

By the Committees on Judiciary; and Military Affairs and
Domestic Security; and Senators Justice and Deutch

590-02378-09

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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; requiring
8 National Guard members to notify employers of intent
9 to return to work; providing exceptions under which
10 employers are not required to allow such members to
11 return to work; providing for entitlement to seniority
12 and other rights and benefits for National Guard
13 members returning to work following state active duty;
14 providing that such members may not be discharged from
15 employment except for cause; providing rights and
16 requirements with respect to use of vacation and leave
17 by such members; removing a limitation with respect to
18 the right of an employee ordered into state active
19 duty to bring a civil action for a specified violation
20 by an employer; amending s. 250.82, F.S.; clarifying
21 provisions; creating s. 250.905, F.S.; providing for
22 the imposition of a civil penalty for specified
23 noncompliance with specified provisions of ch. 250,
24 F.S., or with other specified provisions of federal
25 law; providing an effective date.

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

28
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 (2) (a) Upon the completion of state active duty, a member
54 of the National Guard shall promptly notify the employer of his
55 or her intent to return to work.

56 (b) An employer is not required to allow a member of the
57 National Guard to return to work under this section if:

58 1. The employer's circumstances have so changed as to make

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59 employment impossible or unreasonable;

60 2. Employment would impose an undue hardship on the
61 employer;

62 3. The employment from which the member of the National
63 Guard leaves to serve in state active duty is for a brief,
64 nonrecurrent period and there is no reasonable expectation that
65 such employment will continue indefinitely or for a significant
66 period; or

67 4. The employer had legally sufficient cause to terminate
68 the member of the National Guard at the time he or she left for
69 state active duty.

70
71 The employer has the burden of proving the impossibility or
72 unreasonableness, undue hardship, the brief or nonrecurrent
73 nature of the employment without a reasonable expectation of
74 continuing indefinitely or for a significant period, or the
75 legally sufficient cause to terminate the person at the time he
76 or she left for state active duty.

77 (c) A member of the National Guard who returns to work
78 after serving on state active duty is entitled to:

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

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

87 (d) A member of the National Guard who returns to work

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88 after serving on state active duty may not be discharged from
89 such employment for a period of 1 year after the date the member
90 returns to work, except for cause.

91 (e) An employer may not require any National Guard member
92 returning to employment following a period of state active duty
93 service to use vacation, annual, compensatory, or similar leave
94 for the period during which the member was ordered into state
95 active duty. However, any such returning member shall, upon his
96 or her request, be permitted to use, for the period during which
97 the member was ordered into state active duty, any vacation,
98 annual, compensatory, or similar leave with pay accrued by the
99 member prior to the commencement of his or her state active duty
100 service.

101 (3)~~(2)~~ If the Adjutant General certifies that there is
102 probable cause to believe there has been a violation of this
103 section, an employee ~~who has been employed for a period of at~~
104 ~~least 1 year prior to being~~ ordered into state active duty so
105 injured by a violation of this section may bring civil action
106 against an employer violating this section in a court of
107 competent jurisdiction of the county in which the alleged
108 violator resides or has his or her principal place of business,
109 or in the county wherein the alleged violation occurred. Upon
110 adverse adjudication, the defendant is liable for actual damages
111 or \$500, whichever is greater. The prevailing party in any
112 litigation proceedings is entitled to recover reasonable
113 attorney's fees and court costs.

114 (4)~~(3)~~ The certification of probable cause may not be
115 issued until the Adjutant General, or his or her designee, has
116 investigated the issues. All employers and other personnel

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117 involved with the issues of such investigation must cooperate
118 with the Adjutant General in the investigation.

119 Section 3. Section 250.82, Florida Statutes, is amended to
120 read:

121 250.82 Applicability of state and federal law.—

122 (1) Florida law provides certain protections to members of
123 the United States Armed Forces, the United States Reserve
124 Forces, and the ~~Florida~~ National Guard in various legal
125 proceedings and contractual relationships. In addition to these
126 state provisions, federal law also contains protections, such as
127 those provided in the Servicemembers Civil Relief Act (SCRA),
128 Title 50, Appendix U.S.C. ss. 501 et seq., and the Uniformed
129 Services Employment and Reemployment Rights Act (USERRA), Title
130 38 United States Code, chapter 43, that are applicable to
131 members in every state even though such provisions are not
132 specifically identified under state law.

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

137 Section 4. Section 250.905, Florida Statutes, is created to
138 read:

139 250.905 Penalty.—In addition to any other relief or penalty
140 provided by state or federal law, a person is liable for a civil
141 penalty of not more than \$1,000 per violation if that person
142 violates any provision of this chapter affording protections to
143 members of the United States Armed Forces, the United States
144 Reserve Forces, or the National Guard or any provision of
145 federal law affording protections to such servicemembers over

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146 which a state court has concurrent jurisdiction under s. 250.82.

147 Section 5. This act shall take effect July 1, 2009.