. Do I have a malpractice claim against the insurance agent?**

**A:** Almost certainly not. It does not appear reasonable to claim that the agent had a duty to bring this particular paragraph to your attention, unless you had told him that you were considering military service at the time you bought the policy.

It has now been more than 40 years since Congress abolished the draft and established the All Volunteer Military. More and more each year, the folks with whom we deal (including insurance agents) have no personal or family experience with military service. The entire U.S. military establishment, including Reservists and National Guard members not currently on active duty, amounts to less than  $\frac{3}{4}$  of one percent of the U.S. population.

If you serve our country in uniform (Active, Reserve, or National Guard), you need to keep in mind the ways that military service affects your estate and retirement planning, tax liabilities, civilian career, etc. In 2009, ROA established the Service Members Law Center (SMLC), to provide you this sort of information.

I invite your attention to [www.servicemembers-lawcenter.org](http://www.servicemembers-lawcenter.org). You will find exactly 1,000 “Law Review” articles, with the addition of this article to the website. You will also find a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. I initiated this column in 1997, and we add new articles each week. We added 169 new articles in 2013.

As the SMLC Director, I am here at my post answering telephone calls and e-mails during regular business hours Monday-Friday and until 10 pm Eastern Time on Monday and Thursday evenings. The point of the evening availability is to make it possible for you to call me from the privacy of your own home, not from your civilian job or military assignment.

In 2013, I received and responded to 9,193 inquiries, or 766 per month on average. About half of the inquiries were about problems that Reserve Component members have with their civilian employers, in balancing the demands of a Reserve Component career and a civilian career. The other half of the inquiries were about everything that you can think of that has something to do with military service and law.