

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 432
Committee Substitute Favorable 4/16/97

Short Title: N.C.N.G. Mobilization Lessons/AB.

(Public)

Sponsors:

Referred to:

March 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT THE LESSONS LEARNED FROM HURRICANE FRAN
3 WITH RESPECT TO THE MOBILIZATION OF THE NORTH CAROLINA
4 NATIONAL GUARD.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 127A of the General Statutes is amended by adding a new
7 section to read:

8 "**§ 127A-202.1. Discrimination against persons who serve in the North Carolina**
9 **National Guard and acts of reprisal prohibited.**

10 (a) It is the policy of this State that all individuals shall be afforded the right to
11 perform, apply to perform, or have an obligation to perform service in the North Carolina
12 National Guard without fear of discrimination or retaliatory action from their employer or
13 prospective employer on the basis of that membership, application for membership,
14 performance of service, application for service, or obligation.

15 (b) An individual who is a member of the North Carolina National Guard who
16 performs, has performed, applies to perform, or has an obligation to perform service in
17 the North Carolina National Guard shall not be denied initial employment,
18 reemployment, retention in employment, promotion, or any benefit of employment by an

1 employer on the basis of that membership, application for membership, performance of
2 service, application for service, or obligation.

3 (c) A person shall be considered to have denied a member of the North Carolina
4 National Guard initial employment, reemployment, retention in employment, promotion,
5 or a benefit of employment in violation of this section if the member's membership,
6 application for membership, performance of service, application for service, or obligation
7 for service in the North Carolina National Guard is a motivating factor in that person's
8 action, unless the person can prove by the greater weight of the evidence that the same
9 unfavorable action would have taken place in the absence of the member's membership,
10 application for membership, performance of service, application for service, or
11 obligation.

12 (d) Nothing in this section shall be construed to require a person to pay salary or
13 wages to a member of the North Carolina National Guard during the member's period of
14 active service.

15 (e) The Commissioner of Labor shall enforce the provisions of this section
16 according to Article 21 of Chapter 95 of the General Statutes, including the rules and
17 regulations issued pursuant to that Article."

18 Section 2. G.S. 127A-105 reads as rewritten:

19 "**§ 127A-105. Rations and pay on State service.**

20 The militia of the State, both officers and enlisted personnel, when called into the
21 service of the State by the Governor shall receive the same pay as when called or ordered
22 into the service of the United States, and shall be rationed or paid the equivalent thereof,
23 provided that no officer or enlisted personnel shall receive less than ~~12-18~~ times the
24 minimum hourly wage per day as provided for in ~~G.S. 95-87.~~ G.S. 95-25.3(a)."

25 Section 3. G.S. 127A-107 reads as rewritten:

26 "**§ 127A-107. Rate of pay for other service.**

27 The Governor may, whenever the public service requires it, order upon special or
28 regular duty any officer or enlisted member of the national guard or naval militia, and the
29 expenses and compensation therefor of such officer and enlisted member shall be paid
30 out of the appropriations made to the Department of Crime Control and Public Safety.
31 Such officers and enlisted members shall receive the same rate of pay as officers and
32 enlisted members of the same grade and like service of the regular service, provided that
33 no such officer or enlisted member shall receive less than ~~12-18~~ times the minimum
34 hourly wage per day as provided for in ~~G.S. 95-87.~~ G.S. 95-25.3(a). Officers and enlisted
35 members when on duty in connection with examining boards, efficiency boards, advisory
36 boards, courts of inquiry or similar duty shall be allowed per diem and subsistence
37 prescribed for lawful State boards and commissions generally for such duty. Officers and
38 enlisted members serving on general or special courts-martial shall receive the base pay
39 of their rank. No staff officer or enlisted member who receives a salary from the State as
40 such shall be entitled to any additional compensation other than actual and necessary
41 expenses incurred while traveling upon orders issued by the proper authority."

42 Section 4. Chapter 127A of the General Statutes is amended by adding a new
43 section to read:

1 **"§ 127A-111. Civilian leave option.**

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

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

10 Section 5. Chapter 127A of the General Statutes is amended by adding a new
11 section to read:

12 **"§ 127A-41.1. Stay of legal and court proceedings because of State military service.**

13 At any stage of any legal proceeding in any court in which a person called into service
14 of the State by the Governor is involved, either as plaintiff or defendant, during the
15 period of service or within 60 days after the conclusion of the period of active service, all
16 actions and proceedings:

17 (1) May be stayed by the court on its own motion; or

18 (2) Shall be stayed on application by the member or by a person acting on
19 behalf of the member, unless, in the opinion of the court, the ability of
20 the plaintiff to prosecute the action or the defendant to conduct his
21 defense is not materially affected by reason of the military service."

22 Section 6. G.S. 127A-106 reads as rewritten:

23 **"§ 127A-106. Paid by the State.**

24 When the militia or any portion thereof shall be ordered by the Governor into State
25 service, the ~~pay, pay~~ (including payment for any leave earned as a result of more than 30
26 days of continuous service), subsistence, transportation and other necessary expenses
27 incident thereto shall be paid by the State Treasurer, upon the approval of the Governor."

28 Section 7. G.S. 95-241(a) reads as rewritten:

29 "(a) No person shall discriminate or take any retaliatory action against an employee
30 because the employee in good faith does or threatens to do any of the following:

31 (1) File a claim or complaint, initiate any inquiry, investigation, inspection,
32 proceeding or other action, or testify or provide information to any
33 person with respect to any of the following:

34 a. Chapter 97 of the General Statutes.

35 b. Article 2A or Article 16 of this Chapter.

36 c. Article 2A of Chapter 74 of the General Statutes.

37 d. G.S. 95-28.1.

38 e. Article 16 of Chapter 127A.

39 (2) Cause any of the activities listed in subdivision (1) of this subsection to
40 be initiated on an employee's behalf.

41 (3) Exercise any right on behalf of the employee or any other employee
42 afforded by Article 2A or Article 16 of this Chapter or by Article 2A of
43 Chapter 74 of the General Statutes."

1 Section 8. Sections 1 through 7 of this act become effective December 1,
2 1997. Section 8 of this act is effective when it becomes law.