

By the Committee on Military Affairs and Domestic Security and  
Senators Justice and Deutch

583-01980-09

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1                   A bill to be entitled  
2           An act relating to military affairs; amending s.  
3           250.35, F.S.; clarifying and updating references with  
4           respect to courts-martial; amending s. 250.482, F.S.;  
5           revising applicability of provisions with respect to  
6           immunity from penalization for National Guard members  
7           ordered into state active duty by employers; providing  
8           for entitlement to seniority and other rights and  
9           benefits for National Guard members returning to work  
10          following state active duty; providing that such  
11          members may not be discharged from employment except  
12          for cause; providing rights and requirements with  
13          respect to use of vacation and leave by such members;  
14          removing a limitation with respect to the right of an  
15          employee ordered into state active duty to bring a  
16          civil action for a specified violation by an employer;  
17          amending s. 250.82, F.S.; clarifying provisions;  
18          providing for the imposition of a civil penalty for  
19          specified noncompliance with any duty imposed under  
20          ch. 250, F.S., or with other specified provisions of  
21          state law which afford protections to members of the  
22          United States Armed Forces, the United States Reserve  
23          Forces, and the National Guard; providing for  
24          attorney's fees and court costs; providing an  
25          effective date.

26  
27   Be It Enacted by the Legislature of the State of Florida:

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29          Section 1. Subsections (1) and (2) of section 250.35,

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30 Florida Statutes, are amended to read:

31 250.35 Courts-martial.—

32 (1) The Uniform Code of Military Justice (UCMJ), 10 U.S.C.  
33 ss. 801 et seq., and the Manual for Courts-Martial (2008 ~~2002~~  
34 Edition) are adopted for use by the Florida National Guard,  
35 except as otherwise provided by this chapter.

36 (2) Courts-martial may try any member of the Florida  
37 National Guard for any crime or offense made punishable by the  
38 Uniform Code of Military Justice (2008 ~~2002~~ Edition), except  
39 that a commissioned officer, warrant officer, or cadet may not  
40 be tried by summary courts-martial.

41 Section 2. Section 250.482, Florida Statutes, is amended to  
42 read:

43 250.482 Troops ordered into state active service; not to be  
44 penalized by employers and postsecondary institutions.—

45 (1) If a member of the ~~Florida~~ National Guard is ordered  
46 into state active duty pursuant to this chapter, a private or  
47 public employer, or an employing or appointing authority of this  
48 state, its counties, school districts, municipalities, political  
49 subdivisions, career centers, community colleges, or  
50 universities, may not discharge, reprimand, or in any other way  
51 penalize such member because of his or her absence by reason of  
52 state active duty.

53 (a) A member of the National Guard who returns to work  
54 after serving on state active duty is entitled to:

55 1. The seniority that the member had at his or her place of  
56 employment on the date of the commencement of his or her state  
57 active duty and any other rights and benefits that inure to the  
58 member as a result of such seniority; and

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59       2. Any additional seniority that the member would have  
60 attained at his or her place of employment if he or she had  
61 remained continuously employed and the rights and benefits that  
62 inure to the member as a result of such seniority.

63       (b) A member of the National Guard who returns to work  
64 after serving on state active duty may not be discharged from  
65 such employment, except for cause.

66       (2) An employer may not require any National Guard member  
67 returning to employment following a period of state active duty  
68 service to use vacation, annual, compensatory, or similar leave  
69 for the period during which the member was ordered into state  
70 active duty. However, any such returning member shall, upon his  
71 or her request, be permitted to use, for the period during which  
72 the member was ordered into state active duty, any vacation,  
73 annual, compensatory, or similar leave with pay accrued by the  
74 member prior to the commencement of his or her state active duty  
75 service.

76       (3)(2) If the Adjutant General certifies that there is  
77 probable cause to believe there has been a violation of this  
78 section, an employee ~~who has been employed for a period of at~~  
79 ~~least 1 year prior to being~~ ordered into state active duty so  
80 injured by a violation of this section may bring civil action  
81 against an employer violating this section in a court of  
82 competent jurisdiction of the county in which the alleged  
83 violator resides or has his or her principal place of business,  
84 or in the county wherein the alleged violation occurred. Upon  
85 adverse adjudication, the defendant is liable for actual damages  
86 or \$500, whichever is greater. The prevailing party in any  
87 litigation proceedings is entitled to recover reasonable

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88 attorney's fees and court costs.

89 (4)~~(3)~~ The certification of probable cause may not be  
90 issued until the Adjutant General, or his or her designee, has  
91 investigated the issues. All employers and other personnel  
92 involved with the issues of such investigation must cooperate  
93 with the Adjutant General in the investigation.

94 Section 3. Section 250.82, Florida Statutes, is amended to  
95 read:

96 250.82 Applicability of state and federal law.—

97 (1) Florida law provides certain protections to members of  
98 the United States Armed Forces, the United States Reserve  
99 Forces, and the ~~Florida~~ National Guard in various legal  
100 proceedings and contractual relationships. In addition to these  
101 state provisions, federal law also contains protections, such as  
102 those provided in the Servicemembers Civil Relief Act (SCRA),  
103 Title 50, Appendix U.S.C. ss. 501 et seq., and the Uniformed  
104 Services Employment and Reemployment Rights Act (USERRA), Title  
105 38 United States Code, chapter 43, that are applicable to  
106 members in every state even though such provisions are not  
107 specifically identified under state law.

108 (2) To the extent allowed by federal law, the state courts  
109 ~~shall~~ have concurrent jurisdiction for enforcement over all  
110 causes of action arising from ~~the provisions of~~ federal law and  
111 may award a remedy as provided therein.

112 (3) In addition to any other penalty provided by law, a  
113 person is liable for a civil penalty of up to \$1,000 per  
114 violation, plus attorney's fees and court courts, if that person  
115 in any legal proceeding, contractual relationship, or any other  
116 manner:

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117       (a) Knowingly omits, neglects, or refuses to comply with  
118 any duty imposed upon him or her;

119       (b) Knowingly omits, neglects, or refuses to do or cause to  
120 be done any of the things required; or

121       (c) Commits any act prohibited

122

123 by this chapter or any other provision of state law which  
124 affords protections to members of the United States Armed  
125 Forces, the United States Reserve Forces, and the National  
126 Guard.

127       Section 4. This act shall take effect July 1, 2009.