



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3956/1

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Today!
Fri 10/12
4:00 PM

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1 AN ACT ~~...~~; relating to: reemployment rights after national guard or state
2 defense force service, providing an exemption from emergency rule-making
3 procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Introduction

Under current federal law, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides certain reemployment rights and benefits to persons who are absent from employment because of service in the armed forces or the national guard under federal law (service in the uniformed services). USERRA, however, does not cover person who are absent from employment because of service in the national guard or the state defense force under state law or because of certain service in the national guard under federal law that is not considered to be service in the uniformed services under USERRA (active service). This bill provides for persons who are absent from employment because of active service under state law certain reemployment rights and benefits that are parallel to the reemployment rights and benefits that are provided under USERRA for persons who are absent from employment because of service in the uniformed services under federal law.

Entitlement to reemployment rights

The bill requires any employer, including the state, employing one or more persons on a permanent basis to reemploy a person who is entitled to reemployment under the bill promptly on completion of the person's active service unless the employer's circumstances have so changed as to make reemployment of the person impossible or unreasonable, the position that the person left to perform active service

was for a brief, nonrecurrent period and there was no reasonable expectation that the employment would continue, or, in the case of a person who is not qualified for reemployment, the accommodations, training, or effort required to qualify the person for reemployment would pose an unreasonable hardship on the employer. A person is entitled to reemployment under the bill if all of the following prerequisites are met:

1. The employer has been given advanced notice of the active service, unless the giving of advanced notice was precluded by military necessity or was otherwise impossible or unreasonable.

2. Subject to certain exceptions, the cumulative length of all absences from employment with the employer because of active service or service in the uniformed services does not exceed five years.

3. The person reports back to work or applies for reemployment within the time frames required under the bill. If the person was in active service for less than 31 days, the person must report back to work at the first full regularly-scheduled work period following completion of the active service, plus a reasonable time for safe transportation home and an eight-hour rest period. If the person was in active service for more than 30, but less than 181, days, the person must apply for reemployment within 14 days after completion of the active service. If the person was in active service for more than 180 days, the person must apply for reemployment within 90 days after completion of the active service. In addition, the bill extends those periods for reporting back to work or applying for reemployment by up to two years for hospitalization or convalescence for an illness or injury incurred in or aggravated during the active service.

4. The person's service in the national guard or state defense force was not terminated under other than honorable conditions.

A person who is performing active service on the effective date of the bill is entitled to reemployment under the bill if the person reports back to work or applies for reemployment on or after the effective date of the bill and otherwise meets the prerequisites for reemployment under the bill.

Reemployment positions

The bill specifies the type of position in which a person must be reemployed on returning from active service as follows:

1. If the person was in active service for less than 91 days, the person must be reemployed in the position in which the person would have been employed if the person's employment had not been interrupted by the active service so long as the person is qualified to perform the duties of the position or, if after reasonable efforts by the employer to qualify the person to perform those duties the person is not qualified to perform those duties, in the position in which the person was employed before the active service.

② 1. If the person was in active service for more than 90 days, the person must be reemployed in the position in which the person would have been employed if the person's employment had not been interrupted by the active service or in a position of like seniority, status, and pay so long as the person is qualified to perform the duties of the position or, if after reasonable efforts by the employer to qualify the

that the person is qualified to perform and

person to perform those duties the person is not qualified to perform those duties, in the position in which the person was employed before the active service or in a position of like seniority, status, and pay.

3. If the person has a disability that was incurred in or aggravated during the active service and if after reasonable efforts by the employer to accommodate the disability the employee is not qualified due to the disability to perform the duties of the position in which the person would have been employed if the person's employment had not been interrupted by the active service, the person must be reemployed in any other position that is equivalent to that position in seniority, status, and pay, the duties of which the person is qualified to perform or would be qualified to perform with reasonable efforts by the employer, or, if no equivalent position is available, in a position that is the nearest approximation to that equivalent position in terms of seniority, status, and pay, consistent with the person's circumstances.

4. If the person is not qualified to be employed in the position in which the person would have been employed if the person's employment had not been interrupted by the active service or in the position in which the person was employed before the active service for any reason other than disability incurred in or aggravated during the active service and cannot become qualified to be so employed with reasonable efforts by the employer, the person must be reemployed in any other position that is the nearest approximation to the position in which the person would have been employed if the person's employment had not been interrupted by the active service or, if no position that is the nearest approximation to that position is available, in a position that is the nearest approximation to the position in which the person was employed before the active service began ~~that the person is qualified to perform.~~

Seniority and other rights and benefits

The bill also specified that a person who is absent from employment because of active service is entitled to certain other rights and benefits as follows:

1. On reemployment, the person is entitled to the seniority and other rights and benefits determined by seniority that the person would have had if the person's employment had not been interrupted by the active service.

