

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

FILED SENATE
Mar 28, 2019
S.B. 420
PRINCIPAL CLERK

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SENATE BILL DRS15212-MU-20A

Short Title: NC Servicemembers Civil Relief Act. (Public)

Sponsors: Senators Britt and Daniel (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA SERVICEMEMBERS CIVIL RELIEF ACT
3 AND TO CLARIFY THAT NO MEMBER OF THE NORTH CAROLINA NATIONAL
4 GUARD SHALL BE FORCED TO USE ANY VACATION OR OTHER LEAVE FROM
5 HIS OR HER CIVILIAN EMPLOYMENT FOR A PERIOD OF ACTIVE SERVICE.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. NORTH CAROLINA SERVICEMEMBERS CIVIL RELIEF ACT**

9 **SECTION 1.(a)** Chapter 127B of the General Statutes is amended by adding a new
10 Article to read:

11 "Article 4.

12 "North Carolina Servicemembers Civil Relief Act.

13 **"§ 127B-25. Title.**

14 This Article may be cited as the North Carolina Servicemembers Civil Relief Act.

15 **"§ 127B-26. Purpose.**

16 This Article is intended to incorporate into State law the rights, benefits, and protections of
17 the federal Servicemembers Civil Relief Act, Chapter 50 of Title 50 of the United States Code,
18 and to extend those rights, benefits, and protections to members of the North Carolina National
19 Guard serving on State active duty and to members of the National Guard of other states serving
20 on state active duty who reside in North Carolina. Nothing in this Article is a restriction or
21 limitation on any of the rights, benefits, and protections granted to a servicemember under federal
22 law.

23 **"§ 127B-27. Definitions.**

24 The following definitions apply in this Article:

- 25 (1) Dependent. – As defined in 50 U.S.C. § 3911(4).
26 (2) Military order. – Official military orders, or any notification, certification, or
27 verification from the servicemember's commanding officer, with respect to
28 the servicemember's current or future military service. In the case of a member
29 of the North Carolina National Guard, this term includes an order from the
30 Governor pursuant to Chapter 127A of the General Statutes, and, in the case
31 of a member of the National Guard of another state, this term includes an order
32 from the governor of that state.
33 (3) Military service. – Any of the following:
34 a. As defined in 50 U.S.C. § 3911(2).



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1 **b.** In the case of a member of the North Carolina National Guard, State
2 active duty under an order of the Governor pursuant to this Chapter,
3 for a period of more than 30 consecutive days.

4 **c.** In the case of a member of the National Guard of another state, service
5 under an order of the governor of that state that is similar to State active
6 duty, for a period of more than 30 consecutive days.

7 **(4)** Servicemember. – Any of the following:

8 **a.** A servicemember, as defined in 50 U.S.C. § 3911(1), who resides in
9 this State.

10 **b.** A member of the North Carolina National Guard.

11 **"§ 127B-28. Incorporation and expansion of federal Servicemembers Civil Relief Act; copy**
12 **of military order.**

13 **(a)** The rights, benefits, and protections of the federal Servicemembers Civil Relief Act,
14 Chapter 50 of Title 50 of the United States Code, apply to a servicemember engaged in military
15 service to the extent the servicemember's military service materially affects the servicemember's
16 ability to comply with his or her obligations.

17 **(b)** In the case of a servicemember engaged in military service under G.S. 127B-27(3)b.
18 or c., a person is not subject to the remedies or penalties of this Article unless the servicemember
19 gives to the person a written or electronic copy of the military order no later than 30 days after
20 the military service terminates.

21 **(c)** To the extent this section conflicts with another section in this Article, the other
22 section controls.

23 **(d)** A violation of the federal Servicemembers Civil Relief Act, as expanded by this
24 section, is a violation of this Article.

25 **"§ 127B-29. Dependent's rights and protections.**

26 A dependent of a servicemember engaged in military service has the same rights and
27 protections provided to a servicemember under G.S. 127B-30 and under Subchapter II of Chapter
28 50 of Title 50 of the United States Code.

29 **"§ 127B-30. Termination of contract upon receipt of military order; requirements.**

30 **(a)** It is the policy of this State that servicemembers who have entered into certain service
31 contracts and who later receive military orders to relocate to a location that does not support those
32 contracts should not be penalized for terminating those contracts.

33 **(b)** Termination of Contract. – In addition to the rights and protections regarding
34 consumer transactions, contracts, and service providers provided to a servicemember under
35 Subchapter III of Chapter 50 of Title 50 of the United States Code, a servicemember may
36 terminate a contract described in subsection (c) of this section if the servicemember receives a
37 military order to relocate for a period of military service of at least 90 days to a location that does
38 not support the contract.

39 **(c)** Applicability. – This section applies to a prepaid entertainment contract as defined in
40 G.S. 66-118. This section also applies to a contract to provide any of the following services:

41 **(1)** Telecommunication service.

42 **(2)** Internet service.

43 **(3)** Television service.

44 **(4)** Satellite radio service.

45 **(d)** Notices. – A servicemember shall give to the service provider under the contract
46 written or electronic notice of the termination and a written or electronic copy of the military
47 order. If a servicemember terminates a contract, the service provider shall give to the
48 servicemember written or electronic notice of the servicemember's rights posted on the North
49 Carolina National Guard's Web site pursuant to G.S. 127A-65.

50 **(e)** No Early Termination Charge. – For any contract terminated under this section, the
51 service provider shall not impose an early termination charge.

1 (f) Refund. – Not later than 60 days after the termination date of the contract, the service
2 provider shall refund to the servicemember any fee paid for a service that extends beyond the
3 termination date of the contract.

