



Bill Analysis

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Legislative Service Commission

Sub. H.B. 426*

125th General Assembly
(As Reported by H. State Government)

Reps. Ujvagi, McGregor, Harwood, Book, Perry, Price, Carano, Strahorn, Skindell, Brown, DeGeeter, Collier, Miller, Reidelbach, Mason, Domenick, Sferra, D. Stewart, S. Patton, Allen, Woodard, Distel, Hartnett, Redfern, Barrett, S. Smith, Driehaus, Wilson, Key, DeBose, Yates, Jerse, Schaffer, Seaver, Cirelli, Otterman, Wolpert, Beatty, Hoops, Koziura, Kearns, Olman, C. Evans, Sykes, Flowers, Latta, Fessler, Daniels, Hollister, Cates

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CONTENT AND OPERATION

Overview

The bill makes changes to numerous laws in order to provide protection for and benefits to military personnel and members of their immediate family as follows:

** This analysis was prepared before the report of the House State Government Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

Use of bulk long distance telephone services

(R.C. 125.021(B))

- Requires the Department of Administrative Services to enter into a contract to purchase bulk long distance telephone services and make them available at cost, or to make bulk long distance telephone services available at cost under any existing contract the Department has entered into, to members of the immediate family of persons deployed on active duty so that those family members can communicate with the persons so deployed.
- Requires these telephone contracts to be entered into under the State Purchasing Law and in a nondiscriminatory manner that does not place any potential vendor at a competitive disadvantage.
- Requires the Department to adopt rules under the Administrative Procedure Act to implement the provisions discussed in this section of the analysis.
- Defines "immediate family," in this context, as a person's spouse residing in the person's household, brothers and sisters of the whole or of the half blood, children, including adopted children and stepchildren, parents, and grandparents.
- Defines "active duty," for this context, as active duty pursuant to (1) an Executive Order of the President of the United States, (2) an act of the Congress of the United States, (3) an order of the Governor, as its commander in chief, to the Ohio National Guard to perform any training or duty under certain circumstances, or (4) an order of the Governor to the Ohio organized militia to aid civil authorities in (a) executing the laws of this state, (b) suppressing insurrection, (c) repelling invasion, (d) acting in the event of a disaster within Ohio, or (e) promoting the health, safety, and welfare of Ohio citizens.¹

Armed Forces members filing military power of attorney

(R.C. 317.322)

- Prohibits a county recorder from charging a fee to a United States Armed Forces member who presents for recording a military power of attorney executed pursuant to federal law.

¹ Items (3) and (4) are the orders covered by the bill's cross-references to R.C. 5919.29 and 5923.21, respectively.

Retail installment contracts

(R.C. 1317.06(D) and 1317.061(B))

- Prohibits a retail seller in connection with a retail installment contract that is entered into *on and after* the bill's effective date from charging or collecting from a retail buyer who is deployed on active duty interest or finance charges exceeding an annual percentage rate of 6% during the period that the retail buyer is deployed on active duty. This is in lieu of the statutorily set interest and finance charges, or alternative interest and finance charges, a seller and buyer can contractually agree to under continuing law. (See **COMMENT 1** for key definitions.)
- Provides that, in order for a retail installment contract to be subject to the interest rate limitation, the retail buyer must provide the retail seller with written notice of and a copy of the military or gubernatorial orders calling the retail buyer to active duty and of any orders further extending active duty, not later than 180 days after the date of the retail buyer's termination of or release from active duty.
- Defines "active duty" in the same manner as described under "**Use of bulk long distance telephone services**," above.

Termination of a motor vehicle lease

(R.C. 1349.02 and 1349.99)

- Allows any person, or spouse of a person, who is deployed on active duty to terminate any motor vehicle lease that (1) is entered into *on or after* the bill's effective date and (2) is executed by or on behalf of the person who is deployed on active duty.
- Provides that termination of the motor vehicle lease is not effective until (1) 15 days after the person who is deployed on active duty or the person's spouse gives notice by certified mail, return receipt requested, of the intention to terminate the lease, and (2) the motor vehicle is returned to the lessor's custody or control.
- Prohibits, if the previous requirements are met, (1) a collection agency or lending institution from reporting any information about the nonpayment of the terminated lease to a consumer reporting agency for inclusion in the credit file or report of the person who is deployed on active duty, and (2) a consumer reporting agency from including any information about the nonpayment in that person's credit file or report, and makes violations of these prohibitions a minor misdemeanor. (See **COMMENT 2**.)

- Defines "active duty" in the same manner as described under "*Use of bulk long distance telephone services,*" above.

- Defines "motor vehicle," for this context, as any automobile, car, minivan, passenger van, sport utility vehicle, pickup truck, or other self-propelled vehicle not operated or driven on fixed rails or track.

Termination of a cellular phone contract

(R.C. 1349.03 and 1349.99)

- Allows any person, or spouse of a person, who is deployed on active duty to terminate, without penalty, a cellular phone contract that (1) is entered into *on or after* the bill's effective date and (2) is executed by or on behalf of the person who is deployed on active duty.

