

1 AN ACT in relation to military affairs.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Military Code of Illinois is amended by
5 adding Article V-A and changing the heading of Article VII as
6 follows:

7 (20 ILCS 1805/Art. V-A heading new)

8 ARTICLE V-A. NATIONAL GUARD EMPLOYMENT RIGHTS

9 (20 ILCS 1805/30.1 new)

10 Sec. 30.1. Article short title. This Article may be
11 cited as the Illinois National Guard Employment Rights Law.

12 (20 ILCS 1805/30.5 new)

13 Sec. 30.5. Public policy. As a guide to the
14 interpretation and application of this Article, the public
15 policy of the State is declared as follows:

16 The United States has provided for the reemployment
17 rights of members of the Reserve Components of the armed
18 forces, and of the National Guard of the states, while
19 serving in duty or training statuses pursuant to Title 10 or
20 32 of the United States Code, by enacting the Uniformed
21 Services Employment and Reemployment Rights Act, codified at
22 Title 38, United States Code, Chapter 43. The Uniformed
23 Services Employment and Reemployment Rights Act, however,
24 does not provide any such protection to members of the
25 National Guard serving the states, including the State of
26 Illinois, in a State Active Duty status pursuant to orders of
27 the Governor.

28 The United States has also provided relief from certain
29 civil obligations for personnel of the United States armed

1 forces serving on federal active duty under Title 10 of the
 2 United States Code, by enacting the Soldiers' and Sailors'
 3 Civil Relief Act of 1940, codified at Title 50 Appendix,
 4 United States Code, Sections 501-591. Members of the National
 5 Guard serving other than in such a federal active duty status
 6 under Title 10 of the United States Code, however, are not
 7 subject to, nor do they receive the protections of, the
 8 Soldiers' and Sailors' Civil Relief Act of 1940.

9 As a constituent commonwealth of the United States, and
 10 in accordance with the constitutions of the United States and
 11 of the State of Illinois, the State of Illinois must provide
 12 for the defense of its citizens and territory against
 13 domestic and foreign threats, and the Illinois National Guard
 14 is an essential part of the State's ability to meet such
 15 threats. It is therefore declared to be the policy of the
 16 State of Illinois (i) to ensure the readiness of members of
 17 the National Guard to execute missions assigned by
 18 appropriate federal or State authorities by guaranteeing
 19 adequate protections of their right to return to civilian
 20 employment upon completion of State Active Duty and (ii) to
 21 grant members of the National Guard relief from certain civil
 22 obligations while performing periods of training or duty
 23 under Title 32 of the United States Code and State Active
 24 Duty.

25 (20 ILCS 1805/30.10 new)

26 Sec. 30.10. Definitions. In this Article:

27 "National Guard" has the definition provided by federal
 28 law at 10 U.S.C. 101(c).

29 "Illinois National Guard" has the definition provided in
 30 Sections 5 and 7 of this Code.

31 "Federal active duty under Title 10 of the United States
 32 Code" means active federal service of members of the National
 33 Guard pursuant to any provision of Chapter 1209 of Title 10

1 of the United States Code.

2 "Training or duty under Title 32 of the United States
3 Code" means active or inactive National Guard training or
4 duty performed pursuant to Chapter 5 of Title 32 of the
5 United States Code and pursuant to the orders of the
6 Governor.

7 "State Active Duty" means National Guard duty performed
8 in the active service of any state or United States territory
9 or commonwealth in accordance with that jurisdiction's laws
10 and pursuant to the orders of the Governor concerned. It does
11 not refer to active duty performed pursuant to Chapter 5 of
12 Title 32 of the United States Code and pursuant to the orders
13 of the Governor.

14 "Political subdivision" means any unit of local
15 government or school district.

16 (20 ILCS 1805/30.15 new)

17 Sec. 30.15. National Guard; State Active Duty;
18 reemployment rights.

19 (a) Any member of the National Guard ("a member")
20 employed by a private employer in the State of Illinois or by
21 the State of Illinois or any political subdivision of the
22 State whose absence from a position of employment is
23 necessitated by reason of being called to State Active Duty,
24 whether or not voluntary, shall be entitled to reemployment
25 rights and benefits and other employment benefits under this
26 Article if:

27 (1) the member (or an appropriate officer of the
28 National Guard in which the service is performed) has
29 given advance written or oral notice of the service, if
30 reasonably possible;

31 (2) the member reports to, or submits an
32 application for reemployment to, the employer in
33 accordance with the provisions of subsection (e); and

1 (3) the character of the member's service on State
2 Active Duty was honorable, under honorable conditions, or
3 otherwise characterized as satisfactory.

4 (b) No notice is required under subsection (a) if
5 precluded by military necessity, or if the giving of the
6 notice is not reasonably possible, under all relevant
7 circumstances. A written determination of military necessity
8 for the purposes of this subsection shall be made by the
9 Adjutant General of Illinois and shall not be subject to
10 judicial review.

