

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 Service Men's Employment Tenure Act is
5 amended by changing the title of the Act, by changing
6 Sections 1, 2, 3, 5, 5.1, and 5.2, and by adding Section 4.5
7 as follows:

8 (330 ILCS 60/Act title)

9 An Act in relation to the protection of the employment
10 status of persons in the Illinois National Guard ~~military-or~~
11 ~~naval-service-of-the-United-States-and-of-persons-seeking--to~~
12 ~~enter--such--military--or--naval--service--but--who-have-been~~
13 ~~rejected.~~

14 (330 ILCS 60/1) (from Ch. 126 1/2, par. 29)

15 Sec. 1. Short title. This Act ~~shall-be-known-and~~ may be
16 cited as the Illinois National Guard Service-Men's Employment
17 Rights Tenure Act.

18 (Source: Laws 1941, vol. 1, p. 1202.)

19 (330 ILCS 60/2) (from Ch. 126 1/2, par. 30)

20 Sec. 2. As a guide to the interpretation and application
21 of this Act, the public policy of the State is declared as
22 follows:

23 The United States has provided for the reemployment
24 rights of members of the Reserve Components of the armed
25 forces, and of the National Guard of the states, while
26 serving in duty or training statuses pursuant to Title 10 or
27 32 of the United States Code, by enacting the Uniformed
28 Services Employment and Reemployment Rights Act, codified at
29 Title 38, United States Code, Chapter 43. The Uniformed

1 Services Employment and Reemployment Rights Act, however,
2 does not provide any such protection to members of the
3 National Guard serving the states, including the State of
4 Illinois, in a State Active Duty status pursuant to orders of
5 the Governor.

6 The United States has also provided relief from certain
7 civil obligations for personnel of the United States armed
8 forces serving on federal active duty under Title 10 of the
9 United States Code, by enacting the Soldiers' and Sailors'
10 Civil Relief Act of 1940, codified at Title 50 Appendix,
11 United States Code, Sections 501-591. Members of the National
12 Guard serving other than in such a federal active duty status
13 under Title 10 of the United States Code, however, are not
14 subject to, nor do they receive the protections of, the
15 Soldiers' and Sailors' Civil Relief Act of 1940.

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

31 As-a-constituent-commonwealth-of--the--United--States--of
32 America,--the--State--of--Illinois-is-dedicated-to-the-urgent
33 task-of-strengthening-and--expediting--the--national--defense
34 under-the-emergent-conditions-which-are-threatening-the-peace

1 and security of this nation. It is the considered judgment of
 2 the General Assembly that the wage earners of Illinois who
 3 respond to their country's call to service in this time of
 4 crisis, are deserving of every protection of their employment
 5 status which the law may afford, and that repetition of the
 6 regrettable experience existing after the great war of
 7 1917-1918, wherein returning service men were subjected to
 8 serious discrimination with regard to tenure and other rights
 9 of employment, must be avoided, since any form of economic
 10 discrimination against returning service men is a serious
 11 menace to the entire social fabric of the United States of
 12 America and the State of Illinois.

13 By safeguarding the employment and the rights and
 14 privileges inhering in the employment contract, of service
 15 men, the State of Illinois encourages its workers to
 16 participate to the fullest extent in the national defense
 17 program and thereby heightens the contribution of our State
 18 to the protection of our heritage of liberty and democracy.

19 (Source: Laws 1941, vol. 1, p. 1202.)

20 (330 ILCS 60/3) (from Ch. 126 1/2, par. 31)

21 Sec. 3. Definitions. In this Act:

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

24 "Illinois National Guard" has the definition provided in
 25 Sections 5 and 7 of the Military Code of Illinois.

26 "Federal active duty under Title 10 of the United States
 27 Code" means active federal service of members of the National
 28 Guard pursuant to any provision of Chapter 1209 of Title 10
 29 of the United States Code.

30 "Training or duty under Title 32 of the United States
 31 Code" means active or inactive National Guard training or
 32 duty performed pursuant to Chapter 5 of Title 32 of the
 33 United States Code and pursuant to the orders of the

1 Governor.

2 "State Active Duty" means National Guard duty performed
3 in the active service of any state or United States territory
4 or commonwealth in accordance with that jurisdiction's laws
5 and pursuant to the orders of the Governor concerned. It does
6 not refer to active duty performed pursuant to Chapter 5 of
7 Title 32 of the United States Code and pursuant to the orders
8 of the Governor. The term "persons in the military service",
9 as used in this Act, shall include the following persons--and
10 no others:--All members of the Army of the United States, the
11 United States Navy, the Marine Corps, the Air Force, the
12 Coast Guard and all members of the State Militia called into
13 the service or training of the United States of America or of
14 this State. The term "military service", as used in this Act,
15 shall signify Federal service or active duty with any branch
16 of service heretofore referred to as well as training or
17 education under the supervision of the United States
18 preliminary to induction into the military service. The term
19 "military service" also includes any period of active duty
20 with the State of Illinois pursuant to the orders of the
21 Governor.

22 The foregoing definitions shall apply both to voluntary
23 enlistment and to induction into service by draft or
24 conscription.

