

Committee Substitute for House Bill No. 635

An act relating to military affairs; amending s. 250.35, F.S.; clarifying and updating references with respect to courts-martial; amending s. 250.482, F.S.; revising applicability of provisions with respect to immunity from penalization for National Guard members ordered into state active duty by employers; requiring National Guard members to notify employers of intent to return to work; providing exceptions under which employers are not required to allow such members to return to work; providing for entitlement to seniority and other rights and benefits for National Guard members returning to work following state active duty; providing that such members may not be discharged from employment except for cause; providing rights and requirements with respect to use of vacation and leave by such members; removing a limitation with respect to the right of an employee ordered into state active duty to bring a civil action for a specified violation by an employer; amending s. 250.82, F.S.; clarifying provisions; creating s. 250.905, F.S.; providing for the imposition of a civil penalty for specified noncompliance with specified provisions of ch. 250, F.S., or with other specified provisions of federal law; providing an effective date.

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

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

250.35 Courts-martial.—

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

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

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

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

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

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

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

1. The employer's circumstances have so changed as to make employment impossible or unreasonable;

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

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

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

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

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

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

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

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

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

(3)(2) If the Adjutant General certifies that there is probable cause to believe there has been a violation of this section, an employee ~~who has been~~

employed for a period of at least 1 year prior to being ordered into state active duty so injured by a violation of this section may bring civil action against an employer violating this section in a court of competent jurisdiction of the county in which the alleged violator resides or has his or her principal place of business, or in the county wherein the alleged violation occurred. Upon adverse adjudication, the defendant is liable for actual damages or \$500, whichever is greater. The prevailing party in any litigation proceedings is entitled to recover reasonable attorney's fees and court costs.

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

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

250.82 Applicability of state and federal law.—

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

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

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

250.905 Penalty.—In addition to any other relief or penalty provided by state or federal law, a person is liable for a civil penalty of not more than \$1,000 per violation if that person violates any provision of this chapter affording protections to members of the United States Armed Forces, the United States Reserve Forces, or the National Guard or any provision of federal law affording protections to such servicemembers over which a state court has concurrent jurisdiction under s. 250.82.

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

Approved by the Governor June 1, 2009.

Filed in Office Secretary of State June 4, 2009.