11 (c) An employer is not required to reemploy a member
12 under this Section if:

13 (1) the employer's circumstances have so changed as
14 to make such reemployment impossible or unreasonable, or
15 if reemployment would impose an undue hardship on the
16 employer; or

17 (2) the employment from which the member leaves to
18 serve in the National Guard on State Active Duty is for a
19 brief, nonrecurrent period and there is no reasonable
20 expectation that the employment will continue
21 indefinitely or for a significant period.

22 (d) In any proceeding involving an issue of whether (i)
23 any reemployment referred to in subsection (c) is impossible
24 or unreasonable because of a change in an employer's
25 circumstances; (ii) any accommodation, training, or effort
26 referred to in subdivision (c)(1) would impose an undue
27 hardship on the employer; or (iii) the employment referred to
28 in subdivision (c)(2) is for a brief, nonrecurrent period and
29 there is no reasonable expectation that the employment will
30 continue indefinitely or for a significant period, the
31 employer has the burden of proving the impossibility or
32 unreasonableness, the undue hardship, or the brief or
33 nonrecurrent nature of the employment without a reasonable
34 expectation of continuing indefinitely or for a significant

1 period.

2 (e) Subject to subsection (f), a member referred to in
3 subsection (a) shall, upon completion of a period of State
4 Active Duty, notify the employer referred to in subsection
5 (a) of the member's intent to return to a position of
6 employment with the employer as follows:

7 (1) In the case of a member whose period of State
8 Active Duty was less than 31 days, by reporting to the
9 employer:

10 (A) not later than the beginning of the first
11 full regularly scheduled work period on the first
12 full calendar day following completion of the period
13 of State Active Duty and the expiration of 8 hours
14 after a period allowing for safe transportation of
15 the member from the place of that duty to the
16 member's residence; or

17 (B) as soon as possible after the expiration
18 of the 8-hour period referred to in paragraph (A),
19 if reporting within that period is impossible or
20 unreasonable through no fault of the member.

21 (2) In the case of a member whose period of State
22 Active Duty was more than 30 days but less than 180 days,
23 by submitting an application for reemployment with the
24 employer not less than 14 days after completion of the
25 period of State Active Duty, or if submitting the
26 application within that period is impossible or
27 unreasonable through no fault of the member, the next
28 full calendar day when submission of the application
29 becomes possible.

30 (3) In the case of a member whose period of State
31 Active Duty was 180 days or more, by submitting an
32 application for reemployment with the employer not later
33 than 90 days after completion of the period of service.

34 (f) A member who is hospitalized for, or convalescing

1 from, an illness or injury incurred in, or aggravated during,
 2 the performance of a period of State Active Duty shall, at
 3 the end of the period that is necessary for the member to
 4 recover from the illness or injury, report to the member's
 5 employer or submit an application for reemployment with the
 6 employer. The period of recovery shall not exceed 2 years,
 7 except that the 2-year period shall be extended by the
 8 minimum time required to accommodate the circumstances beyond
 9 the member's control which make reporting within the 2-year
 10 period impossible or unreasonable.

11 (g) A member who fails to report or apply for employment
 12 or reemployment within the appropriate period specified in
 13 this Section shall not automatically forfeit his or her
 14 rights and benefits under subsection (a), but shall be
 15 subject to the conduct rules, established policy, and general
 16 practices of the employer pertaining to explanations and
 17 discipline with respect to absence from scheduled work.

18 (h) A member who submits an application for reemployment
 19 in accordance with this Article shall, upon the request of
 20 the employer, provide to the employer documentation to
 21 establish that:

- 22 (1) the member's application is timely; and
- 23 (2) the character of the member's service was
 24 honorable, under honorable conditions, or otherwise
 25 satisfactory.

26 The failure of a member to provide documentation as
 27 prescribed in this subsection may not be the basis for
 28 denying reemployment if the failure occurs because the
 29 documentation does not exist or is not readily available at
 30 the time of the employer's request. If, after reemployment,
 31 documentation becomes available that establishes that the
 32 member does not meet one or more of the requirements in
 33 paragraph (1) or (2), the employer may terminate the member's
 34 employment in accordance with the conduct rules, established

1 policy, and general practices of the employer pertaining to
2 explanation and discipline with respect to absence from
3 scheduled work. An employer may not delay or attempt to
4 defeat a reemployment obligation by demanding documentation
5 that does not exist or is not then readily available.

6 (i) Except as otherwise provided by this subsection, a
7 member entitled to reemployment under this Article, upon
8 completion of a period of State Active Duty, shall be
9 promptly reemployed in the position of employment which he or
10 she left with the same increases in status, seniority, and
11 wages that were earned during his or her period of State
12 Active Duty by employees in like positions who were on the
13 job at the time the returning member entered State Active
14 Duty, or to a position of like seniority, status, and pay,
15 unless the employer's circumstances have so changed as to
16 make it impossible or unreasonable to do so.

17 If at the time of requesting reemployment, the member is
18 no longer physically, mentally, or otherwise qualified or
19 able to perform the duties of the position of employment
20 which he or she left due to disability acquired incident to
21 his or her service in State Active Duty, but is qualified and
22 able to perform the duties of any other position in the
23 employ of the employer, then the member shall be restored to
24 that other position, the duties of which he or she is
25 qualified and able to perform and that will provide him or
26 her with like seniority, status, and pay, or the nearest
27 approximation thereof consistent with the circumstances of
28 the case.

