

## CHAPTER 202

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**MILITARY AND VETERANS**

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**HOUSE BILL 02-1139**

BY REPRESENTATIVE(S) Crane, Boyd, Cadman, Clapp, Cloer, Dean, Fairbank, Garcia, Groff, Jahn, Johnson, King, Lee, Mace, Miller, Ragsdale, Romanoff, Schultheis, Scott, Spradley, Stafford, Stengel, Swenson, Tapia, Weddig, and White; also SENATOR(S) Cairns, Andrews, Arnold, Chlouber, Dyer, Entz, Epps, Evans, Gordon, Hernandez, Isgar, Lamborn, May, McElhany, Musgrave, Nichol, Taylor, and Teck.

**AN ACT****CONCERNING PROTECTIONS FOR PERSONS ON STATE MILITARY DUTY.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Article 3 of title 28, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 14  
COLORADO STATE MILITARY SERVICE CIVIL RELIEF ACT

**28-3-1401. Short title.** THIS PART 14 SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO STATE MILITARY SERVICE CIVIL RELIEF ACT OF 2002".

**28-3-1402. Applicability.** THIS PART 14 SHALL APPLY TO ANY PERSON WHO IS CALLED TO STATE MILITARY SERVICE, AS THE TERM "MILITARY SERVICE" IS DEFINED IN SECTION 28-3-101, OR CALLED TO ACTIVE DUTY WITH THE STATE DEFENSE FORCE, AS THE TERM "ACTIVE DUTY" IS DEFINED IN SECTION 28-4-102, FOR ANY PERIOD OF TIME LONGER THAN THIRTY DAYS AND WHO IS ORDERED BY THE GOVERNOR TO ENFORCE THE LAW, PRESERVE THE PEACE, SECURE THE RIGHTS OR LIVES OF CITIZENS, OR PROTECT PROPERTY.

**28-3-1403. Stay of civil proceedings.** ANY COURT OF COMPETENT JURISDICTION MAY, ON ITS OWN MOTION, STAY ANY CIVIL ACTION OR PROCEEDING THAT INVOLVES A PERSON DESCRIBED IN SECTION 28-3-1402 FOR THE DURATION OF THE PERIOD OF SERVICE OR DUTY AND FOR THIRTY DAYS THEREAFTER, OR MAY OTHERWISE DISPOSE OF THE CASE AS MAY BE EQUITABLE TO CONSERVE THE INTERESTS OF ALL PARTIES. THE COURT SHALL STAY THE PROCEEDINGS UPON THE APPLICATION OF A PERSON, OR

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

AN AGENT OF THE PERSON, ENGAGED IN STATE MILITARY SERVICE OR ACTIVE DUTY UNLESS, IN THE OPINION OF THE COURT, THE ABILITY OF THE PERSON TO PROSECUTE OR DEFEND THE ACTION IS NOT MATERIALLY AFFECTED.

**28-3-1404. Actions for rent or possession by landlord.** (1) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (1), AN EVICTION, DISTRESS ACTION, OR REQUIREMENT FOR DEPOSIT OF ACCRUED RENT, AS PROVIDED FOR IN LAW, MAY NOT PROCEED AGAINST ANY PERSON DESCRIBED IN SECTION 28-3-1402 DURING THE PERIOD OF SERVICE OR DUTY AND FOR THIRTY DAYS THEREAFTER IF:

(I) THE PERSON, WITHIN THIRTY DAYS AFTER BEING CALLED TO SAID SERVICE OR DUTY, HAS GIVEN WRITTEN NOTICE TO THE AFFECTED LANDLORD WITH REGARD TO ANY PREMISES; AND

(II) THE RENTAL UNIT IS OCCUPIED CHIEFLY AS A RESIDENTIAL DWELLING BY THE PERSON, THE PERSON'S SPOUSE, OR A DEPENDENT OF THE PERSON.

(b) A COURT OF COMPETENT JURISDICTION MAY ALLOW AN ACTION DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1) TO PROCEED BASED UPON A FINDING OF NO SUBSTANTIVE PREJUDICE TO THE PERSON AS A RESULT OF THE SERVICE OR DUTY.

(2) THE COURT MAY, ON ITS OWN MOTION, STAY THE PROCEEDINGS DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION FOR THE DURATION OF THE PERIOD OF SERVICE OR DUTY AND FOR THIRTY DAYS THEREAFTER OR OTHERWISE DISPOSE OF THE CASE AS MAY BE EQUITABLE TO CONSERVE THE INTERESTS OF ALL PARTIES. THE COURT SHALL STAY THE PROCEEDINGS UPON THE APPLICATION OF A PERSON, OR AN AGENT OF THE PERSON, ENGAGED IN STATE MILITARY SERVICE OR ACTIVE DUTY UNLESS, IN THE OPINION OF THE COURT, THE ABILITY OF THE PERSON TO PAY THE AGREED UPON RENT HAS NOT BEEN MATERIALLY AFFECTED BY REASON OF THE SERVICE OR DUTY.

