



ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

TO: Clerks of Superior Court
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Magistrates
District Court Judges
Superior Court Judges

FROM: Matt Kraus, Assistant Legal Counsel
Nicole Brinkley, Assistant Legal Counsel

DATE: October 1, 2019

SUBJECT: The North Carolina Servicemembers Civil Relief Act
S.L. 2019-161

On July 16, 2019, the Governor signed into law SB 420¹, Session Law 2019-161 (hereinafter "the Act"). Part 1 of the Act creates the North Carolina Servicemembers Civil Relief Act in Article 4 of G.S. Chapter 127B. This memo summarizes the impact of certain provisions in this law for court personnel who handle civil and other non-criminal matters. The provisions in Part 1 of the Act addressed in this memo are effective October 1, 2019.

The purpose of the newly created Article 4 is to:

- (1) incorporate into State law the rights, benefits, and protections of the federal Servicemembers Civil Relief Act (SCRA), Chapter 50 of Title 50 of the United States Code;
- (2) extend the rights, benefits, and protections of the federal SCRA to
 - (i) members of the North Carolina National Guard serving on state active duty, and
 - (ii) members of the National Guard of other states serving on state active duty who reside in North Carolina; and
- (3) extend the rights and protections provided to a servicemember under G.S. 127B-30 and under Subchapter II of Chapter 50 of Title 50 of the United States Code to dependents of servicemembers in military service.

Prior to the enactment of Article 4 of G.S. Chapter 127B, the federal Servicemember Civil Relief Act already applied to civil actions and other non-criminal proceedings in North Carolina. Through the enactment of the North Carolina Servicemembers Civil Relief Act, (i) the rights and protections of the federal act are now codified into North Carolina law, (ii) these same rights and protections are now extended to members of the North Carolina National Guard on state active duty and members of other states' national guard on state active duty who reside in North

¹ <https://www.ncleg.gov/Sessions/2019/Bills/Senate/PDF/S420v4.pdf>

Carolina, and (iii) additional rights and protections are now extended to dependents of servicemembers in military service.

Although dependents of servicemembers engaged in military service are afforded some rights and protections under the federal SCRA, new rights and protections under Subchapter II of Chapter 50 of Title 50 of the United States Code, previously only afforded to servicemembers in military service, are now extended under the Act to include dependents of servicemembers in military service.

These expanded rights and protections include:

1. certain protections against default judgments;
2. stay of civil actions and proceedings, including child custody actions, when servicemember has notice;
3. stay or prohibition of fines or penalties under disputed contracts;
4. tolling of statutes of limitation;
5. interest rate limit on obligations incurred prior to military service; and
6. child custody provisions.

Dependent as defined in the SCRA is:

1. a servicemember's spouse;
2. a servicemember's child (as defined in section 101(4) of Title 38); or
3. 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 chapter.

The Servicemembers Civil Relief Act Affidavit made available by the AOC (AOC-G-250) will be updated and posted on Juno to reflect the expanded protections under the Act. For more information regarding the federal Servicemembers Civil Relief Act and its impact on non-criminal actions and proceedings, please review the following [SCRA FAQ Memorandum](#) previously issued by the AOC.

Court officials with any questions may contact Matt Kraus at Matthew.R.Kraus@nccourts.org or Nicole Brinkley at Nicole.N.Brinkley@nccourts.org. Thank you.