

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Military Affairs and Domestic Security Committee

BILL: CS/SB 206

INTRODUCER: Committee on Military Affairs and Domestic Security and Senator Justice

SUBJECT: Military Affairs

DATE: February 4, 2009      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Skelton	Skelton	MS	Fav/CS
2.			JU	
3.				
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |                                         |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 206 updates references to the Uniform Code of Military Justice (UCMJ) to reflect the most current version of the code.

In addition, the bill clarifies that members of the National Guard returning to work after serving on state active duty are entitled to seniority accrued prior to deployment, any additional seniority that would have been attained during the time of deployment, and any additional rights and benefits that would have accrued to the servicemember. The returning worker cannot be discharged from such employment except for cause. Employers may not require servicemembers to use annual, vacation, compensatory, or similar leave for periods of deployment, and must allow the returning servicemember to use accrued leave in a normal manner. The bill removes the one year employment requirement for eligibility for these protections.

CS/SB 206 clarifies the applicability of concurrent jurisdiction of state courts over all causes of action arising from state and federal law relating to members of the armed forces, armed forces reserves, and the National Guard.

The bill creates a provision for an award of up to \$1000 per violation plus attorney's fees and court costs as a result of a failure to comply with the provisions of state and federal law relating to servicemembers.

This bill amends sections 250.35, 250.482, and 250.82 of the Florida Statutes.

## II. Present Situation:

CS/SB 206 updates references to the Uniform Code of Military Justice (UCMJ) to reflect the most current version of the code.

The United States has a long history of providing civil protection for the rights of military servicemembers while they are on active duty. Previous federal law, the Soldiers and Sailors Relief Act of 1940, which traces its history back as far as the Civil War, provided for the postponement of civil actions against servicemembers such as repossession of property, bankruptcy, foreclosure, divorce proceedings, and breach of contract, etc. until after the servicemember returned from overseas duty.<sup>1</sup>

The Servicemembers Civil Relief Act (SCRA),<sup>2</sup> replaced the Soldiers and Sailors Relief Act as current federal law. SCRA carried over many of the previous protections afforded servicemembers while expanding and clarifying others and includes protection against default judgments, evictions and distress, termination of residential or motor vehicle leases, and protection of life insurance policies among others.

SCRA applies jurisdiction to the United States, each of the states including the political subdivisions thereof, and all territories subject to United States jurisdiction. SCRA further provides that a servicemember may make application to any court which would otherwise have jurisdiction over the matter.<sup>3</sup> Thus, state courts may exercise jurisdiction over civil matters relating to servicemembers if applicable.

Federal law prohibits employment and reemployment discrimination against persons because of their active duty, reserve, or National Guard service. The Uniformed Services Employment and Reemployment Rights Act (USERRA),<sup>4</sup> prohibits denial of any employment benefit based on an individual's service membership and protects the rights of individuals to reclaim their civilian employment upon return from military service or training.<sup>5</sup>

Florida provides civil protection to active duty, reserve, and National Guard personnel through the Florida Uniformed Servicemembers Protection Act.<sup>6</sup> This act recognizes that rights enumerated in SCRA and USERRA are applicable to members in every state even though such provisions are not specifically identified under state law. The act further directs the Department of Military Affairs to make a document available to servicemembers and their families, either

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<sup>1</sup> American Forces Information Service at [http://www.defenselink.mil/specials/Relief\\_Act\\_Revision/history.html](http://www.defenselink.mil/specials/Relief_Act_Revision/history.html)

<sup>2</sup> Public Law 108-189, 50 U.S.C. App. ss. 501-596.

<sup>3</sup> Florida Statutes provide for state courts concurrent jurisdiction in s. 250.82, F.S.

<sup>4</sup> 38 U.S.C. ss. 4301- 4333.

<sup>5</sup> U. S. Office of Special Counsel at <http://www.osc.gov/userra.htm>

<sup>6</sup> Chapter 250 Part IV, F.S.

through printed or electronic means, that contains the rights and responsibilities of servicemembers set forth in Florida Statutes. In addition, the act requires that a document containing the rights and responsibilities of servicemembers be made available to state or local organizations affected by said rights. These organizations include but are not limited to:

- Motor vehicle dealers;
- Financial institutions and mortgage brokers;
- Telecommunications service companies;
- Residential tenancies;
- Real estate salespersons and brokers; and
- Members of The Florida Bar Association who serve on a military affairs-related committee.

### **III. Effect of Proposed Changes:**

CS/SB 206 updates references to the Uniform Code of Military Justice (UCMJ) to reflect the most current version of the code.

In addition, the bill amends s. 250.482, F.S., to clarify that members of the National Guard returning to work after serving on state active duty are entitled to seniority accrued prior to deployment, any additional seniority that would have been attained during the time of deployment, and any additional rights and benefits that would have accrued to the servicemember. The returning worker cannot be discharged from such employment except for cause. Employers may not require servicemembers to use annual, vacation, compensatory, or similar leave for periods of deployment, and must allow the returning servicemember to use accrued leave in a normal manner. The bill removes the one year employment requirement for eligibility for these protections.

CS/SB 206 amends s. 250.82, F.S., to clarify that state courts have concurrent jurisdiction, to the extent allowed by federal law, over all causes of action arising from federal law relating to members of the armed forces, reserves, and the National Guard.

In addition, the bill creates a provision for the award of a civil penalty of up to \$1,000 per violation plus attorney's fees and court costs resulting from any person's failure to comply with the requirements of ch. 250, F.S., including failure to comply with the provisions of federal law, SCRA and USERRA, that give servicemembers certain protections relating to civil actions.

The bill provides for an effective date of July 1, 2009.

#### **Other Potential Implications:**

Small business employers may have to hire temporary workers to fill in for active duty servicemembers. The removal of the one year employment requirement for eligibility may cause some small business employers to re-consider the cost effectiveness of employing National Guard members in short term or transient types of jobs.

Job protections provided in this committee substitute may cause additional persons to choose to join the National Guard.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Small business employers may have to hire temporary workers to fill in for active duty servicemembers. The removal of the one year employment requirement for eligibility may cause some small business employers to re-consider the cost effectiveness of employing National Guard members in short term or transient types of jobs.

Job protections provided in this committee substitute may cause additional persons to choose to join the National Guard.

This bill imposes liability for civil penalties of up to \$1,000 per violation plus attorney's fees and court costs on any person who has been found to have violated the rights of servicemembers as enumerated in ch. 250, F.S.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes****CS by Military Affairs and Domestic Security Committee on February 4, 2009:**

CS/SB 206 updates references to the Uniform Code of Military Justice (UCMJ) to reflect the most current version of the code.

In addition, the bill clarifies that members of the National Guard returning to work after serving on state active duty are entitled to seniority accrued prior to deployment, any additional seniority that would have been attained during the time of deployment, and any additional rights and benefits that would have accrued to the servicemember. The returning worker cannot be discharged from such employment except for cause. Employers may not require servicemembers to use annual, vacation, compensatory, or similar leave for periods of deployment, and must allow the returning servicemember to use accrued leave in a normal manner. The bill removes the one year employment requirement for eligibility for these protections.

**B. Amendments:**

None.