

State Government

HB 1147

Brief Description: *Changing provisions relating to employment rights of members of reserve and national guard forces.*

Sponsors: *Representatives Haigh, D. Schmidt, Miloscia, Bush, Conway, Lovick, Jackley, Benson and Esser.*

Brief Summary of Bill

- *Prohibits employment discrimination because of military service.*
- *Expands the number of people eligible for re-employment rights after military service.*
- *Imposes additional requirements and deadlines for persons claiming re-employment rights after military service.*
- *Allows a person to continue health and pension benefits during and after military service.*
- *Changes enforcement provisions relating to employment rights for military personnel.*

Hearing Date: *2/7/01*

Staff: *Jim Morishima (786-7191).*

Background:

I. Employment Rights for Military Personnel.

A resident of the state who vacates a position of employment (public or private) to enter the National Guard, the United States Armed Forces, or the United States Public Health Service, must be re-employed by his or her employer, provided that the resident meets certain eligibility criteria. The right to re-employment does not apply to temporary positions, or if re-employment would be impossible, unreasonable, or against the public

interest because of changed circumstances.

The federal Uniformed Services Employment and Re-employment Rights Act of 1994 protects the employment rights of members of the armed services. Federal law also exists with respect to the provision of health coverage and pension plans. In some cases, federal law preempts state laws dealing with the same subject matter. State laws dealing with employment rights may also be limited by the Commerce Clause of the United States Constitution, which provides that states may not unduly burden interstate commerce.

II. Re-employment Eligibility.

A person is eligible for re-employment if:

- The person is a resident of the state;*
- The person is honorably discharged, or has otherwise satisfactorily completed his or her military service;*
- The person applies for re-employment within 90 days of his or her discharge. If a person is hospitalized while on active duty, and subsequently released from service while still in the hospital, the person may apply for re-employment after being released from the hospital, as long as the hospitalization lasts one year or less;*
- The person returns to his or her job within three months of discharge; and*
- The person has served four years or less (however if the person is required by law to serve more than four years, the person's re-employment rights are not forfeit).*

III. Health and Retirement Plans.

A re-employed person must retain his or her seniority after returning to work. Also, the person must be treated as if he or she was on leave with respect to vacations, insurance, retirement, and other benefits.

IV. Enforcement.

The provisions described above are enforced by the prosecuting attorney in the county in which the employer is located. A person not wishing to pursue his or her rights through the prosecuting attorney may bring an action through a private attorney.

Summary of Bill:

I. Employment Rights for Military Personnel.

A person who is a member of the armed services, or is fulfilling his or her service obligations in the armed services, may not be denied employment, re-employment, retention, promotion, or any other employment benefit because of such membership or service. An employer may not take retaliatory action against an employee enforcing his or her rights under this prohibition.

II. Re-employment Eligibility.

A. Persons Eligible for Re-employment.

The class of persons qualifying for re-employment benefits is expanded to include members of the National Guard of other jurisdictions, persons employed within the state (regardless of residency), and persons employed by employers doing business within the state. A person need not be re-employed if such re-employment would be impossible, unreasonable, or would impose an undue hardship upon the employer. Also, an employer may deny an employee re-employment if the employee's position was for a brief, non-recurrent period and there is no reasonable expectation that the employment would continue indefinitely.

B. Additional Application Requirements.

The 90 day deadline for a person to apply for re-employment is changed to depend on the type and length of service:

- For persons who served less than 31 days, or persons absent for purposes of participating in an examination to determine fitness to perform military service, the deadline is the next regularly scheduled work period plus eight hours;*
- For persons who served more than 30 days, but less than 181 days, the deadline is 14 days;*
- For persons who served more than 180 days, the deadline is 90 days.*
- For persons hospitalized for up to two years for an illness or injury incurred during military service, the deadline is the end of the hospitalization (the current law regarding hospitalization during active duty for up to one year is not changed and may conflict with this provision).*

A person applying for re-employment must provide certain documentation to the employer. A person may not be denied re-employment solely because the documentation is not available.

III. Health and Retirement Plans.

A person may continue his or her employment health benefits while on military duty for up to 18 months. A person electing to continue his or her health benefits may be required to pay for the benefits. A person being re-employed may also have their pension benefits continued as if there was no break in service.

IV. Enforcement.

The employment rights provisions are enforced by the Attorney General. A person not wishing to pursue his or her rights through the Attorney General may bring an action through a private attorney. The burden of proof is shifted to the employer in actions involving certain re-employment issues, including actions to determine whether re-employment would present an undue hardship on the employer.

Rulemaking Authority: *No express authority.*

Effective Date: *Ninety days after adjournment of session in which bill is passed.*

Appropriation: *None.*

Fiscal Note: Requested on January 31, 2001.