



# 129th MAINE LEGISLATURE

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No. 1807

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H.P. 1287

House of Representatives, May 30, 2019

### **An Act To Amend Certain Laws Related to Members of the Military and the Maine National Guard**

(AFTER DEADLINE)

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Submitted by the Department of Defense, Veterans and Emergency Management and approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205. Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "R(t) B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative STEWART of Presque Isle.  
Cosponsored by Senator LUCHINI of Hancock and  
Representatives: SCHNECK of Bangor, STROM of Pittsfield, Senator: CYRWAY of  
Kennebec.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 19-A MRSA §1653-A** is enacted to read:

3 **§1653-A. Parental rights and responsibilities; parent on active duty**

4 **1. Departure under military orders.** A court may not consider departure from the  
5 family residence or absence from the child or children as an adverse factor in determining  
6 parental rights and responsibilities with respect to a minor child when the departing  
7 parent is a member of the National Guard or the Reserves of the United States Armed  
8 Forces under an order to active duty for a period of more than 30 days and whose absence  
9 is due to compliance with military orders.

10 **2. Change of residence of child prohibited when parent under military orders.**  
11 A court may not order a change of the primary physical residence of a child when one of  
12 the child's parents is a member of the National Guard or the Reserves of the United States  
13 Armed Forces under an order to active duty for a period of more than 30 days and whose  
14 absence from the State is due to compliance with military orders unless the change is in  
15 the best interest of the child.

16 **3. Application.** This section applies only if the service of the member referred to in  
17 subsection 1 or subsection 2 is in support of:

18 A. An operational mission for which members of the reserve components have been  
19 ordered to active duty; or

20 B. Forces activated during a period of war declared by Congress or a period of  
21 national emergency declared by the President or Congress.

22 **Sec. 2. 26 MRSA §813**, as repealed and replaced by PL 2001, c. 662, §12, is  
23 amended to read:

24 **§813. Remedies**

25 **1. Action authorized.** If any employer fails to comply with any of the provisions of  
26 sections 811 and 812, the Attorney General, ~~Judge Advocates of the Maine National~~  
27 ~~Guard~~ or employee may bring a civil action for damages for such noncompliance or apply  
28 to the courts for such equitable relief as may be just and proper under the circumstances.

29 **2. Award of fees; costs.** In any civil action under section 811 or 812, the court in its  
30 discretion may award reasonable attorney's fees and costs to any prevailing member of  
31 the National Guard or the Reserves of the United States Armed Forces.

32 **Sec. 3. 37-B MRSA §108**, as amended by PL 1991, c. 376, §64, is further  
33 amended to read:

34 **§108. Designation of Deputy Adjutant General**

35 ~~The assistant adjutant general for the Maine Army National Guard or the assistant~~  
36 ~~adjutant general for the Maine Air National Guard~~ Any federally recognized general

1 officer currently serving in the Maine National Guard may be appointed as Deputy  
2 Adjutant General. The Deputy Adjutant General has all the military related powers,  
3 responsibilities and duties of the Adjutant General if the Adjutant General is unable to  
4 act, or in case of a vacancy in the office of the Adjutant General until the vacancy is filled  
5 by the Governor, as provided by law. The Deputy Adjutant General may also perform  
6 other military duties of the Adjutant General as assigned by the Adjutant General or the  
7 Governor.

8 **Sec. 4. 37-B MRSA §112**, as amended by PL 2013, c. 251, §3, is further amended  
9 to read:

10 **§112. Joint Force Headquarters**

11 The Adjutant General shall organize a staff to be called the Joint Force Headquarters.  
12 It shall command, control and supervise Army and Air National Guard units employed in  
13 support of civil authorities in the protection of life, property and preservation of peace,  
14 order and public safety under competent orders of state authorities. In the event of  
15 mobilization of some or all Army and Air National Guard units by the President of the  
16 United States, it shall assist the State in organizing and training a militia, if required,  
17 perform command and control functions in support of civil authorities, as directed, and  
18 prepare to reconstitute the Army National Guard and Air National Guard when units are  
19 relieved from federal service. ~~It must be commanded by a federally recognized officer~~  
20 ~~who may be the Adjutant General or an Assistant Adjutant General.~~

21 **Sec. 5. 37-B MRSA §113** is enacted to read:

22 **§113. Security at National Guard military facilities and real property of the**  
23 **department**

24 This section governs the provision of security at National Guard military facilities  
25 and real property of the department.

26 **1. Appointment of a provost marshal.** The Adjutant General may appoint a  
27 provost marshal to oversee security at National Guard military facilities and real property  
28 of the department consistent with federal regulations governing similar federally owned  
29 facilities located in the State. The provost marshal is an authorized recipient of  
30 confidential criminal history records for the purpose of carrying out the position's duties  
31 under state law.

