

SENATE BILL No. 1358

July 26, 2006, Introduced by Senators BARCIA, BASHAM, CLARK-COLEMAN, CLARKE, JACOBS, WHITMER, BRATER, SCHAUER, CHERRY, OLSHOVE, EMERSON, SCOTT, ALLEN, THOMAS, PRUSI and GARCIA and referred to the Committee on Commerce and Labor.

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 leave from his or her
 2 employment shall not be denied a leave of absence by his or her
 3 employer for the purpose of being inducted into or entering into
 4 active service, active state service, or the service of the United
 5 States, for the purpose of determining his or her physical fitness
 6 to enter the service, or for performing ~~training~~ duty as an
 7 officer or enlisted member of the military or naval forces of this
 8 state or of the United States **IN ACTIVE STATE SERVICE OR UNDER**

1 **TITLE 10 OR TITLE 32 OF THE UNITED STATES CODE.** ~~Following release~~
2 ~~from service, training duty, or rejection, the employee shall, if~~
3 ~~he or she makes application to his or her employer for reemployment~~
4 ~~within 15~~ **IF THE EMPLOYEE GIVES WRITTEN NOTICE TO THE EMPLOYER**
5 **WITHIN 45** days following **RELEASE FROM** service, release **FROM DUTY,**
6 or rejection, ~~be reemployed in a position of employment~~ **THE**
7 **EMPLOYER SHALL REEMPLOY THE EMPLOYEE** in the following order of
8 priority:

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

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

20 (c) Following service of 91 or more days, a position described
21 under subdivision (a) or (b) or in any other position of lesser
22 status or pay that the person is qualified to perform, only if the
23 person is not qualified and cannot become qualified with reasonable
24 efforts by the employer to be employed as described in subdivision
25 (b).

26 (2) A person who is reemployed under this section is entitled
27 to the seniority and other rights and benefits that are determined

1 by seniority that the person had on the date of the commencement of
2 service plus the additional seniority and rights and benefits that
3 the person would have attained if the person had been continually
4 employed.

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

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

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

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

27 (c) Any service performed as required pursuant to 10 ~~U.S.C.~~

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

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

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

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

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

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

24 (v) The member is called into federal service as a member of
25 the national guard under 10 ~~U.S.C.~~ **USC** 331 to 335 or under 10
26 ~~U.S.C.~~ **USC** 12406.

27 (5) An employee is not entitled to the benefits under this

1 section if the service of the employee in any of the uniformed
2 services is terminated under any of the following circumstances:

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

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

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

10 (d) A dropping from the rolls pursuant to 10 ~~U.S.C.~~ **USC**
11 1161(b).

12 **(6) AN EMPLOYEE WHO MEETS THE REQUIREMENTS OF THIS SECTION AND**
13 **IS DENIED REEMPLOYMENT AFTER GIVING THE EMPLOYER WRITTEN NOTICE MAY**
14 **BRING AN ACTION AGAINST THE EMPLOYER IN THE CIRCUIT COURT FOR THE**
15 **EMPLOYEE'S COUNTY OF RESIDENCE AND SHALL BE AWARDED REINSTATEMENT**
16 **AND REASONABLE ATTORNEY FEES.**

17 (7) ~~(6)~~ As used in this section:

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

24 (b) "Active state service", as applied to the national guard
25 and the defense force, means military service in support of civil
26 authorities, at the request of local authorities, including, but
27 not limited to, support in the enforcement of laws prohibiting the

1 importation, sale, delivery, possession, or use of a controlled
2 substance, if ordered by the governor or as otherwise provided in
3 this act. As used in this subdivision, "controlled substance" means
4 that term as defined in section 7104 of the public health code,
5 1978 PA 368, MCL 333.7104.

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

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

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