

## SCRA is now North Carolina law and its protections are broader

It's almost embarrassing how many posts we've done about the Servicemembers Civil Relief Act (SCRA). (See [here](#), [here](#), [here](#), and [here](#), and also a bunch of others where it is at least mentioned). Actually, I'm just embarrassed that my colleagues did all that and I didn't write any of them. But here I am, and my purpose here is simple: to notify you\* of important *new* SCRA law specifically relevant to North Carolina. These changes became effective earlier this week.

The [SCRA](#) is a federal act in Chapter 50, Title 50 of the United States Code designed to relieve servicemembers of some of the logistical burdens of civilian life while they concentrate on their military service. One section of the act—and the focus of this post—aims at easing the challenges of being a defendant in a civil or administrative proceeding.

So what's new? Here's the skinny:

- The federal SCRA is now incorporated into North Carolina law. North Carolina has codified the provisions of the federal SCRA into the General Statutes. The new North Carolina Servicemembers Civil Relief Act is found in G.S. Chapter 127B, Article 4. It was signed into law as Session Law 2019-161 on July 25, 2019, and it is effective as of October 1, 2019. It also provides for a private right of action and an action by the Attorney General for its violation. G.S. 127B-35 and -36. It also makes a knowing violation of the act an unfair and deceptive trade practice. G.S. 127B-34. You can read the new NC SCRA [here](#).
- The new North Carolina SCRA also *expands beyond* the scope of the federal SCRA:
  - More servicemembers included. It extends the “rights, benefits, and protections” of the federal SCRA (1) to members of the **North Carolina National Guard** serving on active duty; and (2) to members of other states' National Guard serving on state active duty who reside in North Carolina. G.S. 127-28(a).
  - Protects dependents of servicemembers. It also extends certain SCRA rights and protections to dependents of servicemembers. “Dependent” is defined in 50 U.S.C. § 3911(4), and includes spouses, children, and certain supported individuals.

These rights and protections include those under Subchapter II of Chapter 50 of Title 50, the subchapter that relates to civil actions. Some of them are: protections in default and other judgments (§3931); stay of certain proceedings including child custody when the person has notice (§3932); stay of certain fines or penalties under contracts (§3933); tolling of the statute of limitations (§3936); interest rate limitations (§3938); and child custody protections (§3939).

*A note about judgments: the required affidavit.* The judgment protection for defendants who have not appeared (§3931) may be the SCRA provision most familiar to our readers. Under that statute, a plaintiff seeking a judgment where the defendant has not appeared must file an affidavit

regarding whether the defendant is in military service. There are ways of finding this information about a defendant, including this database: <https://scra-w.dmdc.osd.mil/scra/#/home>. But the affidavit requirement now also effectively applies to whether the defendant is a *dependent* of a servicemember, and there is *not* a ready-made way to determine that. As to that, bear in mind that the statute allows a plaintiff to state that plaintiff is “unable to determine whether or not the defendant is in military service.” By extension, plaintiff could similarly represent that plaintiff is “unable to determine” whether defendant is a dependent. The Administrative Office of the Courts has revised its SCRA form affidavit to include a dependents section and to reflect this option. See the revised form, AOC-G-250, [here](#). [Note from 2/2020: This form has been further revised to remove the earlier dependents language pending further legal review by the AOC, so I have removed the link to the form that was in place when I wrote this post. We'll provide a more thorough update of this issue soon.]

There are other important provisions of the new NC SCRA that relate to matters other than civil proceedings, and they contain similar expansions of the federal SCRA. Those topics are outside the scope of this blog, but I recommend reading the [whole act](#) to get a feel for those.

You may be thinking, “That was short, Ann. Haven’t you done what law profs do and ponder the potential unforeseen effects of these changes?” Of course I have! Have you *met* me? But I’ll let the new law settle in. A wise person (actually an internet meme) told me this week not to “create drama where there is none.” I assure you that if any ill effects of this new law materialize, we’ll be right back here blogging about SCRA again.

(\*By “you” I’m really targeting our readers who are *not* court system folks: The fab lawyers at the Administrative Office of the Courts have already summarized these changes for judicial branch employees, and this post is not meant to replace any of that.)