

Congress Beefs up the SCRA Enforcement Mechanism

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

4.9—SCRA Enforcement

On October 13, 2010, President Obama signed into law the Veterans' Benefits Act of 2010 (VBA-2010), Public Law 111-275. This important new law makes several welcome amendments to the Servicemembers Civil Relief Act (SCRA).

Section 303 of VBA-2010 adds a whole new title (Title VIII) to the SCRA. The new section 801 of the SCRA is as follows:

Section 801. ENFORCEMENT BY THE ATTORNEY GENERAL.

(a) Civil Action—The Attorney General [of the United States] may commence a civil action in any appropriate district court of the United States against any person who—(1) engages in a

¹I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

pattern or practice of violating this Act; or (2) engages in a violation of this Act that raises an issue of significant public importance.

(b) RELIEF.—In a civil action commenced under subsection (a), the court may—(1) grant any appropriate equitable or declaratory relief with respect to the violation of this Act; (2) award all other appropriate relief, including monetary damages, to any person aggrieved by the violation; and (3) may, to vindicate the public interest, assess a civil penalty—(A) in an amount not exceeding \$55,000 for a first violation; and (B) in an amount not exceeding \$110,000 for any subsequent violation.

(c) INTERVENTION.—Upon timely application, a person aggrieved by a violation of this Act with respect to which the civil action is commenced may intervene in such action, and may obtain such appropriate relief as the person could obtain in a civil action under section 802 with respect to that violation, along with costs and a reasonable attorney fee.

It is difficult to overstate the importance of this new provision. Bringing the resources of the United States Department of Justice and the authority of a federal district court to bear upon an SCRA violator is immensely helpful in protecting the SCRA rights of service members.

As I explained in Law Review 0941, a private right of action is the right to initiate a civil action in court, in one's own name and with one's own attorney. Some statutes explicitly create private rights of action, while other statutes explicitly preclude private rights of action, usually because the statute provides some other remedy, like enforcement through a government agency like the National Labor Relations Board.

Still other statutes neither explicitly create nor explicitly preclude private rights of action, and until now the SCRA has been in this category. In this situation, a court must determine, as a question of statutory interpretation, whether Congress intended that there be a private right of action. Most courts that have addressed this issue have held that the

SCRA creates an implied private right of action, but the issue has not been entirely free from doubt.

The new section 802(a) explicitly creates a private right of action to enforce the SCRA. This new provision is most welcome.

The new section 802(b) provides: "The court may award to a person aggrieved by a violation of this Act who prevails in an action brought under subsection (a) the costs of the action, including a reasonable attorney fee." This attorney fee provision will be most helpful to service members seeking competent counsel to represent them in SCRA matters.

The new section 803 creates several new federal misdemeanors, for creditors, landlords, and others who willfully violate the SCRA. Conviction can result in imprisonment for up to a year,

plus a substantial fine. Congress is intent on showing that the SCRA is a real law that must be obeyed.

Update – March 2022³

The location of the SCRA in the United States Code has changed several times throughout the years. The most recent change came in 2015. There was an editorial reclassification of the SCR by the Office of the Law Revision Counsel to the United States House of Representatives that became effective on December 1, 2015.⁴ The SCRA is now codified at 50 U.S.C. §§ 3901-4043. The changes in codification have not changed the substance or application of the sections

The relevant sections cited throughout the article can be found as followed:

Section 801 discussing enforcement by the Attorney General can now be found at 50 U.S.C. § 4041.

Section 802 discussing private right of action can now be found at 50 U.S.C. § 4042.

Section 803 discussing preservation of remedies can now be found at 50 U.S.C. § 4043.

For a complete conversion chart for the SCRA please see *The Servicemembers Civil Relief Act Has Moved*.⁵

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Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to

³Update by Second Lieutenant Lauren Walker, USMC.

⁴*The Servicemembers Civil Relief Act (SCRA)*, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-skra> (last visited Mar. 10, 2022).

⁵Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).

exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

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If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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⁶Congress recently established the United States Space Force as the 8th uniformed service.