2. While absent from employment, the person is considered to be on furlough or leave of absence and is entitled to all rights and benefits not determined by seniority that are generally provided by the employer to employees having similar seniority, status, and pay who are on furlough or leave of absence.

3. While absent from employment, the person may continue health coverage for the person and his or her dependents for up to 18 months or until the day after the date on which the person is required to report back to work or apply for reemployment, whichever occurs first. If the person's health coverage is terminated because the person is in active service, the person is entitled to reinstatement of health coverage on reemployment with no exclusion or waiting period that would not have been imposed had the coverage not been terminated because of the active service. A person who is performing active service on the effective date of the bill or a dependent or personal representative of the person may elect to continue health

coverage for the remainder of that 18-month period or until the day after the date on which the person is required to report back to work or apply for reemployment, whichever occurs first.

4. The person may not be discharged from employment, except for cause, for 180 days after reemployment, if the active service was for more than 30 days, but less than 181 days, and for one year after reemployment, if the active service was for more than 180 days.

Enforcement

Finally, the bill provides a procedure for the enforcement of a person's rights under the bill. Specifically, the bill permits a person who believes that his or her employer has failed or refused, or is about to fail or refuse, to provide to the person any reemployment right or benefit to which the person is entitled under the bill to file a complaint with the adjutant general who must then investigate the complaint. If the adjutant general is reasonably satisfied that the person is entitled to the rights or benefits sought, the adjutant general must endeavor to resolve the complaint by conference, conciliation, or persuasion. If the adjutant general is not able to resolve the complaint, the person may request the adjutant general to refer the complaint to counsel appointed by the governor for the purpose of prosecuting such complaints who must file a complaint for appropriate relief with the department of workforce development (DWD) or, if the person is an employee of a state agency, the personnel commission. The bill also permits a person to file a complaint with DWD or the personnel commission on the person's own behalf without filing a complaint with the adjutant general or requesting the adjutant general to appoint counsel.

DWD or the personnel commission must process the complaint in the same manner that employment discrimination complaints are processed under the fair employment law. If DWD or the personnel commission finds that an employer has failed or refused, or is about to fail or refuse, to provide any reemployment right or benefit to which a person is entitled under the bill or has discharged or otherwise discriminated against any person in retaliation for attempting to enforce any rights provided under the bill, DWD or the personnel commission may order the employer to do any one or more of the following:

1. Take such action as will fully vindicate the rights and benefits of the person under the bill.

2. Compensate the person for any loss ^{of} wages, salary, or other benefits suffered because of the failure or refusal to provide reemployment rights or benefits or the discharge or other discrimination.

3. Pay the person, as liquidated damages, an amount that is equal to the amount of compensation ordered, if DWD or the personnel commission finds that the failure or refusal to provide reemployment rights or benefits or the discharge or other discrimination was willful.

4. Pay the person costs and reasonable actual attorney fees, if the person is not represented by counsel appointed by the governor.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 21.80 of the statutes is created to read:

2 **21.80 Reemployment rights after national guard or state defense force**
3 **service.** (1) DEFINITIONS. In this section:

4 (a) "Active service" means active service in the national guard or the state
5 defense force under an order of the governor issued under this chapter or active
6 service in the national guard under 38 USC 502 (f) that is not considered to be service
7 in the uniformed services.

8 (b) "Employer" means a person engaging in any activity, enterprise, or business
9 in this state employing one or more persons on a permanent basis. "Employer"
10 includes the state and any office, department, independent agency, authority,
11 institution, association, society, or other body in state government created or
12 authorized to be created by the constitution or any law, including the legislature and
13 the courts. "Employer" also includes a successor-in-interest of a person employing
14 an individual who has provided notice to that person under sub. (3) (a).

15 (c) "Health benefit plan" has the meaning given in s. 632.745 (11).

16 (d) "Qualified" means having the ability to perform the essential tasks of an
17 employment position.

18 (e) "Reasonable efforts" means, with respect to an action required by an
19 employer under sub. (4) (a) 1., 2., 3., or 4., an action that does not place an undue
20 hardship on the employer.

1 (f) "Service in the uniformed services" has the meaning given in 38 USC 4303
2 (13).

