

HB 635

2009

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

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27 Section 1. Subsections (1) and (2) of section 250.35,  
28 Florida Statutes, are amended to read:

29 | 250.35 Courts-martial.--

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

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

39 | Section 2. Section 250.482, Florida Statutes, is amended  
 40 | to read:

41 | 250.482 Troops ordered into state active service; not to  
 42 | be penalized by employers and postsecondary institutions.--

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

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

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

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

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

64        (2) No employer may require any National Guard member  
65 returning to employment following a period of state active duty  
66 service to use vacation, annual, compensatory, or similar leave  
67 for the period during which the member was ordered into state  
68 active duty. However, any such returning member shall, upon his  
69 or her request, be permitted to use, for the period during which  
70 the member was ordered into state active duty, any vacation,  
71 annual, compensatory, or similar leave with pay accrued by the  
72 member prior to the commencement of his or her state active duty  
73 service.

74        (3)~~(2)~~ If the Adjutant General certifies that there is  
75 probable cause to believe there has been a violation of this  
76 section, an employee ~~who has been employed for a period of at~~  
77 ~~least 1 year prior to being~~ ordered into state active duty so  
78 injured by a violation of this section may bring civil action  
79 against an employer violating this section in a court of  
80 competent jurisdiction of the county in which the alleged  
81 violator resides or has his or her principal place of business,  
82 or in the county wherein the alleged violation occurred. Upon  
83 adverse adjudication, the defendant is liable for actual damages  
84 or \$500, whichever is greater. The prevailing party in any

85 litigation proceedings is entitled to recover reasonable  
 86 attorney's fees and court costs.

87 (4)~~(3)~~ The certification of probable cause may not be  
 88 issued until the Adjutant General, or his or her designee, has  
 89 investigated the issues. All employers and other personnel  
 90 involved with the issues of such investigation must cooperate  
 91 with the Adjutant General in the investigation.

92 Section 3. Section 250.82, Florida Statutes, is amended to  
 93 read:

94 250.82 Applicability of state and federal law.--

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

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

110 (3) Any person who:

111 (a) Knowingly omits, neglects, or refuses to comply with  
 112 any duty imposed upon him or her by;

HB 635

2009

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

115 (c) Commits any act prohibited by

116

117 this chapter or any other provision of the Florida Statutes that  
118 affords protections to members of the United States Armed  
119 Forces, the United States Reserve Forces, and the National Guard  
120 in any legal proceeding, contractual relationship, or in any  
121 other manner, in addition to any other penalty provided by law,  
122 is liable for a civil penalty of up to \$1,000 per violation,  
123 attorney's fees, and court costs.

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