- Provides that termination of the cellular phone contract is not effective until (1) 30 days after the person who is deployed on active duty or the person's spouse gives notice by certified mail, return receipt requested, of the intention to terminate the contract, and (2) unless the person who is deployed on active duty owns the phone, it is returned to the custody or control of the cellular telephone company or the person or person's spouse agrees in writing to return the phone as soon as practicable after the deployment is completed.

- Prohibits, if the previous requirements are met, (1) a collection agency or cellular telephone company from reporting any information about the nonpayment of the terminated contract to a consumer reporting agency for inclusion in the credit file or report of the person who is deployed on active duty, and (2) a consumer reporting agency from including any information about the nonpayment in that person's credit file or report, and makes violations of these prohibitions a minor misdemeanor.

- Defines "active duty" in the same manner described under "*Use of bulk long distance telephone services,*" above.

Military leave of absence from institutions of higher education

(R.C. 1713.60, 3332.20, and 3345.53)

- Requires (1) private nonprofit institutions of higher education that hold a certificate of authorization from the Ohio Board of Regents, (2) state institutions of higher education, and (3) institutions that hold a certificate of registration from the State Board of Career Colleges and Schools to grant a student a "military leave of absence" from the institution while the student is serving on active duty, and for

one year after the conclusion of that service, if the student is (a) a member of the National Guard or other Armed Forces reserve component and called to active duty, or (b) a member of the Armed Forces in a retired status and called to active duty. The student must not suffer an academic penalty as a result of the leave of absence.

- Requires these institutions, upon request of a student granted a military leave of absence not later than one year after the student's release from active duty to (1) *credit* tuition and fee charges toward a subsequent academic term in an amount that is 100% of what the student paid the institution for the academic term in which the student withdraws or (2) *refund* 100% of the tuition and fees paid for the academic term provided the student withdraws before the withdrawal date established by the institution. Items (1) and (2) are actions an institution must take at the election of a student granted a military leave of absence. However, for purposes of item (2), if the student withdraws after the withdrawal date established by the institution, the student is ineligible for a refund.

- Defines the "withdrawal date" for purposes of the credit and refund provisions as the same date as that set by an institution for its general student population to withdraw from the institution or a course or class without academic penalty.

- Requires these institutions, upon request of a student granted a military leave of absence not later than one year after the student's release from active duty, to restore the student to the educational status attained prior to being called to active duty without loss of academic credits earned, scholarships or grants awarded, or (except as provided above) tuition and other fees paid prior to the commencement of active duty.

- If an institution fails to comply with the foregoing requirements, allows an aggrieved student to commence an action against the institution to enforce the requirements in the court of common pleas of the county in which the student resides or, in the case of a state institution of higher education, in the Court of Claims. If the student resides outside Ohio, the action instead must be commenced in the court of common pleas of the county in which the campus of the institution previously attended by the student is located or, in the case of a state institution of higher education, in the Court of Claims. The court may award reasonable attorney's fees and expenses if the student prevails in the action.

- Defines "active duty," as used in this context, as full-time duty in the active military service of the United States, including full-time training duty, annual training duty, and active state duty for members of the National Guard.

Determination of school district

(R.C. 3313.64(A)(9), (B)(1) and (14), (C), and (M))

- For purposes of continuing law that generally requires for admittance to kindergarten or first grade that a child (who is at least five years old but under 21 years old or who is a handicapped preschool child) be admitted to the schools of the school district *in which the child's parent resides* without payment of tuition, provides that a child whose parent is a member of the National Guard or a reserve unit of the United States Armed Forces and called to active duty, or a child whose parent is a member of the Armed Forces and ordered to a temporary duty assignment outside of the district, may continue to attend school in the district in which the child's parent lived before being so called or ordered, as long as the child's parent continues to be a resident of that district, and regardless of where the child lives as a result of the parent's active duty status or temporary duty assignment.

- Specifies that the school district is not responsible for providing transportation for a child who lives outside of the district as a result of the parent's active duty status or temporary duty assignment.

- Provides that a child under the age of 22 who resides with a person *other than the child's parent* is entitled to attend school in the school district in which *that person resides* if both of the following apply: (1) that person has been designated, through a military power of attorney executed under federal law or comparable document necessary to complete a family care plan, as the parent's agent for the care, custody, and control of the child while the parent is on active duty as a member of the National Guard or a reserve unit of the United States Armed Forces or because the parent is a United States Armed Forces member and is on duty assignment away from the parent's residence and (2) the military power of attorney or comparable document includes at least the authority to enroll the child in school.

- Provides that the entitlement to attend school in the district in which the parent's agent under the military power of attorney or comparable document resides applies until the end of the school year in which the military power of attorney or comparable document expires.

- Defines "active duty" in the same manner as described under "*Use of bulk long distance telephone services,*" above.

