

Hurricane Florence: How State Laws Protect Service Members

By Jeffrey Naimon, Sasha Leonhardt and Jessica Shannon

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As the southeastern United States braces for Hurricane Florence, the governors of North Carolina, South Carolina and Virginia have authorized their state National Guard for response efforts, and neighboring governors in Maryland and West Virginia have placed their National Guard members on notice. In light of Hurricane Florence's arrival, we have highlighted the laws in these affected states that provide protections to members of the National Guard called to state military service. While assuring the safety of these communities and the service members providing assistance is of utmost concern, creditors can do their part by being aware of these laws and paying attention to which of their customers may be entitled to these protections.[1]



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North Carolina

Under North Carolina law, if an individual is serving on active duty in the United States armed forces or on active duty in the National Guard under an order of the president supported by federal funding for a period of more than 30 consecutive days, state law limits a creditor's ability to foreclose on the individual's mortgage loan.[2]



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South Carolina

South Carolina law does not provide additional protections for individuals in federal or state service.

Virginia

Under Virginia law, any member of the Virginia National Guard ordered to active duty by the governor for at least 30 consecutive days is entitled to receive all of the protections provided to individuals under the federal Service members Civil Relief Act, or SCRA.[3] These include restrictions on home mortgage foreclosures and automobile repossessions for debts incurred prior to entering active duty, additional rules regarding the entry of default judgment against service members, prohibitions on evictions without first obtaining a waiver or court order, and — with prior notice to the creditor — a 6



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percent limitation on interest rates.[4]

Maryland

Under Maryland law, any member of the Maryland National Guard or the Maryland Defense Force ordered to state active duty for a period of 14 consecutive days or longer is entitled to receive all of the protections provided to individuals under the federal SCRA.[5] These include restrictions on home mortgage foreclosures and automobile repossessions for debts incurred prior to entering active duty, additional rules regarding the entry of default judgment against service members, prohibitions on evictions without first obtaining a waiver or court order, and — with prior notice to the creditor — a 6 percent limitation on interest rates.[6]

West Virginia

Under West Virginia law, any member of the West Virginia National Guard ordered to state active duty for a period of 30 days or more is entitled to receive all of the protections provided to individuals under the federal SCRA.[7] These include restrictions on home mortgage foreclosures and automobile repossessions for debts incurred prior to entering active duty, additional rules regarding the entry of default judgment against service members, prohibitions on evictions without first obtaining a waiver or court order, and — with prior notice to the creditor — a 6 percent limitation on interest rates.[8]

In addition, members of the California National Guard were recently mobilized to assist local communities as wildfires covered much of the state this past summer. In recent weeks, the California Senate and State Assembly passed Assembly Bill 3212, which would extend protections for service members under the state's Military and Veterans Code. If signed into law by the governor and enacted, AB 3212 will apply to members of the National Guard, State Military Reserve and the Naval Militia called to full-time active state service or full-time active federal service, as well as other individuals called to full-time active duty for a period in excess of seven days in any 14-day period.

California AB 3212 provides several benefits to service members covered by its provisions:

- AB 3212 extends the 6 percent interest rate cap for installment loans and credit cards to 120 days after military service. Additionally, the bill would extend the protection for student loans to one year after military service. In contrast, the federal SCRA limits the interest rate cap for these types of loans to the period of military service.
- AB 3212 requires any person who receives a request from a service member for relief under Chapter 7.5 of the Military and Veterans Code and believes the service member is not entitled to the relief to provide the service member with a written response including (1) the basis for determining the request is incomplete or rejecting the request; (2) a list of information/materials that are missing if the request was incomplete; and (3) contact information for the creditor. This response must be sent within 30 days of the request. Failure to provide this request is an automatic waiver of any objection to the request, and in such a circumstance the service member shall be entitled to the relief requested. The federal SCRA does not include a similar provision.
- Existing California law provides that, at any stage in any action or proceeding in which a service member is involved, the court may stay an action or proceeding during the period of military service or 60 days thereafter. AB 3212 would extend this protection to 120 days after the period of military service. The federal SCRA does not contain a similar extension as provided in this bill;

rather, the federal SCRA protections against default judgments only apply to service member defendants during military service.

- AB 3212 provides that a service member may terminate a motor vehicle lease after the service member's entry into military service for a period of not less than 180 days. It also provides for cancellation of leases executed while in a period of military service if the service member receives military orders for a change of permanent station from a location in the continental United States to a location outside the continental United States, or from a location in a state outside the continental United States to any location outside that state, or to deploy for a period not less than 180 days. The addition of the auto lease termination provisions mirror the federal SCRA.

If you are interested in laws affecting National Guard units in other states, our Law360 article last year focused on those states that were affected by Hurricane Harvey.

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[1] This is a brief summary of the most critical state laws that affect the relationship between creditors and state National Guard members, and is not meant to be an exhaustive list of all state-specific laws that may protect service members.

[2] N.C. Gen. Stat. § 45-21.12A.

[3] Va. Code § 44-102.1.

[4] 50 U.S.C. §§ 3952-53, 3931, 3951, and 3937.

[5] Md. Code, Pub. Safety § 13-704.

[6] 50 U.S.C. §§ 3952-53, 3931, 3951, and 3937.

[7] W. Va. Code § 15-1F-11.

[8] 50 U.S.C. §§ 3952-53, 3931, 3951, and 3937.