

1 H.766

2 Introduced by Committee on General, Housing and Military Affairs

3 Date:

4 Subject: Internal security and public safety; national guard

5 Statement of purpose: This bill proposes to give the adjutant general the
6 authority to create medals and awards to recognize meritorious service. The
7 bill allows a court to stay a civil or administrative proceeding during the time a
8 Vermont National Guard member is on state active duty. The bill clarifies that
9 a guard member is allowed to take unpaid leave from work during a period of
10 state active duty. The bill also allows members of the guard to continue their
11 civilian health insurance when called to state active duty, and clarifies the law
12 regarding the receipt of educational assistance.

~~An act relating to the national guard~~ *An act relating to the rehabilitation of
Vermont National Guard members and certain rights and responsibilities of
guard members and their employers*

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 ~~Sec. 1. 20 V.S.A. § 946 is added to read:~~

15 ~~§ 946. NONJUDICIAL PUNISHMENT~~

16 ~~Any commander of the national guard, not in the service of the United~~
17 ~~States, may, in addition to or in lieu of admonition or reprimand, impose~~
18 ~~nonjudicial punishment in like manner and to the extent prescribed by~~
19 ~~Article 15 of the Uniform Code of Military Justice, Manual for Courts-Martial,~~
20 ~~United States, as shall be currently in use by the armed forces of the United~~

States, except that there shall be no right to demand trial by courts-martial when the commander notifies the accused prior to accepting the nonjudicial punishment that the maximum punishment to be considered in the event that the accused is found guilty will be the loss of one rank, restriction, extra duty, oral admonition or reprimand, or written reprimand.

Sec. 2. 20 V.S.A. § 369 is added to read:

§ 369. AWARDS

Upon the approval of the governor, the adjutant general may, from time to time, create and design such awards and medals to recognize meritorious service or outstanding achievement for members of the Vermont National Guard. The adjutant general will cause to be published a roster of these awards and medals, the criteria and process for awarding them, and a description or specification of the award and medals. All awards and medals will be presented in the name of the state of Vermont and be awarded to a member or retired member of the Vermont National Guard or if the member is deceased to the member's spouse, child, parent, sibling, or grandchild.

Sec. 3. 20 V.S.A. § 603 is amended to read:

§ 603. ARMS AND EQUIPMENT; PAY AND RATIONS

When the national guard, or part thereof, is ordered out under the provisions of section 366, 601, or 602 of this title, the state shall furnish arms and equipment necessary for each officer, warrant officer, and enlisted person; and

1 they shall be entitled to ~~pay and rations~~ pay, subsistence, and quarters
2 allowance equivalent to that paid to members of the armed forces of the United
3 States for officers, warrant officers, and enlisted persons of corresponding
4 grade and time in service as designated in the U.S. pay tables.

5 Sec. 4. 20 V.S.A. § 608 is added to read:

6 § 608. CIVILIAN LEAVE OPTION

7 If any member of the Vermont national guard is ordered to state active duty
8 by the governor, the service member shall have the right to take leave without
9 pay from his or her civilian employment. No member of the national guard
10 shall be forced to use or exhaust his or her vacation or other accrued leave
11 from his or her civilian employment for a period of active service.

12 Sec. 5. 20 V.S.A. § 609 is added to read:

13 § 609. STAY OF LEGAL PROCEEDINGS BECAUSE OF
14 SERVICE IN NATIONAL GUARD

15 (a)(1) If a service member of the Vermont National Guard who is ordered
16 to state active duty by the governor is a party to a civil or administrative
17 proceeding in any Vermont court, the proceeding:

18 (A) may be stayed by the court on its own motion; or

19 (B) shall be stayed by application of the member or person acting on
20 behalf of the member, unless the court finds that the proceeding would not be

1 ~~materially affected by reason of the member's absence, or that the member can~~
2 participate by telephone or other electronic means.

3 (2) A motion for a stay under this subsection may be filed, or the court
4 may issue such a stay, at any time during the period of active service. Any
5 stay issued shall not remain in effect for more than 30 days after the
6 completion of state active duty.

