

**LAW REVIEW<sup>1</sup> 12048**

**May 2012**

**DOJ Settles SCRA Case Against Norfolk Towing Company**

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

4.6—Eviction and Foreclosure Protection

4.9—SCRA Enforcement

***“A person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement.”***

**Title 50, United States Code Appendix, section 537(a)(1) [50 U.S.C. App. 537(a)(1)].**

***“A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.”***

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<sup>1</sup>I invite the reader's attention to [www.roa.org/lawcenter](http://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.

<sup>2</sup>BA 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 (VRRA—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 VRRA 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 VRRA 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](mailto:SWright@roa.org).

**50 U.S.C. App. 537(c).**

On May 1, 2012, the United States Department of Justice (DOJ) announced that it had settled a lawsuit that it had filed against B.C. Enterprises, Inc. (doing business as Aristocrat Towing). In the lawsuit, DOJ had alleged that the company had violated the Servicemembers Civil Relief Act (SCRA) when it towed and sold the vehicles belonging to active duty service members without obtaining court orders, as required by 50 U.S.C. App. 537(a)(1). The settlement provides \$75,000 in damages to the 26 aggrieved service members, and it also requires the company to provide credit repair services to those members.

This case began when Lieutenant Yahya Jaboori, USN, returned from a deployment to Iraq and learned that the company had towed and sold his vehicle while he was deployed. He sought assistance from the legal assistance office at the Naval Legal Service Office in Norfolk, and that office referred the matter to DOJ. The other 25 affected service members were identified later.

If you need assistance regarding the SCRA or other laws, you should start the process by making an appointment with a legal assistance attorney. Go to <http://legalassistance.law.af.mil>. The service is operated by the Air Force, but it includes legal assistance offices for all the services, even the Coast Guard. The website will show you, from your zip code, the nearest military legal assistance offices. You must call and make an appointment, because military legal assistance attorneys will not provide legal assistance by telephone. You can make an appointment at the office that is most convenient for you, even if it is of a different service. Please see [Law Review 125](#) for more information about the kinds of services that are available through military legal assistance offices.

Within DOJ, responsibility for enforcing the SCRA is assigned to the Civil Rights Division, which is headed by Assistant Attorney General Thomas E. Perez. The [DOJ press release](#) quotes Mr. Perez as follows:

Servicemembers make great personal sacrifices. We will ensure that the rights of the brave men and women who serve and protect us are protected at home. This settlement sends a strong message to businesses nationwide that the Justice Department will enforce the SCRA to protect against the taking of servicemembers' property without first seeking court orders as is required by law.

Businesses around the country need to be familiar with the SCRA, because some of the folks the business deals with will be active duty service members, and ignorance of the law is no excuse. Such knowledge is especially important in a place like Norfolk, which is home to most of the ships of the United States Atlantic Fleet.

### **Update – March 2022<sup>3</sup>**

The location of the SCRA within the United States code changed in late 2015. Previously codified at 50 U.S.C App. §§ 501-597(b), 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.<sup>4</sup> 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. Therefore, the application of the SCRA throughout this article applies the same today as it did when it was written.

The relevant section cited throughout the article can be found at:

50 U.S.C. App. § 537 discussing enforcement of storage liens can be found at 50 U.S.C. § 3958.

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

#### **Please join or support ROA**

This article is one of 2,300-plus “Law Review” articles available at [www.roa.org/lawcenter](http://www.roa.org/lawcenter). The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established on 10/1/1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

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 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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<sup>3</sup>Update by Second Lieutenant Lauren Walker, USMC.

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

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

If you are now serving or have ever served in any one of our nation's eight<sup>6</sup> uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at [www.roa.org](http://www.roa.org) or call ROA at 800-809-9448.

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:

Reserve Organization of America  
1 Constitution Ave. NE

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<sup>6</sup>Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.