25 The term "Political subdivision", as used in this Act,
26 means any unit of local government or school district.

27 (Source: P.A. 88-518.)

28 (330 ILCS 60/4.5 new)

29 Sec. 4.5. National Guard; State Active Duty;
30 reemployment rights.

31 (a) Any member of the National Guard ("a member")
32 employed by a private employer in the State of Illinois or by
33 the State of Illinois or any political subdivision of the

1 State whose absence from a position of employment is
2 necessitated by reason of being called to State Active Duty,
3 whether or not voluntary, shall be entitled to reemployment
4 rights and benefits and other employment benefits under this
5 Act if:

6 (1) the member (or an appropriate officer of the
7 National Guard in which the service is performed) has
8 given advance written or oral notice of the service, if
9 reasonably possible;

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

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

16 (b) No notice is required under subsection (a) if
17 precluded by military necessity, or if the giving of the
18 notice is not reasonably possible, under all relevant
19 circumstances. A written determination of military necessity
20 for the purposes of this subsection shall be made by the
21 Adjutant General of Illinois and shall not be subject to
22 judicial review.

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

25 (1) the employer's circumstances have so changed as
26 to make such reemployment impossible or unreasonable, or
27 if reemployment would impose an undue hardship on the
28 employer; or

29 (2) the employment from which the member leaves to
30 serve in the National Guard on State Active Duty is for a
31 brief, nonrecurrent period and there is no reasonable
32 expectation that the employment will continue
33 indefinitely or for a significant period.

34 (d) In any proceeding involving an issue of whether (i)

1 any reemployment referred to in subsection (c) is impossible
2 or unreasonable because of a change in an employer's
3 circumstances; (ii) any accommodation, training, or effort
4 referred to in subdivision (c)(1) would impose an undue
5 hardship on the employer; or (iii) the employment referred to
6 in subdivision (c)(2) is for a brief, nonrecurrent period and
7 there is no reasonable expectation that the employment will
8 continue indefinitely or for a significant period, the
9 employer has the burden of proving the impossibility or
10 unreasonableness, the undue hardship, or the brief or
11 nonrecurrent nature of the employment without a reasonable
12 expectation of continuing indefinitely or for a significant
13 period.

14 (e) Subject to subsection (f), a member referred to in
15 subsection (a) shall, upon completion of a period of State
16 Active Duty, notify the employer referred to in subsection
17 (a) of the member's intent to return to a position of
18 employment with the employer as follows:

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

22 (A) not later than the beginning of the first
23 full regularly scheduled work period on the first
24 full calendar day following completion of the period
25 of State Active Duty and the expiration of 8 hours
26 after a period allowing for safe transportation of
27 the member from the place of that duty to the
28 member's residence; or

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

33 (2) In the case of a person whose period of State
34 Active Duty was more than 30 days but less than 180 days,

1 by submitting an application for reemployment with the
2 employer not less than 14 days after completion of the
3 period of State Active Duty, or if submitting the
4 application within that period is impossible or
5 unreasonable through no fault of the member, the next
6 full calendar day when submission of the application
7 becomes possible.

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

12 (f) A member who is hospitalized for, or convalescing
13 from, an illness or injury incurred in, or aggravated during,
14 the performance of a period of State Active Duty shall, at
15 the end of the period that is necessary for the member to
16 recover from the illness or injury, report to the member's
17 employer or submit an application for reemployment with the
18 employer. The period of recovery shall not exceed 2 years,
19 except that the 2-year period shall be extended by the
20 minimum time required to accommodate the circumstances beyond
21 the member's control which make reporting within the 2-year
22 period impossible or unreasonable.

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

30 (h) A member who submits an application for reemployment
31 in accordance with this Act shall, upon the request of the
32 employer, provide to the employer documentation to establish
33 that:

34 (1) the member's application is timely; and

1 (2) the character of the member's service was
2 honorable, under honorable conditions, or otherwise
3 satisfactory.

4 The failure of a member to provide documentation as
5 prescribed in this subsection may not be the basis for
6 denying reemployment if the failure occurs because the
7 documentation does not exist or is not readily available at
8 the time of the employer's request. If, after reemployment,
9 documentation becomes available that establishes that the
10 member does not meet one or more of the requirements in
11 paragraph (1) or (2), the employer may terminate the member's
12 employment in accordance with the conduct rules, established
13 policy, and general practices of the employer pertaining to
14 explanation and discipline with respect to absence from
15 scheduled work. An employer may not delay or attempt to
16 defeat a reemployment obligation by demanding documentation
17 that does not exist or is not then readily available.

18 (i) Except as otherwise provided by this subsection, a
19 member entitled to reemployment under this Act, upon
20 completion of a period of State Active Duty, shall be
21 promptly reemployed in the position of employment which he or
22 she left with the same increases in status, seniority, and
23 wages that were earned during his or her period of State
24 Active Duty by employees in like positions who were on the
25 job at the time the returning member entered State Active
26 Duty, or to a position of like seniority, status, and pay,
27 unless the employer's circumstances have so changed as to
28 make it impossible or unreasonable to do so.

