

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 44-93.2, 44-93.3, and 44-93.4 of the Code of Virginia, relating to*
3 *National Guard, employment protections.*

4
5 Approved

[H 146]

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 44-93.2, 44-93.3, and 44-93.4 of the Code of Virginia are amended and reenacted as**
8 **follows:**

9 **§ 44-93.2. Leaves of absence from nongovernmental employment.**

10 A member of the Virginia National Guard or Virginia Defense Force, or a ~~resident of the~~
11 ~~Commonwealth~~ person who is a member of the National Guard of another state *and who is otherwise*
12 *employed in the Commonwealth*, called to state active duty or military duty pursuant to Title 32 of the
13 United States Code shall have the right to take leave without pay from his nongovernmental
14 employment. No member of the National Guard or Virginia Defense Force, or ~~resident of the~~
15 ~~Commonwealth~~ person who is a member of the National Guard of another state, shall be forced to use
16 or exhaust his vacation or other accrued leaves from his nongovernmental employment for a period of
17 active service. The choice of leave shall be solely within the discretion of the member.

18 **§ 44-93.3. Reemployment rights.**

19 Upon honorable release from state active duty or military duty pursuant to Title 32 of the United
20 States Code, a member of the Virginia National Guard or Virginia Defense Force, or a ~~resident of the~~
21 ~~Commonwealth~~ person who is a member of the National Guard of another state *and who was previously*
22 *employed in the Commonwealth*, shall make written application to his previous employer for
23 reemployment within (i) 14 days of his release from duty or from hospitalization following release if the
24 length of the member's absence by reason of service in the uniformed services does not exceed 180 days
25 or (ii) 90 days of his release from duty or from hospitalization following release if the length of the
26 member's absence by reason of service in the uniformed services exceeds 180 days. When released from
27 such duty, they shall be restored to positions held by them when ordered to duty. If the office or
28 position has been abolished or otherwise has ceased to exist during such leave of absence, they shall be
29 reinstated in a position of like seniority, status and pay if the position exists, or to a comparable vacant
30 position for which they are qualified, unless to do so would be unreasonable. This section shall not
31 apply when the cumulative length of the absence and of all previous absences from a position of
32 employment with that employer by reason of service in the uniformed services exceeds five years.

33 **§ 44-93.4. Discrimination against persons who serve in the Virginia National Guard, Virginia**
34 **Defense Force, or National Guard of another state and acts of reprisal prohibited.**

35 A. A member of the Virginia National Guard or Virginia Defense Force, or a ~~resident of the~~
36 ~~Commonwealth~~ person who is a member of the National Guard of another state, who performs, has
37 performed, applies to perform, or has an obligation to perform state active duty or military duty pursuant
38 to Title 32 of the United States Code shall not be denied initial employment, reemployment, retention in
39 employment, promotion, or any benefit of employment by an employer *within the Commonwealth* on the
40 basis of that membership, application for membership, performance of service, application for service, or
41 obligation.

42 B. A person shall be considered to have denied a member of the Virginia National Guard or Virginia
43 Defense Force, or a ~~resident of the Commonwealth~~ person who is a member of the National Guard of
44 another state, initial employment, reemployment, retention in employment, promotion, or a benefit of
45 employment *within the Commonwealth* in violation of this section if the member's membership,
46 application for membership, performance of service, application for service, or obligation for service is a
47 motivating factor in that person's action, unless the person can prove by the greater weight of the
48 evidence that the same unfavorable action would have taken place in the absence of the member's
49 membership, application for membership, performance of service, application for service, or obligation
50 for service.

ENROLLED

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