3 (g) "Undue hardship" means, with respect to an action required by an employer
4 under sub. (4) (a) 1., 2., 3., or 4., significant difficulty or expense, when considered
5 in light of all of the following:

6 1. The nature and cost of the action.

7 2. The overall financial resources of the facility involved in providing the action,
8 the number of persons employed at the facility, the effect of providing the action on
9 the resources and finances of the facility, and any other impact of the action on the
10 operation of the facility.

11 3. The overall financial resources of the employer, the number of person^S
12 employed by the employer, and the number, type, and location of the employer's
13 facilities.

14 4. The type of operation of the employer, including the composition, structure,
15 and functions of the employer's workforce, the geographic separateness of the facility
16 involved in providing the action from the employer, and the administrative and
17 financial relationship of the facility to the employer.

18 (2) MORE GENEROUS RIGHTS PERMITTED. Nothing in this section prohibits an
19 employer from providing employees who are called into active service with
20 reemployment rights and benefits that are more generous to the employee than the
21 rights and benefits provided under this section.

22 (3) REEMPLOYMENT RIGHTS. (a) *Prerequisites*. Subject to par. (d), any person who
23 is absent from a position of employment because of active service is entitled to the
24 reemployment rights and benefits specified in this section if all of the following apply:

1 1. Except as provided in par. (b), the person or an appropriate officer in the
2 national guard or the state defense force has given advanced notice of the active
3 service to the person's employer.

4 2. Except as provided in par. (c), the cumulative length of the absence from the
5 position of employment and of all previous absences from a position of employment
6 with the employer by reason of active service or service in the uniformed services
7 does not exceed 5 years.

8 3. Except as provided in par. (f), the person reports to the employer or submits
9 an application for reemployment to the employer as required under par. (e).

10 4. The person's service in the national guard or the state defense force has not
11 been terminated under other than honorable conditions.

12 (b) *Notice not required.* No notice is required under par. (a) 1. if the giving of
13 that notice is precluded by military necessity or is otherwise impossible or
14 unreasonable. A determination of military necessity for purposes of this paragraph
15 shall be made according to regulations promulgated by the federal secretary of
16 defense and is not subject to judicial review.

17 (c) *Length of absence limit.* The periods of service in the uniformed services
18 described in 38 USC 4312 (c) (1) to (4) and all of the following periods of active service
19 are not included in calculating the 5-year period specified in par. (a) 2.:

20 1. Any period of active service beyond that 5-year period that is required to
21 complete an initial period of obligated active service.

22 2. Any period of active service for which the person, through no fault of the
23 person's own, was unable to obtain orders releasing the person from a period of active
24 service before the expiration of the 5-year period.

1 3. Any period of active service that was performed to fulfill any additional
2 training requirements determined and certified in writing by the federal secretary
3 of the army, the federal secretary of the air force, or the adjutant general to be
4 necessary for professional development or for completion of skill training or
5 retraining.

6 4. Any period of active service that was performed by a person who was ordered
7 to, or retained in, active service, other than for training, because of a war or national
8 emergency declared by the ~~President~~ or Congress, because of insurrection, rebellion,
9 riot, invasion, or resistance to the execution of the laws of this state or of the United
10 States, or in support of an operational mission, a critical mission, or any other
11 requirement of the uniformed services.

12 (d) *Exceptions.* An employer is not required to reemploy a person under this
13 section if the employer shows that any of the following apply:

14 1. The employer's circumstances have so changed as to make reemployment of
15 the person impossible or unreasonable.

16 2. The position of employment that the person left to perform active service was
17 for a brief, nonrecurrent period and there was no reasonable expectation that the
18 position of employment would continue indefinitely or for a significant period of time.

19 3. In the case of a person who is entitled to reemployment under sub. (4) (a) 3.
20 or 4., the accommodations, training, or effort required under sub. (4) (a) 3. or 4. would
21 pose an undue hardship on the employer.

22 (e) *Return procedures.* 1. Subject to subds. 4. and 5., if a person who has been
23 absent from a position of employment because of active service that lasted for less
24 than 31 days, who has been absent from a position of employment for any period of
25 time for the purpose of an examination to determine the person's fitness to perform

1 active service, or who has been absent from a position of employment because the
2 person was hospitalized for or was convalescing from an illness or injury that was
3 incurred in or aggravated during the performance of that active service wishes to
4 receive the reemployment rights and benefits specified in this section, the person
5 must notify the person's employer of the person's intent to return to the position of
6 employment by reporting to the employer by no later than the beginning of the first
7 full regularly-scheduled work period on the first full calendar day following the
8 completion of the active service, examination, or period of hospitalization or
9 convalescence, a period of time that allows for the safe transportation of the person
10 from the place of active service, examination, hospitalization, or convalescence to the
11 person's residence, and a rest period of 8 hours following that transportation period
12 or, if through no fault of the person's own reporting to the employer within that time
13 is impossible or unreasonable, by reporting to the employer as soon as possible after
14 that 8-hour rest period.

