

SUBSTITUTE FOR
SENATE BILL NO. 192

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 section 3 (MCL 32.273), as amended by 2002 PA 121.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) An employee who ~~requests a~~ **GIVES ADVANCE NOTICE**
2 **FOR A PERIOD OF** leave from his or her employment shall not be
3 denied a leave of absence by his or her employer for the purpose of
4 being inducted into or entering into active service, active state
5 service, or the service of the United States, for the purpose of
6 determining his or her physical fitness to enter the service, or
7 for performing ~~training duty~~ **SERVICE** as an officer or enlisted
8 member of the military or naval forces of this state or of the

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1 United States **IN ACTIVE STATE SERVICE OR UNDER TITLE 10 OR TITLE 32**
 2 **OF THE UNITED STATES CODE.** ~~Following release from service, training~~
 3 ~~duty, or rejection, the employee shall, if he or she makes~~
 4 ~~application to his or her employer for reemployment within 15~~ **IF**
 5 **THE EMPLOYEE <<REPORTS TO WORK OR APPLIES>> TO THE EMPLOYER WITHIN 45**
 6 **days OR, IF THE**

7 **SERVICE WAS FOR MORE THAN 180 DAYS, WITHIN 90 DAYS** following
 8 **RELEASE FROM** service, release **FROM DUTY**, or rejection, ~~be~~
 9 ~~reemployed in a position of employment~~ **THE EMPLOYER SHALL REEMPLOY**
 10 **THE EMPLOYEE** in the following order of priority:

11 (a) Following service of 1 to 90 days, in the position of
 12 employment in which the person would have been employed if the
 13 continuous employment of the person with the employer had not been
 14 interrupted by service, the duties of which the person is qualified
 15 to perform.

16 (b) Following service of 1 to 90 days, in the position of
 17 employment in which the person was employed on the date of the
 18 commencement of service, only if the person is not qualified to
 19 perform the duties of the position referred to in subdivision (a)
 20 and after reasonable efforts by the employer to qualify the person
 21 have been made.

22 (c) Following service of 91 or more days, a position described
 23 under subdivision (a) or (b) or in ~~any other~~ **A position of lesser**
 24 **THAT IS THE NEAREST APPROXIMATION IN status or** ~~AND~~ **pay TO A**
 25 **POSITION DESCRIBED IN SUBDIVISION (A) OR (B)** that the person is
 26 qualified to perform, only if the person is not qualified and
 27 cannot become qualified with reasonable efforts by the employer to
 be employed as described in subdivision (b).

1 (2) A person who is reemployed under this section is entitled
2 to the seniority and other rights and benefits that are determined
3 by seniority that the person had on the date of the commencement of
4 service plus the additional seniority and rights and benefits that
5 the person would have attained if the person had been continually
6 employed.

7 (3) In addition to the seniority, rights, and benefits under
8 subsection (2), a person who is reemployed under this section is
9 entitled to rights and benefits, not determined by seniority, that
10 are generally provided by the employer to employees who have
11 similar seniority, status, and pay who are on furlough or leave of
12 absence under a contract, agreement, policy, practice, or plan in
13 effect at the commencement of service or established while the
14 person performs service.

15 (4) The employee is not entitled to reemployment under this
16 section if the employee who is absent by reason of active service,
17 active state service, or the service of the United States has a
18 ~~cumulative~~**AN UNINTERRUPTED** period of service in the uniformed
19 services, with respect to the employer relationship for which a
20 person seeks reemployment, that exceeds 5 years, except that ~~any~~
21 **FOR PURPOSES OF THIS SUBSECTION, A** period of service shall not
22 include any of the following:

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

25 (b) Any service during which the person was unable to obtain
26 orders releasing him or her from a period of service in the
27 uniformed services before the expiration of the 5-year period and

1 the inability was through no fault of the person.

2 (c) Any service performed as required pursuant to 10 ~~U.S.C.~~
3 **USC** 10147, under 32 ~~U.S.C.~~ **USC** 502(a) or 503, or to fulfill
4 additional training requirements determined and certified in
5 writing by the appropriate service secretary to be necessary for
6 professional development or for completion of skill training or
7 retraining.

8 (d) Any service performed by a member in active service,
9 active state service, or the service of the United States if any of
10 the following occur:

11 (i) The member is ordered to or retained on active duty, active
12 service, or active state service under 10 ~~U.S.C.~~ **USC** 688, 12301(a),
13 12301(g), 12302, 12304, or 12305, or under 14 ~~U.S.C.~~ **USC** 331, 332,
14 359, 360, 367, or 712.

15 (ii) The member is ordered to or retained on active duty,
16 active service, or active state service, other than for training,
17 under any provision of law because of a war or national emergency
18 declared by the president, the congress, or the governor.

19 (iii) The member is ordered to active duty, other than for
20 training, in support, as determined by the appropriate service
21 secretary, of an operational mission for which personnel have been
22 ordered to active duty under 10 ~~U.S.C.~~ **USC** 12304.

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

26 (v) The member is called into federal service as a member of
27 the national guard under 10 ~~U.S.C.~~ **USC** 331 to 335 or under 10

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1 ~~U.S.C.—USC~~ 12406.

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

5 (a) A separation of the person from the uniformed service or
6 national guard with a dishonorable or bad conduct discharge.

7 (b) A separation of the person from the uniformed service or
8 national guard under other than honorable conditions, as
9 characterized pursuant to regulations prescribed by the appropriate
10 service secretary.

11 (c) A dismissal of the person under 10 ~~U.S.C.—USC~~ 1161(a).

12 (d) A dropping from the rolls pursuant to 10 ~~U.S.C.—USC~~
13 1161(b).

14 (6) AN EMPLOYEE WHO MEETS THE REQUIREMENTS OF THIS SECTION AND
15 IS DENIED REEMPLOYMENT AFTER <<REPORTING TO WORK OR APPLYING TO THE
16 EMPLOYER>> MAY
17 BRING AN ACTION AGAINST THE EMPLOYER IN THE CIRCUIT COURT FOR THE
18 EMPLOYEE'S COUNTY OF RESIDENCE AND SHALL BE AWARDED REINSTATEMENT
19 AND REASONABLE ATTORNEY FEES.

20 (7) ~~(6)~~—As used in this section:

21 (a) "Active service" means service, including active state
22 service or special duty required by law, regulation, or pursuant to
23 order of the governor. Active service includes continuing service
24 of an active member of the national guard and the defense force in
25 fulfilling that active member's commission, appointment, or
26 enlistment.

27 (b) "Active state service", as applied to the national guard
and the defense force, means military service in support of civil

1 authorities, at the request of local authorities, including, but
2 not limited to, support in the enforcement of laws prohibiting the
3 importation, sale, delivery, possession, or use of a controlled
4 substance, if ordered by the governor or as otherwise provided in
5 this act. As used in this subdivision, "controlled substance" means
6 that term as defined in section 7104 of the public health code,
7 1978 PA 368, MCL 333.7104.

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

10 (d) "Service secretary" means the secretary ~~of the army,~~
11 ~~secretary of the navy, or secretary of the air force~~ **CONCERNED** as
12 defined in 10 U.S.C. ~~101(9)~~ **USC 101(A) (9)** .

13 (e) "Uniformed service" means the armed forces, the reserve
14 component, the national guard in active service or active state
15 service, the commissioned corps of the public health service, and
16 any other category of persons designated by the president or
17 governor in time of war or national emergency.