29 If at the time of requesting reemployment, the member is
30 no longer physically, mentally, or otherwise qualified or
31 able to perform the duties of the position of employment
32 which he or she left due to disability acquired incident to
33 his or her service in State Active Duty, but is qualified and
34 able to perform the duties of any other position in the

1 employ of the employer, then the member shall be restored to
2 that other position, the duties of which he or she is
3 qualified and able to perform and that will provide him or
4 her with like seniority, status, and pay, or the nearest
5 approximation thereof consistent with the circumstances of
6 the case.

7 If a member enters State Active Duty and the position of
8 employment which he or she left is filled by one or more
9 employees who are also members of the National Guard and who
10 later enter State Active Duty, the members shall, upon
11 release from State Active Duty, be given preference in the
12 matter of reemployment in the order in which they entered
13 State Active Duty, and the employer shall not be required to
14 retain more than one of them in his or her employ.

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

1 (330 ILCS 60/5) (from Ch. 126 1/2, par. 33)

2 Sec. 5. Reemployment; benefits.

3 (a) Any member of the National Guard person who is
4 reemployed ~~restored~~ or seeks reemployment ~~to-be-restored~~ to a
5 position of employment in accordance with the provisions of
6 this Act, shall be considered as having been on furlough or
7 leave of absence during his or her State Active Duty military
8 service and shall be so reemployed ~~restored~~ without loss of
9 seniority and shall be entitled to participate in insurance
10 or other benefits offered by the employer pursuant to
11 established rules and practices relating to employees on
12 furlough or leave of absence in effect with the employer at
13 the time such member person entered State Active Duty
14 ~~military--service~~. Such member person shall not be discharged
15 from such position without cause within one year after such
16 reemployment ~~restoration~~.

17 (b) If an employer provides health insurance, an
18 exclusion or waiting period may not be imposed in connection
19 with coverage of a health or physical condition of a member
20 person entitled to participate in that insurance under this
21 Section, or a health or physical condition of any other
22 person who is covered by the insurance by reason of the
23 coverage of that member person, if (1) the condition arose
24 before or during that member's ~~person's~~ period of State
25 Active Duty ~~military--service~~; (2) an exclusion or waiting
26 period would not have been imposed for the condition during a
27 period of coverage resulting from participation by that
28 member person in the insurance; and (3) the condition of that
29 member person has not been determined to be service
30 connected.

31 (Source: P.A. 88-518.)

32 (330 ILCS 60/5.1)

33 Sec. 5.1. Stay of prosecution. During and for a period

1 of 14 days after a period of training or duty in excess of 29
2 days either under Title 32 of the United States Code or under
3 State Active Duty ~~military-service-with-the-State-of-Illinois~~
4 ~~pursuant--to--the--orders--of--the--Governor,~~ a court having
5 jurisdiction over the enforcement of any civil obligation or
6 liability, the prosecution of any civil suit or proceeding,
7 or the entry or enforcement of any civil order, writ,
8 judgment, or decree may stay, postpone, or suspend the matter
9 if the court determines that a person's failure to meet the
10 obligation is the direct result of the aforementioned period
11 of training or duty ~~military---service.~~ The stay,
12 postponement, or suspension of proceedings does not in any
13 way modify any condition, obligation, term, or liability
14 agreed upon or incurred by a person in military service
15 including but not limited to accrued interest, late fees, or
16 penalties. No stay, postponement, or suspension shall be
17 provided regarding any written agreement entered into, or
18 debt that is incurred, by the person during or after his or
19 her period of training or duty either under Title 32 of the
20 United States Code or under State Active Duty ~~military~~
21 ~~service.~~

22 (Source: P.A. 88-518.)

23 (330 ILCS 60/5.2)

24 Sec. 5.2. School attendance and tuition. Any person in
25 federal active duty under Title 10 of the United States Code,
26 or in training or duty under Title 32 of the United States
27 Code, or in State Active Duty, ~~military-service-with-the~~
28 ~~State-of-Illinois~~ pursuant to the orders of the Governor has
29 the right to receive a full monetary credit or refund for
30 funds paid to any Illinois public university, college or
31 community college if the person is placed into a period of
32 military service with the State of Illinois pursuant to the
33 orders of the Governor and is unable to attend the university

1 or college for a period of 7 or more days. Withdrawal from
2 the course shall not impact upon the final grade point
3 average of the person. If any person who has been enrolled
4 in any Illinois public university, college, or community
5 college is unable to process his or her enrollment for the
6 upcoming term, he or she shall have any and all late
7 penalties and or charges set aside, including any and all
8 late processing fees for books, lab fees, and all items that
9 were not in place because the person was engaged in military
10 service and was unable to enroll in the courses at the
11 appropriate time. The rights set forth in this Sec. are in
12 addition to any rights afforded to persons in military
13 service with the State of Illinois pursuant to the orders of
14 the Governor under the policies of an Illinois public
15 university, college, or community college.

16 (Source: P.A. 88-518.)

17 (330 ILCS 60/4 rep.)

18 Section 10. The Service Men's Employment Tenure Act is
19 amended by repealing Section 4.

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.