

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 281

(Chair, Education, Health, and Environmental Affairs
Committee)(By Request - Departmental - Military)

Education, Health, and Environmental Affairs

Health and Government Operations

**State Government - Members of the National Guard - Active Duty - Employment
Protection**

This departmental bill establishes that, when ordered to military duty for any period of time, the Uniformed Services Employment and Reemployment Rights Act (USERRA) applies to (1) members of the National Guard when ordered to military duty under specified State or federal law, whether or not the member is a resident of or employed in this State, and (2) residents of this State who are members of the National Guard in another state or the District of Columbia, when ordered to military duty by the chief executive officer of that jurisdiction or under specified federal law.

In addition, the bill repeals the application of the rights granted by federal law, including the Servicemembers Civil Relief Act (SCRA) and USERRA, to members of the Maryland Defense Force (MDDF).

Fiscal Summary

State Effect: Since it is assumed that this bill applies in a limited number of cases, State finances are not materially affected.

Local Effect: Since it is assumed that this bill applies in a limited number of cases, local government finances are not materially affected.

Small Business Effect: The Military Department (MIL) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Current Law: 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 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.

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, 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.

Background: MDDF was formally established by the General Assembly in 1917 and is a uniformed military agency of volunteers under the Adjutant General of Maryland and MIL. MDDF has the primary mission of providing competent supplemental professional, technical, and military support to the Maryland Army National Guard, the Maryland Air National Guard, and the Maryland Emergency Management Agency. MIL states that there are 396 members of MDDF and advises that MDDF members are volunteers that can be activated under the Public Safety Article but are never ordered to active duty under either Title 10 or Title 32 of the U.S. Code.

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.

USERRA does not have extraterritorial application; therefore, its protections do not extend to Maryland National Guard members who work out of state. Likewise, it does not protect members of other states' and the District of Columbia's National Guard who work in Maryland. Only a few states extend such protections to service members in another state. Montana included the phrase "the authority of the governor in any other state" within its definition of "state military duty" in order to extend the protections to its residents who serve in other states.

MIL advises that many service members join units of the military occupational specialties rather than by state of residence. According to MIL, approximately 20% of Maryland National Guard members live in other states. Given that Maryland is adjacent to four states and the District of Columbia, it is likely that Maryland residents have joined guard units in those jurisdictions.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management; Department of Labor, Licensing, and Regulation; Military Department; U.S. Department of Labor; Department of Legislative Services

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kb/lgc

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESS

TITLE OF BILL: National Guard - State Active Duty - Employment Protection

BILL NUMBER: SB 281

PREPARED BY: Military Department

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

 WILL HAVE MEANINGFUL ECONOMIC IMPACT OF MARYLAND SMALL BUSINESSES

PART B ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.