

HOUSE BILL No. 4292

February 20, 2007, Introduced by Reps. Espinoza, Brown, Sheltroun, McDowell, Polidori, Gonzales, Byrum and Marleau and referred to the Committee on Military and Veterans Affairs and Homeland Security.

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 officer
7 or enlisted member of the military or naval forces of this state or
8 of the United States **IN ACTIVE STATE SERVICE OR UNDER TITLE 10 OR**

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

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

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

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

25 (2) A person who is reemployed under this section is entitled
26 to the seniority and other rights and benefits that are determined
27 by seniority that the person had on the date of the commencement of

1 service plus the additional seniority and rights and benefits that
2 the person would have attained if the person had been continually
3 employed.

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

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

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

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

26 (c) Any service performed as required pursuant to 10 ~~U.S.C.~~
27 **USC** 10147, under 32 ~~U.S.C.~~**USC** 502(a) or 503, or to fulfill

1 additional training requirements determined and certified in
2 writing by the appropriate service secretary to be necessary for
3 professional development or for completion of skill training or
4 retraining.

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

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

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

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

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

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

26 (5) An employee is not entitled to the benefits under this
27 section if the service of the employee in any of the uniformed

1 services is terminated under any of the following circumstances:

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

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

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

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

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

16 (7) ~~(6)~~ As used in this section:

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

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

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

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

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

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