Forcible Entry and Detainer Law

(R.C. 1923.062)

- Provides that, in an action brought under the Forcible Entry and Detainer (Eviction) Law for possession of residential premises of a tenant or manufactured home park resident who is deployed on active duty or of any member of the tenant's or resident's immediate family, if the tenant or resident entered into the rental agreement *on or after* the bill's effective date, the court may, on its own motion, and must, upon motion made by or on behalf of the tenant or resident, do either of the following if the tenant's or resident's ability to pay the agreed rent is materially affected by the deployment on active duty: (1) stay the proceedings for a period of 90 days unless, in the opinion of the court, justice and equity require a longer or shorter period of time or (2) adjust the obligation under the rental agreement to preserve the interest of all parties to it.
- Provides that, if a stay is granted, the court may grant the landlord or manufactured home park operator such relief as equity may require.
- Specifies that these provisions do not apply to landlords or manufactured home park operators operating less than four residential premises.
- Defines "active duty" in the same manner as described under "**Use of bulk long distance telephone services**," above.

Individual life insurance policies

(R.C. 3915.053)

- Provides that any individual life insurance policy insuring the life of a reservist who is on active duty does not lapse and is not forfeited for the nonpayment of premiums during the reservist's period of military service or during the two-year period after that service ends if (1) the policy was in force for at least 180 days, (2) it was brought within the federal Servicemembers Civil Relief Act, and (3) it was not cancelled or had not lapsed for nonpayment of premiums prior to the reservist's commencement of the period of military service.²
- Permits insurers to continue to enforce policy provisions relating to naval or military service in time of war.

² Current insurance law defines a "reservist" as a member of a reserve component of the United States Armed Forces and a member of the Ohio National Guard (R.C. 3923.381-- not in the bill).

- Describes "active duty" in the same manner as under "Use of bulk long distance telephone services," above.

Public utility stoppages

(R.C. 4933.12(F) and 4933.121(E))

- Prohibits a natural gas or gas company from stopping gas from entering, and prohibits an electric company from ceasing to provide electricity to, the residential premises of any residential consumer who is deployed on active duty.
- Authorizes a natural gas or gas company or an electric company to file an application with the Public Utilities Commission (PUC) for approval of authority to recover amounts that it determines are uncollectible from a residential consumer who is deployed on active duty.
- Requires that recovery be through a rider on the base rates of customers of the company or through other means the PUC approves, but any amount approved to be recovered through a rider or other means must not be considered by the PUC in any subsequent rate determination.
- Requires that, upon return of a residential consumer from active duty, the company offer the customer a period equal to at least the period of deployment on active duty to pay any arrearages incurred during the period of deployment, and further requires the company to inform the consumer that, if the period the company offers presents a hardship to the consumer, the consumer may request the assistance of the PUC to obtain a longer period to pay the arrearages.
- Prohibits any late payment fees or interest from being charged to the residential consumer during the deployment or the repayment period.
- Defines "active duty" in the same manner as described under "Use of bulk long distance telephone services," above.

COMMENT

1. The following are key definitions that relate to the bill's "Retail installment contracts" provisions (R.C. 1317.01--not in the bill):

(a) "Retail installment sale" includes every retail installment contract to sell specific goods, every consumer transaction in which the cash price may be paid in installments over a period of time, and every retail sale of specific goods to any person in which the cash price may be paid in installments over a period of

time. "Retail installment sale" does not include certain lease-purchase agreements or layaway arrangements.

(b) "Goods" means all things, including specially manufactured goods but not including the money in which the price is to be paid or things in action, that are movable at the time of identification for sale or identification to the contract for sale and that are purchased primarily for personal, family, or household purposes.

(c) "Specific goods" means goods, including related services, identified and agreed upon at the time a contract to sell or a sale is made.

(d) "Retail" means to dispose of specific goods to, or to acquire specific goods by, a person for use other than for purposes of resale.

(e) "Buyer" means a person who buys or agrees to buy goods or any legal successor in interest of that person. And, a "retail buyer" means a buyer who is a party to a retail installment sale or any legal successor in interest of that person.

(f) "Seller" means a person who sells or agrees to sell goods. And, a "retail seller" means a seller who is a party to a retail installment sale.

(g) "Retail installment contract" means any written instrument that is executed in connection with any retail installment sale and is required by or authorized by provisions of the Retail Installment Contract Law, and includes all such instruments executed in connection with any retail installment sale.

(h) "Consumer transaction" means a sale, lease, assignment, or other transfer of an item of goods, or a service, except certain professional transactions, to an individual for purposes that are primarily personal, family, or household. A "consumer transaction" does not include a lease-purchase agreement.

2. For purposes of the bill's "Termination of a motor vehicle lease" provisions, a "lending institution" includes specified savings and loan associations, banks, and other entities (R.C. 175.01(E)--not in the bill).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-09-04	pp. 1663-1664
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