29 If a member enters State Active Duty and the position of
30 employment which he or she left is filled by one or more
31 employees who are also members of the National Guard and who
32 later enter State Active Duty, the members shall, upon
33 release from State Active Duty, be given preference in the
34 matter of reemployment in the order in which they entered

1 State Active Duty, and the employer shall not be required to
2 retain more than one of them in his or her employ.

3 (j) Except as otherwise provided in this Section, each
4 member in the employ of a private employer or of the State of
5 Illinois or a political subdivision of the State who, for the
6 purpose of entering State Active Duty, has left or leaves
7 that employment but who has been rejected for State Active
8 Duty for lack of proper qualifications, shall be restored by
9 the employer (i) to the position of employment which the
10 member left with the same seniority, status, and wage
11 increases that an employee who was employed in that position
12 at the time the member left to enter State Active Duty earned
13 during the time the member was absent from employment because
14 of his or her attempt to enter State Active Duty or (ii) to a
15 position of like seniority, status, and pay, provided that at
16 the time of the rejection for State Active Duty the member is
17 qualified to perform the duties of the position of employment
18 which he or she left and has made application for
19 reemployment within the time period specified in subsection
20 (e) after receiving official notice of the rejection for
21 State Active Duty.

22 (20 ILCS 1805/30.20 new)

23 Sec. 30.20. Reemployment; benefits.

24 (a) Any member of the National Guard who is reemployed
25 or seeks reemployment to a position of employment in
26 accordance with the provisions of this Article, shall be
27 considered as having been on furlough or leave of absence
28 during his or her State Active Duty and shall be so
29 reemployed without loss of seniority and shall be entitled to
30 participate in insurance or other benefits offered by the
31 employer pursuant to established rules and practices relating
32 to employees on furlough or leave of absence in effect with
33 the employer at the time the member entered State Active

1 Duty. The member shall not be discharged from the position
2 without cause within one year after reemployment.

3 (b) If an employer provides health insurance, an
4 exclusion or waiting period may not be imposed in connection
5 with coverage of a health or physical condition of a member
6 entitled to participate in that insurance under this Section,
7 or a health or physical condition of any other person who is
8 covered by the insurance by reason of the coverage of that
9 member, if: (i) the condition arose before or during that
10 member's period of State Active Duty; (ii) an exclusion or
11 waiting period would not have been imposed for the condition
12 during a period of coverage resulting from participation by
13 that member in the insurance; and (iii) the condition of that
14 member has not been determined to be service connected.

15 (20 ILCS 1805/30.25 new)

16 Sec. 30.25. Stay of prosecution. During and for a
17 period of 14 days after a period of training or duty in
18 excess of 29 days either under Title 32 of the United States
19 Code or under State Active Duty, a court having jurisdiction
20 over the enforcement of any civil obligation or liability,
21 the prosecution of any civil suit or proceeding, or the entry
22 or enforcement of any civil order, writ, judgment, or decree
23 may stay, postpone, or suspend the matter if the court
24 determines that a person's failure to meet the obligation is
25 the direct result of that period of training or duty. The
26 stay, postponement, or suspension of proceedings does not in
27 any way modify any condition, obligation, term, or liability
28 agreed upon or incurred by a person in military service
29 including but not limited to accrued interest, late fees, or
30 penalties. No stay, postponement, or suspension shall be
31 provided regarding any written agreement entered into, or
32 debt that is incurred, by the person during or after his or
33 her period of training or duty either under Title 32 of the

1 United States Code or under State Active Duty.

2 (20 ILCS 1805/30.30 new)

3 Sec. 30.30. School attendance and tuition. Any person
4 in federal active duty under Title 10 of the United States
5 Code, or in training or duty under Title 32 of the United
6 States Code, or in State Active Duty, pursuant to the orders
7 of the Governor has the right to receive a full monetary
8 credit or refund for funds paid to any Illinois public
9 university, college, or community college if the person is
10 placed into a period of military service with the State of
11 Illinois pursuant to the orders of the Governor and is unable
12 to attend the university or college for a period of 7 or more
13 days. Withdrawal from the course shall not impact upon the
14 final grade point average of the person. If any person who
15 has been enrolled in any Illinois public university, college,
16 or community college is unable to process his or her
17 enrollment for the upcoming term, he or she shall have any
18 and all late penalties and or charges set aside, including
19 any and all late processing fees for books, lab fees, and all
20 items that were not in place because the person was engaged
21 in military service and was unable to enroll in the courses
22 at the appropriate time. The rights set forth in this
23 Section are in addition to any rights afforded to persons in
24 military service with the State of Illinois pursuant to the
25 orders of the Governor under the policies of an Illinois
26 public university, college, or community college.

27 (20 ILCS 1805/Art. VII heading)

28 ARTICLE VII. SEPARATION THE-RETIRED-LIST

29 (20 ILCS 1805/33 rep.)

30 Section 10. The Military Code of Illinois is amended by
31 repealing Section 33.

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.