7 (b) An application for a stay pursuant to subdivision (a)(1)(B) of this
8 section shall include:

9 (1) a letter or other communication setting forth facts stating the manner
10 in which the member's duty requirements materially affect the member's
11 ability to appear and stating a date when the member will be available to
12 appear; and

13 (2) a letter or other communication from the member's commanding
14 officer stating that the member's current military duty prevents the member
15 from appearing and that military leave is not authorized for the member at the
16 time of the letter.

17 (c) This section shall not apply to:

18 (1) proceedings involving relief from abuse orders under 15 V.S.A.
19 chapter 21, subchapter 1;

20 (2) proceedings involving orders against stalking or sexual assault under
21 12 V.S.A. chapter 178;

1 ~~(3) proceedings involving abuse prevention orders for vulnerable adults~~
2 under 33 V.S.A. chapter 69, subchapter 1; or

3 (4) civil operator's license suspension proceedings under 23 V.S.A.
4 § 1205.

5 Sec. 6. 21 V.S.A. § 492 is amended to read:

6 § 492. RIGHTS AND BENEFITS

7 * * *

8 (c)(1) If any member of the Vermont National Guard with civilian
9 employer-sponsored insurance coverage is ordered to state active duty by the
10 governor for up to 30 days, the service member may, at the member's option,
11 continue his or her civilian health insurance under the same terms and
12 conditions as were in effect for the month preceding the member's call to state
13 active duty, including a continuation of the same levels of employer and
14 employee contributions toward premiums and cost-sharing.

15 (2) If a member of the Vermont National Guard is called to state active
16 duty for more than 30 days, the member may continue his or her civilian health
17 insurance. For a member whose employer chooses not to continue regular
18 contributions toward premiums and cost-sharing during the period of the
19 member's state active duty in excess of 30 days, the state of Vermont shall be
20 responsible for paying the employer's share of the premium and cost-sharing.

1 ~~(3) The department of labor shall administer this subsection and shall~~
2 ~~adopt rules pursuant to 3 V.S.A. chapter 25 to carry out the purposes of this~~
3 ~~subsection, including developing employee notice requirements, enforcement~~
4 ~~provisions, and a process for the state to remit the employer's share of~~
5 ~~premiums and cost-sharing to the appropriate entities pursuant to~~
6 ~~subdivision (2) of this subsection.~~

7 Sec. 7. 16 V.S.A. § 2537 is amended to read:

8 § 2537. ARMED SERVICES SCHOLARSHIPS

9 * * *

10 (b) Definitions:

11 (1) "Vermont National Guard" as used in this section will be
12 deemed to include Vermont army national guard and Vermont air national
13 guard.

14 (2) "Active duty for national guard Vermont National Guard and for
15 active reserve forces" means full-time duty in the active military service of the
16 United States and includes full-time training duty, annual training duty, and
17 attendance, while in the active military service, at a school designated as a
18 service school by law or by the Secretary of the military department concerned.

19 (3) "Inactive duty" means training performed by members of a reserve
20 component while not on active duty and includes unit training assemblies,

1 ~~training periods, military flight periods and other equivalent duty and while on~~
2 state duty on order of the governor or the governor's representative.

3 (4) "Armed forces of the United States" means the Army, Navy,
4 Air Force, Marine Corps, and Coast Guard.

5 (5) "Child" means a natural or adoptive child of a member of the
6 Vermont National Guard or armed forces, and includes a stepchild.

7 Sec. 8. 16 V.S.A. § 2856 is amended to read:

8 § 2856. EDUCATIONAL ASSISTANCE

9 (a) An active member of the Vermont ~~army national guard or the air~~
10 ~~national guard~~ National Guard may be eligible for an interest-free loan in an
11 academic year for financial assistance to pay for tuition and fees for courses
12 taken at a Vermont college, university, regional technical center, or other
13 programs approved pursuant to policies adopted in accordance with subsection
14 (f) of this section. ~~Academic year awards may be up to the in-state tuition rate~~
15 ~~at the University of Vermont for that year.~~

16 (b) To be eligible for an educational loan under this section, a person shall:

17 (1) be an active member in good standing of a ~~federally recognized~~
18 federally recognized unit of the Vermont ~~army national guard or air national~~
19 ~~guard~~ National Guard;

20 (2) have successfully completed basic training or commissioning; and

21 (3) ~~not hold a baccalaureate degree or higher; and~~

1 ~~(4) be enrolled in a program that leads to a postsecondary degree,~~
2 diploma or be studying for relevant continuing education purposes.