**28-3-1405. Installment contracts - purchase of property.** (1) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (1), A CREDITOR WHO HAS RECEIVED A DEPOSIT OR INSTALLMENT OF THE PURCHASE PRICE UNDER AN INSTALLMENT CONTRACT FOR THE PURCHASE OF REAL OR PERSONAL PROPERTY FROM A PERSON WHO, AFTER THE DATE OF THE PAYMENT OF SUCH DEPOSIT OR INSTALLMENT, IS CALLED TO STATE MILITARY SERVICE OR ACTIVE DUTY AS DESCRIBED IN SECTION 28-3-1402, MAY NOT:

(I) EXERCISE ANY RIGHT OR OPTION UNDER SAID CONTRACT TO RESCIND OR TERMINATE THE CONTRACT; OR

(II) RESUME POSSESSION OF THE PROPERTY.

(b) A CREDITOR DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1) MAY RESCIND OR TERMINATE THE INSTALLMENT CONTRACT OR RESUME POSSESSION OF THE PROPERTY FOR NONPAYMENT IF:

(I) THE PERSON, WITHIN THIRTY DAYS AFTER BEING CALLED TO SAID SERVICE OR DUTY, HAS NOT PROVIDED THE CREDITOR WITH WRITTEN NOTICE OF THE SERVICE OR

DUTY;

(II) A COURT OF COMPETENT JURISDICTION HAS AFFIRMATIVELY AUTHORIZED SUCH RECISSION, TERMINATION, OR POSSESSION; OR

(III) THE NONPAYMENT OF ANY INSTALLMENT UNDER THE INSTALLMENT CONTRACT OR ANY OTHER BREACH OF THE TERMS THEREOF DID NOT OCCUR DURING THE PERIOD OF THE SERVICE OR DUTY OR FOR THIRTY DAYS THEREAFTER.

(2) (a) UPON HEARING SAID ACTION, A COURT MAY ORDER THE REPAYMENT OF PRIOR INSTALLMENTS OR DEPOSITS OR ANY PART THEREOF AS A CONDITION OF TERMINATING THE CONTRACT AND RESUMING POSSESSION OF THE PROPERTY.

(b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (2), A COURT MAY, ON ITS OWN MOTION, STAY THE PROCEEDINGS FOR THE DURATION OF THE PERIOD OF SERVICE OR DUTY AND FOR THIRTY DAYS THEREAFTER OR OTHERWISE DISPOSE OF THE CASE AS MAY BE EQUITABLE TO CONSERVE THE INTERESTS OF ALL PARTIES. THE COURT SHALL STAY THE PROCEEDINGS UPON THE APPLICATION OF A PERSON, OR AN AGENT OF THE PERSON, ENGAGED IN STATE MILITARY SERVICE OR ACTIVE DUTY UNLESS, IN THE OPINION OF THE COURT, THE ABILITY OF THE PERSON TO COMPLY WITH THE TERMS OF THE OBLIGATION IS NOT MATERIALLY AFFECTED.

**28-3-1406. Mortgage or security on property.** (1) IN ANY PROCEEDING COMMENCED DURING A PERIOD OF STATE MILITARY SERVICE OR ACTIVE DUTY, AS DESCRIBED IN SECTION 28-3-1402, TO ENFORCE OBLIGATIONS SECURED BY A MORTGAGE, TRUST DEED, OR OTHER SECURITY UPON REAL OR PERSONAL PROPERTY OWNED PRIOR TO THE COMMENCEMENT OF THE PERIOD OF STATE MILITARY SERVICE OR ACTIVE DUTY, THE COURT MAY, ON ITS OWN MOTION, STAY THE PROCEEDINGS FOR THE DURATION OF THE PERIOD OF SERVICE OR DUTY AND FOR THIRTY DAYS THEREAFTER OR OTHERWISE DISPOSE OF THE CASE AS MAY BE EQUITABLE TO CONSERVE THE INTERESTS OF ALL PARTIES. THE COURT SHALL STAY THE PROCEEDINGS UPON THE APPLICATION OF A PERSON, OR AN AGENT OF THE PERSON, ENGAGED IN STATE MILITARY SERVICE OR ACTIVE DUTY UNLESS, IN THE OPINION OF THE COURT, THE ABILITY OF THE PERSON TO COMPLY WITH THE TERMS OF THE OBLIGATION IS NOT MATERIALLY AFFECTED.

