

ASSEMBLY BILL NO. 337—ASSEMBLYMAN ELLIOT ANDERSON

MARCH 20, 2017

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing termination of the employment of members of the National Guard. (BDR 36-1134)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the National Guard; conferring certain protections upon the members of the National Guard of another state concerning the unlawful termination of employment of those members in this State; authorizing a member of the Nevada National Guard or a member of the National Guard of another state to bring a civil action concerning his or her unlawful termination under certain circumstances; revising the remedies available to a member of the Nevada National Guard or a member of the National Guard of another state whose employment is unlawfully terminated; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, the employer of a member of the Nevada National Guard is
2 prohibited from terminating the member’s employment because he or she is ordered
3 to active service or otherwise required by law to perform duties as a member of the
4 Nevada National Guard. An employer who violates that prohibition is guilty of a
5 misdemeanor and is subject to an administrative penalty of not more than \$5,000.
6 (NRS 412.139) **Section 1** of this bill expands existing law by prohibiting the
7 employer of a member of the National Guard of another state who is employed in
8 this State from terminating the member’s employment because he or she is ordered
9 to active service or otherwise required by the law of that state to perform duties as a
10 member of the National Guard of that state.

11 Under existing law, a member of the Nevada National Guard who believes that
12 his or her employment has been terminated unlawfully is entitled to a hearing
13 before the Labor Commissioner. (NRS 412.1393) **Section 2** of this bill confers that
14 same right upon a member of the National Guard of another state who is employed



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15 in this State. **Section 2** also provides that if, for any reason the Labor
16 Commissioner does not determine that the employment of a member of the Nevada
17 National Guard or the National Guard of another state was terminated unlawfully,
18 the member may bring a civil action in district court against his or her employer
19 seeking such a determination.

20 Under existing law, if the Labor Commissioner determines that the employment
21 of a member of the Nevada National Guard was terminated unlawfully, the member
22 is entitled to be immediately reinstated to his or her former position without loss of
23 seniority or benefits and to receive all wages and benefits lost as a result of the
24 termination. (NRS 412.1395) **Section 3** of this bill provides that if the Labor
25 Commissioner determines that the employment of a member of the Nevada
26 National Guard or the National Guard of another state was terminated unlawfully,
27 the member is entitled to: (1) immediate reemployment in the position in which he
28 or she would have been employed if his or her continuous employment with the
29 employer had not been unlawfully terminated; (2) immediate restoration to the
30 seniority and benefits to which he or she would have been entitled if his or her
31 continuous employment with the employer had not been unlawfully terminated; and
32 (3) receipt of all wages and benefits lost as a result of the termination. **Section 3**
33 also requires the award of attorney's fees and costs to the member under certain
34 circumstances.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 412.139 is hereby amended to read as follows:
2 412.139 1. An employer may not terminate the employment
3 of a member of the :

4 (a) Nevada National Guard because the member:
5 ~~(a)~~ (1) Assembles for training, participates in field training or
6 active duty or otherwise meets as required pursuant to NRS
7 412.118; or

8 ~~(b)~~ (2) Is ordered to active service or duty pursuant to NRS
9 412.122 or 412.124 ~~(1)~~ ; or

10 (b) *National Guard of another state who is employed in this*
11 *State because the member:*

12 (1) *Assembles for training, participates in field training or*
13 *active duty or otherwise meets as required pursuant to the law of*
14 *that state; or*

15 (2) *Is ordered to active service or duty pursuant to the law*
16 *of that state.*

17 2. Any employer who violates subsection 1 is guilty of a
18 misdemeanor.

19 3. In addition to any other remedy or penalty, the Labor
20 Commissioner may impose against the employer an administrative
21 penalty of not more than \$5,000 for each such violation.

22 **Sec. 2.** NRS 412.1393 is hereby amended to read as follows:

23 412.1393 1. Any member of the Nevada National Guard *or*
24 *the National Guard of another state* who believes his or her



1 employment was terminated in violation of NRS 412.139 may,
2 within 60 days after receiving a notice of termination, request a
3 hearing before the Labor Commissioner to determine if his or her
4 employment was so terminated.

5 2. The Office shall supply the member with all forms needed to
6 request such a hearing. The Labor Commissioner shall conduct the
7 hearing in the manner provided in NRS 607.205 to 607.220,
8 inclusive.

9 *3. Notwithstanding any other provision of law, if for any*
10 *reason the Labor Commissioner does not determine that the*
11 *employment of the member was terminated in violation of NRS*
12 *412.139, the member may, within 120 days after receiving a notice*
13 *of termination, bring a civil action in any district court in this*
14 *State against his or her employer seeking such a determination.*

15 **Sec. 3.** NRS 412.1395 is hereby amended to read as follows:

16 412.1395 *1.* If the employment of a member of the Nevada
17 National Guard *or the National Guard of another state* is found *by*
18 *the Labor Commissioner* to have been terminated ~~as a result of the~~
19 ~~member:~~

20 ~~— 1. Assembling for training, participating in field training or~~
21 ~~active duty or otherwise meeting as required pursuant to NRS~~
22 ~~412.118; or~~

23 ~~— 2. Being ordered to active service or duty pursuant to NRS~~
24 ~~412.122 or 412.124;~~

25 ~~→} in violation of NRS 412.139, the member is entitled to {be~~
26 ~~immediately reinstated to his or her} :~~

27 (a) *Immediate reemployment in the* position ~~{without loss}~~ of
28 *employment in which he or she would have been employed if his*
29 *or her continuous employment with the employer had not been*
30 *unlawfully terminated;*

31 (b) *Immediate restoration to the* seniority ~~{or}~~ and benefits ~~{}~~
32 *to which he or she would have been entitled if his or her*
33 *continuous employment with the employer had not been*
34 *unlawfully terminated;* and ~~{to receive}~~

35 (c) *Receipt of* all wages and benefits lost as a result of the
36 termination.

37 *2. If the employment of a member of the Nevada National*
38 *Guard or the National Guard of another state is found by the*
39 *district court to have been terminated in violation of NRS 412.139,*
40 *the district court shall award the member, in addition to the relief*
41 *provided in subsection 1 and any other relief granted by the*
42 *district court, the reasonable attorney's fees and costs incurred by*
43 *the member to bring the action.*

44 **Sec. 4.** The amendatory provisions of this act do not apply to a
45 member of the Nevada National Guard or the National Guard of



- 1 another state whose employment in this State is terminated before
- 2 July 1, 2017.
- 3 **Sec. 5.** This act becomes effective on July 1, 2017.

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