3 (c) A loan made under this section shall be interest free and may be
4 partially or completely cancelled and forgiven for a person who:

5 (1) submits certification that the person has successfully completed the
6 course; and

7 (2) submits certification that the person has completed two years of
8 national guard service for each full academic year award. Service
9 requirements for less than a full academic year award shall be proportionate to
10 the amount of the award. The board shall determine the amount of loan to be
11 cancelled for each completed year of service. The amount cancelled for each
12 year of service shall not exceed 50 percent of the loan.

13 (d) The adjutant general shall provide a certificate documentation of
14 eligibility to each person who has been found to be eligible for educational
15 assistance under this section for each academic period. ~~The certificate shall be~~
16 ~~valid for one academic year.~~

17 (e) ~~A person shall not be eligible for educational assistance under this~~
18 ~~section for any courses taken after he or she has been awarded a baccalaureate~~
19 ~~degree or is no longer an active member in good standing of the Vermont army~~
20 ~~national guard or the air national guard~~ The loan of a person who loses
21 eligibility under this section while enrolled in a course shall go into repayment

1 ~~pursuant to the terms of the loan, and the person shall be ineligible for further~~
2 ~~assistance under this section until the loan is repaid in full.~~

3 (f) The board, in consultation with the office of the adjutant general, shall
4 adopt ~~rules~~ policies, procedures, and guidelines necessary to implement the
5 provisions of this section, which shall include application requirements, annual
6 loan requirements, loan forgiveness requirements, and annual loan amounts
7 based on available funds. ~~Rules~~ The policies, procedures, and guidelines shall
8 include definitions of “successful completion of a course,” “relevant
9 continuing education courses” and what constitutes an “academic year.” Rules
10 adopted by the Vermont ~~state colleges~~ State Colleges under section 2183 of
11 this title, prior to its repeal, shall remain valid under this section and shall be
12 administered by the corporation.

13 (g) [Repealed.]

14 (h) The availability of loans made under this subchapter is subject to funds
15 appropriated to the Vermont ~~army or air national guard~~ National Guard for that
16 ~~purpose.~~

Sec. 1. REPORT

The Office of the Adjutant General is directed to report by January 15, 2013 to the senate committees on judiciary and government operations and to the house committees on judiciary and general, housing and military affairs on recommendations for statutory changes regarding discipline of enlisted

personnel in the Vermont National Guard. The report shall present the various offenses that have resulted in discharges from the Vermont National Guard during the last five (5) or more years, and shall be presented in such form as to not cause to be revealed the identity of the enlisted personnel. The report shall also contain a detailed comparison of other states which have elected to make or not make similar changes, and any other information the Office of the Adjutant General believes to be relevant.

Sec. 2. 20 V.S.A. § 369 is added to read:

§ 369. AWARDS AND MEDALS

Upon the approval of the governor, the adjutant general may, from time to time, create and design such awards and medals to recognize meritorious service or outstanding achievement for members of the Vermont National Guard. The adjutant general will cause to be published a roster of these awards and medals, the criteria and process for awarding them, and a description or specification of the award and medals. All awards and medals will be presented in the name of the state of Vermont and be awarded to a member or retired member of the Vermont National Guard or if the member is deceased to the member's spouse, child, parent, sibling, or grandchild or, if none, to a person designated by the executor of the estate.