(2) A SALE, FORECLOSURE, OR SEIZURE OF PROPERTY FOR NONPAYMENT OF ANY SUM DUE UNDER ANY OBLIGATION, OR FOR BREACH OF THE TERMS OF ANY SUCH OBLIGATION, IS NOT VALID IF MADE DURING A PERIOD OF STATE MILITARY SERVICE OR ACTIVE DUTY, AS DESCRIBED IN SECTION 28-3-1402, OR WITHIN THIRTY DAYS THEREAFTER, UNLESS SUCH SALE, FORECLOSURE, OR SEIZURE IS MADE UPON AN ORDER PREVIOUSLY GRANTED BY THE COURT AND A RETURN THERETO MADE AND APPROVED BY THE COURT.

(3) THIS SECTION APPLIES ONLY TO OBLIGATIONS SECURED BY A MORTGAGE, TRUST DEED, OR OTHER SECURITY IN THE NATURE OF A MORTGAGE UPON REAL OR PERSONAL PROPERTY OWNED BY A PERSON DESCRIBED IN SECTION 28-3-1402 AT THE COMMENCEMENT OF STATE MILITARY SERVICE OR ACTIVE DUTY, WHICH OBLIGATION ORIGINATED PRIOR TO THE PERSON'S SERVICE OR DUTY AND IS STILL OWED BY THE PERSON DURING THE PERIOD OF SERVICE OR DUTY.

**28-3-1407. Duty to furnish orders.** BEFORE A PERSON SHALL BE ENTITLED TO ANY STAY PURSUANT TO THIS PART 14, THAT PERSON SHALL FURNISH TO THE COURT AND TO ANY OTHER AFFECTED PARTIES A COPY OF THE PERSON'S ORDERS, TOGETHER WITH A WRITTEN STATEMENT FROM THE ADJUTANT GENERAL OF THE STATE OF COLORADO, THAT THE PERSON HAS SERVED CONTINUOUSLY ON STATE ORDERS FOR THE PERIOD COMMENCING WITH THE DATE OF THE ORDERS THROUGH THE DATE OF THE STATEMENT. THE COURT OR OTHER AFFECTED PARTIES MAY REQUIRE THE PERSON TO FURNISH A RECERTIFICATION EVERY THIRTY DAYS THEREAFTER, WHICH SHALL BE FURNISHED TO THE PERSON BY THE ADJUTANT GENERAL UPON REQUEST.

**SECTION 2.** 28-3-506, Colorado Revised Statutes, is amended to read:

**28-3-506. Discrimination against employment - penalty.** (1) (a) No person shall discriminate against any officer or enlisted ~~man~~ PERSON of the military forces of the state because of ~~his~~ THE OFFICER OR ENLISTED PERSON'S membership therein.

(b) No employer or officer or agent of any corporation, company, or firm or other person shall:

(I) Refuse to hire any person for or discharge any person from employment because of ~~his being~~ THE PERSON'S STATUS AS an officer or enlisted ~~man~~ PERSON of the military forces of the state; or

(II) Hinder or prevent ~~him~~ THE PERSON from performing any military service he OR SHE may be called upon to perform by proper authority; or

(III) Dissuade any person from enlistment in the said national guard by threat or injury to ~~him~~ SUCH PERSON, if he OR SHE so enlists, in respect to ~~his~~ THE PERSON'S employment, trade, or business.

(2) Any person violating any of the provisions of SUBSECTION (1) OF this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five ~~hundred~~ THOUSAND dollars. IN ADDITION, THE AGGRIEVED PERSON MAY BRING AN ACTION AT LAW FOR DAMAGES FOR SUCH NONCOMPLIANCE OR APPLY TO THE DISTRICT COURT FOR SUCH EQUITABLE RELIEF AS IS JUST AND PROPER UNDER THE CIRCUMSTANCES.

**SECTION 3.** 28-3-611, Colorado Revised Statutes, is amended to read:

**28-3-611. Employer's noncompliance - actions.** ANY EMPLOYER VIOLATING ANY OF THE PROVISIONS OF THIS PART 6 IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE OF NOT MORE THAN FIVE THOUSAND DOLLARS. ~~If any employer fails to comply with the foregoing,~~ IN ADDITION, the employee may ~~at his election,~~ bring an action at law for damages AND REASONABLE ATTORNEY FEES for such noncompliance or apply to the district court for such equitable relief AND REASONABLE ATTORNEY FEES as ~~is~~ ARE just and proper under the circumstances.

**SECTION 4. Effective date - applicability.** This act shall take effect July 1, 2002, and shall apply to offenses committed on or after said date.

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 29, 2002