

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

**SENATE BILL 420
RATIFIED BILL**

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

The General Assembly of North Carolina enacts:

PART I. NORTH CAROLINA SERVICEMEMBERS CIVIL RELIEF ACT

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

"Article 4.

"North Carolina Servicemembers Civil Relief Act.

"§ 127B-25. Title.

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

"§ 127B-26. Purpose.

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

"§ 127B-27. Definitions.

The following definitions apply in this Article:

- (1) Dependent. – As defined in 50 U.S.C. § 3911(4).
- (2) Military order. – Official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military service. In the case of a member of the North Carolina National Guard, this term includes an order from the Governor pursuant to Chapter 127A of the General Statutes, and, in the case of a member of the National Guard of another state, this term includes an order from the governor of that state.
- (3) Military service. – Any of the following:
 - a. As defined in 50 U.S.C. § 3911(2).
 - b. In the case of a member of the North Carolina National Guard, State active duty under an order of the Governor pursuant to Chapter 127A of the General Statutes, for a period of more than 30 consecutive days.
 - c. In the case of a member of the National Guard of another state, service under an order of the governor of that state that is similar to State active duty, for a period of more than 30 consecutive days.
- (4) Servicemember. – Any of the following:



- a. A servicemember, as defined in 50 U.S.C. § 3911(1), who resides in this State.
- b. A member of the North Carolina National Guard.

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

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

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

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

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

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

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

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

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

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

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

- (1) Telecommunication service.
- (2) Internet service.
- (3) Television service.
- (4) Satellite radio service.

(d) Notices. – A servicemember shall give to the service provider under the contract written or electronic notice of the termination and a written or electronic copy of the military order. The notice shall state the effective date of the termination. If a servicemember terminates a contract, the service provider shall give to the servicemember written, electronic, or oral notice of the servicemember's rights.

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

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

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

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

"§ 127B-31. Reserved.

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

(a) If a servicemember who is a member of the North Carolina National Guard, or who is a member of the National Guard of another state who resides in this State, has a lease agreement on the servicemember's residence and the lease agreement expires while the servicemember is engaged, for any period of time, in State active duty or service under an order of the governor of another state that is similar to State active duty, the servicemember is entitled to extend the lease agreement to terminate 10 days after the servicemember's State active duty or service terminates upon providing written or electronic notice to the landlord or the landlord's representative. The terms of the lease agreement during this period of extension shall be the same terms that applied during the month before the expiration.

(b) This section applies only to servicemembers who are current on all rents and security deposits required and in good standing regarding the lease agreement. Nothing in this section relieves the servicemember of the obligation to pay rent, fees, dues, or other monies required in the lease agreement on time and in full.

"§ 127B-33. No waiver.

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

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

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

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

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

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

(1) Injunction.

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

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

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

"§ 127B-36. Private right of action.

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

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

(1) Injunction.

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

(3) Damages.

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

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

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

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

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

- (1) ~~May be stayed by the court on its own motion; or~~
- (2) ~~Shall be stayed on application by the member or by a person acting on behalf of the member, unless, in the opinion of the court, the ability of the plaintiff to prosecute the action or the defendant to conduct a defense is not materially affected by reason of the military service.~~

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

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

"§ 127A-65. List of rights; posting.

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

SECTION 1.(d) G.S. 42-45 reads as rewritten:

"§ 42-45. Early termination of rental agreement by military personnel, surviving family members, or lawful representative.

(a) ~~Any member of the Armed Forces of the United States, the Active Guard and Reserve under section 101 of Title 10 of the United States Code, or a military technician under section 10216 of Title 10 of the United States Code who (i) is required to move pursuant to permanent change of station orders to depart 50 miles or more from the location of the dwelling unit, or (ii) is prematurely or involuntarily discharged or released from active duty with the Armed Forces of the United States, may terminate the member's rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the member's commanding officer.~~

(a1) ~~Any member of the Armed Forces of the United States, the Active Guard and Reserve under section 101 of Title 10 of the United States Code, or a military technician under section 10216 of Title 10 of the United States Code who is deployed with a military unit for a period of not less than 90 days may terminate the member's rental agreement for a dwelling unit by providing the landlord with a written notice of termination. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the member's commanding officer. Termination of a lease pursuant to this subsection is effective 30 days after the first date on which the next rental payment is due or 45 days after the landlord's receipt of the notice, whichever is shorter, and payable after the date on which the notice of termination is delivered.~~

...

(a3) ~~If a member of the Armed Forces of the United States, the Active Guard and Reserve under section 101 of Title 10 of the United States Code, or a military technician under section 10216 of Title 10 of the United States Code dies while on active duty, then an immediate family member, or a lawful representative of the member's estate, may terminate the member's rental agreement for a dwelling unit by providing the landlord with a written notice of termination to~~

be effective on the date described in subsection (a1) of this section. A copy of the death certificate, official military personnel casualty report, or letter from the commanding officer verifying the member's death must accompany the notice for this subsection to be effective. Termination of the member's lease obligations under this subsection shall also terminate the lease obligations of any cotenants who are immediate family members. If the member was a cotenant with a person who is not an immediate family member, then the termination shall relate only to the obligation of the member under the rental agreement. The prorated charges in subsection (a2) of this section and the liquidated damages provisions of subsection (b) of this section shall apply to any claims against the member's estate.

...."

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

PART II. CLARIFY USE OF CIVILIAN LEAVE

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

"§ 127A-111. Civilian leave option.

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

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

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

PART III. EFFECTIVE DATE

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

In the General Assembly read three times and ratified this the 16th day of July, 2019.

s/ Ralph E. Hise
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Roy Cooper
Governor

Approved _____, m. this _____ day of _____, 2019