

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 249

(Delegate Smith, *et al.*)

Economic Matters

Education, Health, and Environmental Affairs

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Members of the National Guard - Employment and Reemployment Rights -  
Enforcement

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This bill authorizes a member of the Maryland National Guard whose employment and reemployment rights under specified State law have been violated to bring a civil action for economic damages including lost wages and benefits. The bill authorizes a court to award any economic damages to which the member of the National Guard may be entitled, reasonable counsel fees and other costs, and any other appropriate relief.

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Fiscal Summary

**State Effect:** None. The bill codifies existing practice.

**Local Effect:** None. The bill codifies existing practice.

**Small Business Effect:** None.

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Analysis

**Current Law/Background:** The Servicemembers Civil Relief Act (SCRA) (50 U.S.C. §§ 501 to 596), formally known as the Soldiers' and Sailors' Civil Relief Act, is a federal law that provides military members certain protections as they enter active duty and other protections while they are on active duty. It has been adopted into State law and becomes effective when members of the National Guard or Maryland Defense Force (MDDF) are ordered to military duty for 14 days or longer under the auspices of the Public Safety Article, or Title 10 or Title 32 of the U.S. Code. SCRA covers issues such as rental agreements, security deposits, prepaid rent, eviction, installment contracts, credit card

interest rates, mortgage interest rates, mortgage foreclosure, civil judicial proceedings, automobile leases, life insurance, health insurance, and income tax payments.

The Uniformed Services Employment and Reemployment Rights Act (USERRA) has also been adopted into State law and becomes effective when members of the National Guard or MDDF are ordered to military duty for any period of time under the auspices of the Public Safety Article, or Title 10 or Title 32 of the U.S. Code. USERRA applies to all employers, regardless of size, and provides protections, such as reemployment protection, for individuals who leave positions for active duty. According to the U.S. Department of Labor (DOL), under USERRA, a member has the right to be reemployed in his/her civilian job if he/she leaves that job to perform service in the uniformed services. The member (1) must ensure that his/her employer receives advance written or verbal notice of the service; (2) has five years or less of cumulative service in the uniformed services while with that particular employer; (3) returns to work or applies for reemployment in a timely manner after the service is concluded; and (4) has not been separated from service with a disqualifying discharge or under other than honorable conditions. If the member is eligible to be reemployed, the member must be restored to the job and benefits the member would have attained if he/she had not been absent due to military service or, in some cases, a comparable job.

Members who believe that they have been victims of an employment discrimination based on their military service may file a complaint with DOL or file their own lawsuit in federal or state court. Members can also seek the assistance of the Employer Support of the Guard and Reserve (ESGR). ESGR, a U.S. Department of Defense office, was established to promote cooperation and understanding between Reserve Component Service members and their civilian employers and to assist in the resolution of conflicts arising from an employee's military commitment. The program provides information, counseling, and informal mediation of issues relating to USERRA compliance.

The Maryland National Guard is made up of Army National Guard and Air National Guard units, which fall under MIL. MIL advises that there are approximately 6,000 members of the Maryland National Guard.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 557 (Senators Astle and Salling) - Education, Health, and Environmental Affairs.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Military Department, U.S. Department of Justice, U.S. Department of Labor, American Bar Association, Department of Legislative Services

**Fiscal Note History:** First Reader - January 29, 2016  
min/lgc Revised - House Third Reader - March 17, 2016

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