

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1807

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)

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 "Robert 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 **Sec. 11. 37-B MRSA §264, sub-§3, ¶Q**, as amended by PL 2015, c. 37, §2, is
 2 further amended to read:

3 Q. The Gardiner Armory, located on Brunswick Avenue, Gardiner, by means of a
 4 quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the
 5 State from all claims, including any environmental clean-up costs that may arise in
 6 connection with the land or the buildings constituting the armory; and

7 **Sec. 12. 37-B MRSA §264, sub-§3, ¶R**, as enacted by PL 2015, c. 37, §3, is
 8 amended to read:

9 R. The Belfast Armory, located on U.S. Route 1, Belfast, by means of a quitclaim
 10 deed as long as the purchaser agrees to indemnify and hold harmless the State from
 11 all claims, including any environmental clean-up costs that may arise in connection
 12 with the land or the buildings constituting the armory; and

13 **Sec. 13. 37-B MRSA §264, sub-§3, ¶S** is enacted to read:

14 S. The South Portland Air National Guard Station, located on Western Avenue,
 15 South Portland, by means of a quitclaim deed as long as the purchaser agrees to
 16 indemnify and hold harmless the State from all claims, including any environmental
 17 clean-up costs that may arise in connection with the land or the buildings constituting
 18 the station.

19 **Sec. 14. 37-B MRSA §343**, as enacted by PL 2005, c. 353, §4, is repealed.

20 **Sec. 15. 37-B MRSA §462** is enacted to read:

21 **§462. Operating under the influence**

22 **1. Prohibition; operating under the influence.** Any person subject to this Code
 23 who commits an offense prohibited under Title 29-A, section 2411 is guilty of that
 24 offense under this Code.

25 **2. Punishment.** Any person subject to this Code who is found guilty of an offense
 26 prohibited under Title 29-A, section 2411 may be punished as a court-martial may direct.

27 **SUMMARY**

28 This bill makes the following changes in the laws relating to the Department of
 29 Defense, Veterans and Emergency Management:

- 30 1. It moves the law relating to parental rights and responsibilities of active-duty
 31 parents from the laws pertaining to the Military Bureau to the laws governing domestic
 32 relations;
- 33 2. It limits the award, in any civil action brought under the laws regarding
 34 preservation of status and right to benefits of members of the Maine National Guard or
 35 the Reserves of the United States Armed Forces, of reasonable attorney's fees and costs to

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.