

HOUSE BILL No. 4796

August 18, 2015, Introduced by Reps. Franz, Goike, Graves, Price, Yonker, Dianda, Hughes, Pettalia, Barrett and Glenn and referred to the Committee on Military and Veterans Affairs.

A bill to amend 1955 PA 133, entitled

"An act to provide for the granting of military leaves and providing re-employment protection for officers and enlisted men of the military or naval forces of the state or of the United States," by amending sections 2 and 3 (MCL 32.272 and 32.273), section 3 as amended by 2008 PA 106.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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1 Sec. 2. ~~No~~**AN** employer or **AN** officer or agent of any
2 corporation, company, or firm, or other person shall **NOT** discharge
3 any person from employment because of being or performing his **OR**
4 **HER** duty as an officer or enlisted ~~man~~**MEMBER** of the military or
5 naval forces of this state **OR ANY OTHER STATE**, or hinder or prevent
6 him **OR HER** from performing any military service or from attending

1 any military encampment or place of drill or instruction ~~—he~~ **OR**
2 **SHE** may be called upon to perform or attend by proper authority, or
3 dissuade any person from enlistment or accepting a commission in
4 the ~~national guard~~ **NATIONAL GUARD** or naval militia by threat of
5 injury to him **OR HER** in respect to his **OR HER** employment, trade, or
6 business ~~in case of his~~ **UPON** enlistment or acceptance of a
7 commission.

8 Sec. 3. (1) An employee who gives advance notice for a period
9 of leave from his or her employment shall not be denied a leave of
10 absence by his or her employer for the purpose of being inducted
11 into or entering into active service, active state service, or the
12 service of the United States, for the purpose of determining his or
13 her physical fitness to enter the service, or for performing
14 service as an officer or enlisted member of the military or naval
15 forces of this **STATE, ANY OTHER** state, or ~~of~~ the United States in
16 active state service or under title 10 or title 32 of the United
17 States ~~code.~~ **CODE**. If the employee reports to work or applies to
18 the employer within 45 days or, if the service was for more than
19 180 days, within 90 days following release from service, release
20 from duty, or rejection, the employer shall reemploy the employee
21 in the following order of priority:

22 (a) Following service of 1 to 90 days, in the position of
23 employment in which the person would have been employed if the
24 continuous employment of the person with the employer had not been
25 interrupted by service, the duties of which the person is qualified
26 to perform.

27 (b) Following service of 1 to 90 days, in the position of

1 employment in which the person was employed on the date of the
2 commencement of service, only if the person is not qualified to
3 perform the duties of the position referred to in subdivision (a)
4 and after reasonable efforts by the employer to qualify the person
5 have been made.

6 (c) Following service of 91 or more days, **IN** a position
7 described under subdivision (a) or (b), or in a position that is
8 the nearest approximation in status and pay to a position described
9 in subdivision (a) or (b) that the person is qualified to perform ⁷
10 only if the person is not qualified and cannot become qualified
11 with reasonable efforts by the employer to be employed as described
12 in subdivision (b).

13 (2) A person who is reemployed under this section is entitled
14 to the seniority and other rights and benefits that are determined
15 by seniority that the person had on the date of the commencement of
16 service plus the additional seniority and rights and benefits that
17 the person would have attained if the person had been continually
18 employed.

19 (3) In addition to the seniority, rights, and benefits under
20 subsection (2), a person who is reemployed under this section is
21 entitled to rights and benefits, not determined by seniority, that
22 are generally provided by the employer to employees who have
23 similar seniority, status, and pay who are on furlough or leave of
24 absence under a contract, agreement, policy, practice, or plan in
25 effect at the commencement of service or established while the
26 person performs service.

27 (4) The employee is not entitled to reemployment under this

1 section if the employee who is absent by reason of active service,
2 active state service, or the service of the United States has an
3 uninterrupted period of service in the uniformed services, with
4 respect to the employer relationship for which a person seeks
5 reemployment, that exceeds 5 years. ~~, except that for~~ **FOR** purposes
6 of this subsection, a period of service shall not include any of
7 the following:

8 (a) Any service that is required, beyond 5 years, to complete
9 an initial period of obligated service.

