

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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SENATE BILL 420

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

Sponsors: Senators Britt and Daniel (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 1, 2019

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).



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.

40  
41 **PART III. EFFECTIVE DATE**

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