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BILL ANALYSIS

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Senate Bill 192 (Substitute S-1)
Sponsor: Senator Jim Barcia
Committee: Commerce and Tourism

Date Completed: 2-5-08

CONTENT

The bill would amend Public Act 133 of 1955, which provides for the reemployment of employees after military service, to do all of the following:

- Refer specifically to performing service in the Armed Forces or National Guard in a provision prohibiting an employer from denying an employee's request for a leave of absence for military service.**
- Require an employer to reemploy an employee following service if he or she gave written notice within 45 days after service, or within 90 days after service if it were for more than 180 days, rather than if he or she applies for employment within 15 days.**
- Revise the Act's priorities for reemployment.**
- Provide that an employee would not be entitled to reemployment if he or she were absent for an uninterrupted period of five years, rather than a cumulative period of five years.**
- Allow a qualified employee who was denied reemployment to file a civil action, and require his or her reinstatement and payment of his or her attorney fees.**

Request for Leave of Absence

Under the Act, an employer may not deny an employee's request for a leave of absence for the purpose of being inducted into or entering into active service, active State service, or the service of the United States, for the purpose of determining his or her physical fitness to enter the service, or for performing training duty as an officer or enlisted member of the military or naval forces of Michigan or the United States. The bill would refer to performing service, rather than performing training duty, and would include service in active State service or under Title 10 (Armed Forces) or Title 32 (National Guard) of the U.S. Code.

"Service" means active service, active State service, or in the service of the United States.

"Active service" means service, including active State service or special duty required by law, regulation, or pursuant to order of the Governor, and includes continuing service of an active member of the National Guard and the defense force in fulfilling that active member's commission, appointment, or enlistment.

"Active state service", as applied to the National Guard and the defense force, means military service in support of civil authorities, at the request of local authorities, including support in the enforcement of laws prohibiting the importation, sale, delivery, possession, or

use of a controlled substance, if ordered by the Governor or as otherwise provided in the Act.

"Uniformed service" means the Armed Forces, the reserve component, the National Guard in active service or active State service, the commissioned corps of the Public Health Service, and any other category of persons designated by the President or Governor in time of war or national emergency.

Reemployment

Currently, following release from service, training duty, or rejection, the employee must be reemployed if he or she applies to the employer for reemployment within 15 days following service, release, or rejection. Under the bill, the employer would have to reemploy the employee if he or she gave written notice to the employer within 45 days following release from service, release from duty, or rejection. Reemployment would be required if the employee notified the employer within 90 days, if the service were for more than 180 days.

Under the Act, a returning employees must be reemployed in a position according to the following order of priority:

- Following service of one to 90 days, the position that the person would have held if his or her continuous employment with the employer had not been interrupted by service, if the person were qualified to perform the duties of that position.
- Following service of one to 90 days, the position that the person held on the date service began, only if he or she is not qualified for the position described above and after the employer has made reasonable efforts to qualify the person.
- Following service of 91 or more days, a position described above or any other position of lesser status or pay that the person is qualified to perform, only if he or she is not qualified and cannot become qualified with reasonable efforts by the employer for the position he or she had when service began.

Under the bill, the third priority would be employment in a position described in the first two options or a position that was the nearest approximation in status and pay to such a position that the person was qualified to perform, only if he or she were not qualified and could not become qualified with reasonable efforts by the employer for the position he or she had when service began.

An employee is not entitled to reemployment under the Act if he or she has a cumulative period of service in the uniformed services, with respect to the employer relationship for which he or she seeks reemployment, that exceeds five years, except for specified periods of service. Under the bill, this provision would apply to an uninterrupted five-year period rather than a cumulative period of five years.

Civil Action

The bill specifies that an employee who met the requirements for reemployment, and was denied reemployment after giving the employer written notice, could bring an action against the employer in the circuit court for the employee's county of residence. The employee would have to be awarded reinstatement and reasonable attorney fees.

MCL 32.273

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Under the bill, aggrieved employees would be allowed reimbursement for reasonable attorney fees. These reimbursements would be paid by private employers, local units of

government, or the State, depending on the employees' place of employment. The potential amount of these reimbursements is indeterminate and is totally dependent on the number of grievances filed.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.