Sec. 3. 20 V.S.A. § 603 is amended to read:

§ 603. ARMS AND EQUIPMENT; PAY AND RATIONS

When the national guard, or part thereof, is ordered out under the provisions of section 366, 601, or 602 of this title, the state shall furnish arms and equipment necessary for each officer, warrant officer, and enlisted person; and they shall be entitled to ~~pay and rations~~ pay, subsistence, and quarters allowance equivalent to that paid to members of the armed forces of the United States for officers, warrant officers, and enlisted persons of corresponding grade and time in service as designated in the U.S. pay tables.

Sec. 4. 20 V.S.A. § 608 is added to read:

§ 608. CIVILIAN LEAVE OPTION

If any member of the Vermont national guard is ordered to state active duty by the governor, the service member shall have the right to take leave without pay from his or her civilian employment. No member of the national guard shall be required to use or exhaust his or her vacation or other accrued leave from his or her civilian employment for a period of active service.

Sec. 5. 20 V.S.A. § 609 is added to read:

§ 609. STAY OF LEGAL PROCEEDINGS BECAUSE OF SERVICE IN NATIONAL GUARD

(a)(1) If a service member of the Vermont National Guard who is ordered to state active duty by the governor is a party to a civil or administrative proceeding in any Vermont court, the proceeding:

(A) may be stayed by the court on its own motion; or

(B) shall be stayed by application of the member or person acting on behalf of the member, unless the court finds that the proceeding would not be materially affected by reason of the member's absence or that the member can participate by telephone or other electronic means.

(2) A motion for a stay under this subsection may be filed or the court may issue such a stay at any time during the period of active service. Any stay issued shall not remain in effect for more than 30 days after the completion of state active duty.

(b) An application for a stay pursuant to subdivision (a)(1)(B) of this section shall include a letter or other communication from the member or a person on his or her behalf setting forth facts stating the manner in which the member's duty requirements materially affect the member's ability to appear and stating a date when the member is expected to be available to appear, together with any information from the member's commanding officer.

(c)(1) This section shall not apply to:

(A) proceedings involving relief from abuse orders under 15 V.S.A. chapter 21, subchapter 1;

(B) proceedings involving orders against stalking or sexual assault under 12 V.S.A. chapter 178;

(C) proceedings involving abuse prevention orders for vulnerable adults under 33 V.S.A. chapter 69, subchapter 1; or

(D) civil operator's license suspension proceedings under 23 V.S.A. § 1205.

(2) If a service member is unable to appear at a hearing due to responsibilities related to state active duty service, the court may issue interim or ex parte orders in proceedings identified in subdivision (A), (B), or (C) of this subsection, and the department of motor vehicles may suspend a civil operator's license. If the court issued any order while the member was on state active duty, upon the member's return, he or she shall, upon request, be entitled to a hearing and the opportunity to move to strike or modify the order or suspension issued in his or her absence. If the civil operator's license is reinstated, there shall be no reinstatement fee.

Sec. 5a. 12 V.S.A. § 553 is amended to read:

§ 553. MEMBER OF ARMED SERVICES; TOLLING STATUTE OF LIMITATIONS

When an inhabitant of this state is in the military or naval service of the United States; or is a member of the Vermont National Guard and has been ordered to state active duty and, at the time of entering such service or duty, had a cause of action against another person, or another person had a cause of action against him or her, the time spent in such military or naval service out of this state or the time spent in state active duty shall not be taken as part of the time limited for the bringing of an action by or against him or her

founded on such causes. The limitation period for a cause of action shall be tolled during the duration of the person's out of state military or naval service, or state active duty service, plus an additional 60 days.

Sec. 6. 21 V.S.A. § 492 is amended to read:

§ 492. RIGHTS AND BENEFITS

* * *

(c)(1) If any member of the Vermont National Guard with civilian employer-sponsored insurance coverage is ordered to state active duty by the governor for up to 30 days, the service member may, at the member's option, continue his or her civilian health insurance under the same terms and conditions as were in effect for the month preceding the member's call to state active duty, including a continuation of the same levels of employer and employee contributions toward premiums and cost-sharing.

(2) If a member of the Vermont National Guard is called to state active duty for more than 30 days, the member may continue his or her civilian health insurance. For a member whose employer chooses not to continue regular contributions toward premiums and cost-sharing during the period of the member's state active duty in excess of 30 days, the state of Vermont shall be responsible for paying the employer's share of the premium and cost-sharing.