10 (b) Any service during which the person was unable to obtain
11 orders releasing him or her from a period of service in the
12 uniformed services before the expiration of the 5-year period and
13 the inability was through no fault of the person.

14 (c) Any service performed as required pursuant to 10 USC
15 10147, under 32 USC 502(a) or 503, or to fulfill additional
16 training requirements determined and certified in writing by the
17 appropriate service secretary to be necessary for professional
18 development or for completion of skill training or retraining.

19 (d) Any service performed by a member in active service,
20 active state service, or the service of the United States if any of
21 the following occur:

22 (i) The member is ordered to or retained on active duty,
23 active service, or active state service under 10 USC 688, 12301(a),
24 12301(g), 12302, 12304, or 12305, or under 14 USC 331, 332, 359,
25 360, 367, or 712.

26 (ii) The member is ordered to or retained on active duty,
27 active service, or active state service, other than for training,

1 under any provision of law because of a war or national emergency
2 declared by the president, the ~~congress,~~ **CONGRESS**, or the governor
3 **OF THIS STATE OR ANY OTHER STATE.**

4 (iii) The member is ordered to active duty, other than for
5 training, in support, as determined by the appropriate service
6 secretary, of an operational mission for which personnel have been
7 ordered to active duty under 10 USC 12304.

8 (iv) The member is ordered to active duty in support, as
9 determined by the appropriate service secretary, of a critical
10 mission or requirement of the uniformed services.

11 (v) The member is called into federal service as a member of
12 the ~~national guard~~ **NATIONAL GUARD** under 10 USC 331 to 335 or under
13 10 USC 12406.

14 (5) An employee is not entitled to the benefits under this
15 section if the service of the employee in any of the uniformed
16 services is terminated under any of the following circumstances:

17 (a) A separation of the person from the uniformed service or
18 ~~national guard~~ **NATIONAL GUARD** with a dishonorable or bad conduct
19 discharge.

20 (b) A separation of the person from the uniformed service or
21 ~~national guard~~ **NATIONAL GUARD** under other than honorable
22 conditions, as characterized pursuant to regulations prescribed by
23 the appropriate service secretary.

24 (c) A dismissal of the person under 10 USC 1161(a).

25 (d) A dropping from the rolls pursuant to 10 USC 1161(b).

26 (6) An employee who meets the requirements of this section and
27 is denied reemployment **AS REQUIRED UNDER THIS SECTION** after

1 reporting to work or applying to the employer may bring an action
2 against the employer in the circuit court for the employee's county
3 of residence and shall be awarded reinstatement and reasonable
4 attorney fees.

5 (7) As used in this section:

6 (a) "Active service" means service, including active state
7 service or special duty required by law, regulation, or pursuant to
8 order of the governor **OF THIS STATE OR ANY OTHER STATE**. Active
9 service includes continuing service of an active member of the
10 ~~national guard~~ **NATIONAL GUARD** and the defense force in fulfilling
11 that active member's commission, appointment, or enlistment.

12 (b) "Active state service", as applied to the ~~national guard~~
13 **NATIONAL GUARD** and the defense force, means military service in
14 support of civil authorities, at the request of local authorities,
15 including, but not limited to, support in the enforcement of laws
16 prohibiting the importation, sale, delivery, possession, or use of
17 a controlled substance, if ordered by the governor or as otherwise
18 provided in this act. As used in this subdivision, "controlled
19 substance" means that term as defined in section 7104 of the public
20 health code, 1978 PA 368, MCL 333.7104.

21 (c) "Service" means active service, active state service, or
22 in the service of the United States.

23 (d) "Service secretary" means the secretary concerned as
24 defined in 10 USC 101(a)(9).

25 (e) "Uniformed service" means the armed forces, the reserve
26 component, the ~~national guard~~ **NATIONAL GUARD** in active service or
27 active state service, the commissioned corps of the public health

1 service, and any other category of persons designated by the
2 president or governor in time of war or national emergency.

3 Enacting section 1. This amendatory act takes effect 90 days
4 after the date it is enacted into law.