

VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

CHAPTER 327

An Act to amend and reenact §§ 44-93.2, 44-93.3, and 44-93.4 of the Code of Virginia, relating to the National Guard; reemployment rights and discrimination in employment.

[H 111]

Approved March 11, 2016

Be it enacted by the General Assembly of Virginia:

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

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

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

§ 44-93.3. Reemployment rights.

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

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

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

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