

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

24  
25   Be It Enacted by the Legislature of the State of Florida:  
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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 (2) (a) Upon the completion of state active duty, a member  
 52 of the National Guard shall promptly notify the employer of his  
 53 or her intent to return to work.

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

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

57 employment impossible or unreasonable;

58 2. Employment would impose an undue hardship on the  
59 employer;

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

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

68  
69 The employer has the burden of proving the impossibility or  
70 unreasonableness, undue hardship, the brief or nonrecurrent  
71 nature of the employment without a reasonable expectation of  
72 continuing indefinitely or for a significant period, or the  
73 legally sufficient cause to terminate the person at the time he  
74 or she left for state active duty.

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

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

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

85        (d) A member of the National Guard who returns to work  
86 after serving on state active duty may not be discharged from  
87 such employment for a period of 1 year after the date the member  
88 returns to work, except for cause.

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

99        (3)~~(2)~~ If the Adjutant General certifies that there is  
100 probable cause to believe there has been a violation of this  
101 section, an employee ~~who has been employed for a period of at~~  
102 ~~least 1 year prior to being~~ ordered into state active duty so  
103 injured by a violation of this section may bring civil action  
104 against an employer violating this section in a court of  
105 competent jurisdiction of the county in which the alleged  
106 violator resides or has his or her principal place of business,  
107 or in the county wherein the alleged violation occurred. Upon  
108 adverse adjudication, the defendant is liable for actual damages  
109 or \$500, whichever is greater. The prevailing party in any  
110 litigation proceedings is entitled to recover reasonable  
111 attorney's fees and court costs.

112        (4)~~(3)~~ The certification of probable cause may not be

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113 | issued until the Adjutant General, or his or her designee, has  
 114 | investigated the issues. All employers and other personnel  
 115 | involved with the issues of such investigation must cooperate  
 116 | with the Adjutant General in the investigation.

117 |       Section 3. Section 250.82, Florida Statutes, is amended to  
 118 | read:

119 |           250.82 Applicability of state and federal law.--

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

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

135 |       Section 4. Section 250.905, Florida Statutes, is created to  
 136 | read:

137 |           250.905 Penalty.--In addition to any other relief or  
 138 | penalty provided by state or federal law, a person is liable for  
 139 | a civil penalty of not more than \$1,000 per violation if that  
 140 | person violates any provision of this chapter affording

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141 | protections to members of the United States Armed Forces, the  
142 | United States Reserve Forces, or the National Guard or any  
143 | provision of federal law affording protections to such  
144 | servicemembers over which a state court has concurrent  
145 | jurisdiction under s. 250.82.

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