(3) The office of the adjutant general shall administer this subsection and may adopt policies, procedures, and guidelines to carry out the purposes

of this subsection, including developing employee notice requirements, enforcement provisions, and a process for the state to remit the employer's share of premiums and cost-sharing to the appropriate entities pursuant to subdivision (2) of this subsection.

Sec. 7. 16 V.S.A. § 2537 is amended to read:

§ 2537. ARMED SERVICES SCHOLARSHIPS

* * *

(b) Definitions:

(1) "Vermont National ~~guard~~ Guard" as used in this section will be deemed to include Vermont army national guard and Vermont air national guard.

(2) "Active duty for ~~national-guard~~ Vermont National Guard and for active reserve forces" means full-time duty in the active military service of the United States and includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

(3) "Inactive duty" means training performed by members of a reserve component while not on active duty and includes unit training assemblies, training periods, military flight periods and other equivalent duty and while on state duty on order of the governor or the governor's representative.

(4) “Armed forces of the United States” means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(5) “Child” means a natural or adoptive child of a member of the Vermont National Guard or armed forces, and includes a stepchild.

Sec. 8. 16 V.S.A. § 2856 is amended to read:

§ 2856. EDUCATIONAL ASSISTANCE; INTEREST FREE LOANS

(a) An active member of the Vermont ~~army national guard or the air national guard~~ National Guard may be eligible for an interest-free loan in an academic year for financial assistance to pay for tuition and fees for courses taken at a Vermont college, university, regional technical center, or other programs approved pursuant to policies adopted in accordance with subsection (f) of this section. ~~Academic year awards may be up to the in-state tuition rate at the University of Vermont for that year.~~

(b) To be eligible for an educational loan under this section, a person shall:

(1) ~~be an active member in good standing of a federally recognized~~ federally recognized unit of the Vermont ~~army national guard or air national guard~~ National Guard;

(2) have successfully completed basic training or commissioning; and

(3) ~~not hold a baccalaureate degree or higher; and~~

~~(4) be enrolled in a program that leads to a postsecondary degree, diploma or be studying for relevant continuing education purposes.~~

~~(c) A loan made under this section shall be interest free and may be partially or completely cancelled and forgiven for a person who:~~

~~(1) submits certification that the person has successfully completed the course; and~~

~~(2) submits certification that the person has completed two years of national guard service for each full academic year award. Service requirements for less than a full academic year award shall be proportionate to the amount of the award. The board shall determine the amount of loan to be cancelled for each completed year of service. The amount cancelled for each year of service shall not exceed 50 percent of the loan.~~

~~(d) The adjutant general shall provide ~~a certificate~~ documentation of eligibility ~~to each person who has been found to be eligible for educational assistance under this section for each academic period.~~ The certificate shall be valid for one academic year.~~

~~(e) A person shall not be eligible for educational assistance under this section for any courses taken after he or she has been awarded a baccalaureate degree or is no longer an active member in good standing of the Vermont army national guard or the air national guard The loan of a person who loses eligibility under this section while enrolled in a course shall go into~~

repayment pursuant to the terms of the loan, and the person shall be ineligible for further assistance under this section until the loan is repaid in full.

(f) *The board, in consultation with the office of the adjutant general, shall adopt ~~rules~~ policies, procedures, and guidelines necessary to implement the provisions of this section, which shall include application requirements, annual loan requirements, loan forgiveness requirements, and annual loan amounts based on available funds. ~~Rules~~ The policies, procedures, and guidelines shall include definitions of “successful completion of a course,” “relevant continuing education courses” and what constitutes an “academic year.” ~~Rules adopted by the Vermont state colleges~~ State Colleges under section 2183 of this title, prior to its repeal, shall remain valid under this section and shall be administered by the corporation.*

(g) [Repealed.]

(h) *The availability of loans made under this subchapter is subject to funds appropriated to the Vermont ~~army or air national guard~~ National Guard for that purpose.*