

ENROLLED
CS/HB 635

2009 Legislature

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:

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

Page 1 of 6

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0635-02-er

ENROLLED
CS/HB 635

2009 Legislature

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

ENROLLED
CS/HB 635

2009 Legislature

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.

ENROLLED
CS/HB 635

2009 Legislature

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

ENROLLED
CS/HB 635

2009 Legislature

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

ENROLLED

CS/HB 635

2009 Legislature

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.