4 (g) Unpaid Obligation. – Any tax, liability, or other obligation due and unpaid at the time
5 of the termination remains the obligation of the servicemember.

6 (h) Resubscription. – If the servicemember resubscribes to the service provided under the
7 contract, the service provider shall not impose any charge or fee other than the usual and
8 customary charges and fees for the installation or acquisition of customer equipment imposed on
9 any other subscriber.

10 "**§ 127B-31. Reserved.**

11 "**§ 127B-32. Eviction; penalty or fee; extension of lease.**

12 (a) A servicemember shall not be evicted from the servicemember's residence while the
13 servicemember is engaged in military service or within 14 days after the military service
14 terminates. If the servicemember's military service prevents the servicemember from removing
15 the servicemember's possessions from the residence, the servicemember is not liable for any
16 penalty or fee arising from the servicemember's failure to vacate the residence.

17 (b) If a servicemember has a lease agreement on the servicemember's residence and the
18 lease agreement expires while the servicemember is engaged in military service, the
19 servicemember is entitled to extend the lease agreement to terminate 10 days after the
20 servicemember's military service terminates. The terms of the lease agreement during this period
21 of extension shall be the same terms that applied during the month before the expiration.

22 "**§ 127B-33. No waiver.**

23 This Article supersedes any agreement that reduces, limits, or eliminates any right or benefit
24 provided by this Article.

25 "**§ 127B-34. Violation is unfair or deceptive trade practice.**

26 A violation of this Article is an unfair or deceptive trade practice for purposes of Chapter 75
27 of the General Statutes.

28 "**§ 127B-35. Action by Attorney General.**

29 (a) Civil Action. – The Attorney General may commence a civil action against any person
30 that violates any provision of this Article.

31 (b) Remedies. – The court may order any of the following remedies:

32 (1) Injunction.

33 (2) Payment of restitution to a servicemember in the amount of money unlawfully
34 received from, or required to be refunded to, the servicemember.

35 (3) Any other remedy provided under Chapter 75 of the General Statutes.

36 (c) Civil Penalty. – The court may assess a civil penalty not to exceed five thousand
37 dollars (\$5,000) per violation. The clear proceeds of civil penalties imposed pursuant to this
38 section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with
39 G.S. 115C-457.2.

40 "**§ 127B-36. Private right of action.**

41 (a) Civil Action. – A servicemember aggrieved by a person's violation of any provision
42 of this Article may commence a civil action against that person.

43 (b) Remedies. – The court may order any of the following remedies:

44 (1) Injunction.

45 (2) Payment of restitution to a servicemember in the amount of money unlawfully
46 received from, or required to be refunded to, the servicemember.

47 (3) Damages.

48 (4) Any other remedy provided under Chapter 75 of the General Statutes.

49 (c) Costs. – A servicemember who prevails in an action under this section may recover
50 attorneys' fees and court costs."

1 **SECTION 1.(b)** G.S. 127A-41.1 is recodified as G.S. 127B-31 and reads as
2 rewritten:

3 **"§ 127B-31. Stay of legal and court proceedings because of State military service.**

4 (a) ~~At any stage of any legal proceeding in any court in which a person called into service~~
5 ~~of the State by the Governor is involved, either as plaintiff or defendant, during the period of~~
6 ~~service or within 60 days after the conclusion of the period of active service, all actions and~~
7 ~~proceedings:~~ civil action or proceeding in which a servicemember engaged in military service is
8 a party, the court may stay the action or proceeding on its own motion and shall stay the action
9 or proceeding on application by the servicemember, or by a person acting on behalf of the
10 servicemember, unless the court finds that the ability of the servicemember to litigate is not
11 materially affected by his or her military service.

12 (1) ~~May be stayed by the court on its own motion; or~~

13 (2) ~~Shall be stayed on application by the member or by a person acting on behalf~~
14 ~~of the member, unless, in the opinion of the court, the ability of the plaintiff~~
15 ~~to prosecute the action or the defendant to conduct a defense is not materially~~
16 ~~affected by reason of the military service.~~

17 (b) This section applies during the servicemember's military service and within 60 days
18 after the military service terminates."

19 **SECTION 1.(c)** Article 3 of Chapter 127A of the General Statutes is amended by
20 adding a new section to read:

21 **"§ 127A-65. List of rights; posting.**

22 The North Carolina National Guard shall post on its Web site a list of the rights a
23 servicemember or a dependent of a servicemember has under the North Carolina
24 Servicemembers Civil Relief Act and under the federal Servicemembers Civil Relief Act,
25 Chapter 50 of Title 50 of the United States Code."

26 **SECTION 1.(d)** This section becomes effective October 1, 2019, and applies to
27 contracts entered into, renewed, or modified on or after that date.

28
29 **PART II. CLARIFY USE OF CIVILIAN LEAVE**

30 **SECTION 2.(a)** G.S. 127A-111 reads as rewritten:

31 **"§ 127A-111. Civilian leave option.**

32 (a) A member of the North Carolina National Guard called into service of the State by
33 the Governor ~~shall have~~ has the right to take leave without pay from his or her civilian
34 employment. No member of the North Carolina National Guard shall be forced to use ~~or exhaust~~
35 any of his or her vacation or other accrued leaves from his or her civilian employment for a period
36 of active service. The choice of leave ~~shall be~~ is solely within the discretion of the member.

37 (b) The Commissioner of Labor shall enforce the provisions of this section pursuant to
38 Chapter 95 of the General Statutes."

39 **SECTION 2.(b)** This section is effective when it becomes law.

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41 **PART III. EFFECTIVE DATE**

42 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes
43 law.