32 **2. Designation of military facilities.** For purposes of this section, the Adjutant  
33 General may designate all or portions of department facilities or real property as military  
34 facilities.

35 **3. Funding.** Modifications of National Guard military facilities or real property of  
36 the department or changes to protocols or procedures or actions to provide security in a  
37 manner consistent with federal regulations governing similar federally owned facilities in  
38 the State are limited to those that are without cost or are federally funded either directly  
39 or indirectly through a cooperative agreement.

1           **4. Authority to protect certain assets.** In compliance with federal law, and subject  
2 to conditions and limitations as promulgated by the United States Department of Defense  
3 or its military departments, the National Guard is authorized to use all means necessary to  
4 protect its assets that are inherently dangerous or vital to national security.

5           **Sec. 6. 37-B MRSA §143**, as repealed and replaced by PL 1997, c. 455, §13, is  
6 amended to read:

7           **§143. Pay and allowances**

8           **1. Pay and allowances.** Members Subject to subsection 2 and section 150, members  
9 of the Maine National Guard ordered to active state service under this Title, except under  
10 section 150, section 181-A, subsections 1 to 5 are entitled to receive at least the same pay  
11 and allowance allowances as would be payable to those persons from the United States  
12 Armed Forces. The member's Such pay, except for that pay of those members serving  
13 under section 150, must include a minimum may not be less than pay based upon at least  
14 12 hours a day at the state minimum wage.

15           **2. Cooperative agreement pay and allowances.** Members and retired members of  
16 the Maine National Guard called to active state service under section 181-A, subsection 5  
17 in support of a cooperative agreement with the Federal Government are entitled to receive  
18 the same pay and allowances as would be payable to those persons from the United States  
19 Armed Forces, but not more than the pay and allowances payable in accordance with the  
20 terms of the cooperative agreement. Pay may not be less than pay based upon 12 hours a  
21 day at the state minimum wage.

22           **Sec. 7. 37-B MRSA §147**, as amended by PL 2003, c. 583, §5, is repealed.

23           **Sec. 8. 37-B MRSA §150**, as amended by PL 1995, c. 196, Pt. A, §2, is further  
24 amended to read:

25           **§150. Unauthorized voluntary service without pay prohibited**

26           A unit of the state military forces may not perform any voluntary active state service  
27 without pay, unless authorized by express order of the Governor.

28           An officer, warrant officer or enlisted person or any retired officer, retired warrant  
29 officer or retired enlisted person of the state military forces may not perform any  
30 voluntary active state service without pay, unless authorized by express order of the  
31 Governor, the Adjutant General or the Deputy Adjutant General.

32           **Sec. 9. 37-B MRSA §181-A, sub-§5**, as enacted by PL 1995, c. 600, §2, is  
33 amended to read:

34           **5. Military duty by consent.** The Governor, ~~or the Governor's designee,~~ Adjutant  
35 General or Deputy Adjutant General may ~~order call~~ a member or retired member of the  
36 Maine National Guard, with that member's consent, to perform active state service of any  
37 nature.

38           **Sec. 10. 37-B MRSA §190**, as enacted by PL 2017, c. 108, §5, is repealed.



1 any prevailing member of the Maine National Guard or the Reserves of the United States  
2 Armed Forces;

3 3. It allows any federally recognized general officer currently serving in the Maine  
4 National Guard to be appointed Deputy Adjutant General;

5 4. It eliminates the requirement that a federally recognized officer must command  
6 the Joint Force Headquarters;

7 5. It moves the law relating to security at Maine National Guard military facilities  
8 and the real property of the department from the laws pertaining to the activation of state  
9 military forces to the laws governing the organization of state military forces. It also  
10 allows the provost marshal to receive confidential criminal history records and allows the  
11 Maine National Guard to use all means necessary to protect its assets that are inherently  
12 dangerous or vital to national security;

13 6. It repeals the law governing retired officers and the retired list and amends the  
14 laws governing the Governor's authority to activate state military forces to allow the  
15 Adjutant General or Deputy Adjutant General to call a member or retired member of the  
16 Maine National Guard, with that member's consent, to perform active state service;

17 7. It amends the law prohibiting any voluntary active state service without the  
18 express order of the Governor to specify that the active state service prohibited is service  
19 without pay. It also specifies that members and retired members of the Maine National  
20 Guard in active state service pursuant to a cooperative agreement with the Federal  
21 Government are entitled to the same pay as is received by persons from the United States  
22 Armed Forces, but that the pay may not be less than pay based upon a 12-hour day at the  
23 state minimum wage nor more than that allowed pursuant to the cooperative agreement;

24 8. It allows the Adjutant General to sell the South Portland Air National Guard  
25 Station; and

26 9. It adds violations under the motor vehicle laws prohibiting operating under the  
27 influence as violations under the Maine Code of Military Justice.