15 2. Subject to subds. 4. and 5., if a person who has been absent from a position
16 of employment because of active service that lasted for more than 30 days, but less
17 than 181 days, or who has been absent from a position of employment because the
18 person was hospitalized for or was convalescing from an illness or injury that was
19 incurred in or aggravated during the performance of that active service wishes to
20 receive the reemployment rights and benefits specified in this section, the person
21 must notify the person's employer of the person's intent to return to the position of
22 employment by submitting to the employer an application for reemployment by no
23 later than 14 days after the completion of the active service, hospitalization, or
24 convalescence or, if through no fault of the person's own submitting the application
25 within that time is impossible or unreasonable, by submitting to the employer an

1 application for reemployment by no later than the first full calendar day on which
2 submission of the application becomes possible. ✓

3 3. Subject to subds. 4. and 5., if a person who has been absent from a position
4 of employment because of active service that lasted for more than 180 days or who
5 has been absent from a position of employment because the person was hospitalized
6 for or was convalescing from an illness or injury that was incurred in or aggravated
7 during the performance of that active service wishes to receive the reemployment
8 rights and benefits specified in this section, the person must notify the person's
9 employer of the person's intent to return to the position of employment by submitting
10 to the employer an application for reemployment by no later than 90 days after the
11 completion of the active service, hospitalization, or convalescence or, if through no
12 fault of the person's own submitting the application within that time is impossible
13 or unreasonable, by submitting to the employer an application for reemployment by
14 no later than the first full calendar day on which submission of the application
15 becomes possible.

16 4. The period of hospitalization or convalescence specified in subds. 1., 2., and
17 3. may not exceed 2 years, except that if through no fault of the person's own it is
18 impossible or unreasonable for the person to report to the employer within the time
19 specified in subd. 1. or to apply for reemployment within the time specified in subd.
20 2. or 3., that 2-year period shall be extended by the minimum period of time required
21 to accommodate the circumstances that made it impossible or unreasonable for the
22 person to report or apply as so required.

23 5. A person who fails to report to the person's employer within the time specified
24 in subd. 1. or who fails to apply for reemployment within the time specified in subd.
25 2. or 3. does not automatically forfeit the reemployment rights and benefits specified

1 in this section. Instead, the person shall be subject to the rules, policies, and
2 practices of the person's employer pertaining to discipline for unexcused absences
3 from work.

4 (f) *Documentation.* 1. A person who submits an application for reemployment
5 under par. (e) 2. or 3. must, on the request of the person's employer, provide to the
6 employer documentation to establish that the application was submitted within the
7 time limits specified in par. (e) 2. or 3., that the person's cumulative length of all
8 absences from employment with the employer because of active service or service in
9 the uniformed services does not, except as permitted under par. (c), exceed 5 years,
10 and that the person's service was not terminated under other than honorable
11 conditions.

12 2. An employer may not refuse to reemploy a person who fails to provide any
13 of the documentation specified in subd. 1. because that documentation does not exist
14 or is not readily available at the time the employer requests that documentation. If
15 after the person is reemployed documentation becomes available that establishes
16 that the person does not meet any of the requirements specified in subd. 1., the
17 employer may terminate the person's employment and the provision of any rights
18 and benefits afforded to the person under this section.

19 3. An employer may not delay or attempt to defeat a reemployment right that
20 the employer is obligated to provide under this section by demanding documentation
21 that does not exist or is not readily available at the time of the demand.

22 (g) *Veterans preferences.* The right of a person to reemployment under this
23 subsection does not entitle the person to retention, preference, or displacement
24 rights over any person who has a superior claim under s. 45.35 (4), 62.13 (4) (d), 63.28

SECTION 1

1 (1) (f), 63.37, 63.39 (2m), 66.0509 (1), 230.15 (2m), 230.16 (7) or (7m), 230.21 (1m),
2 230.25, or 230.275.

3 (h) *Prohibited bases for denial of reemployment.* In determining a person's
4 right to reemployment and other benefits under this section, an employer may not
5 deny reemployment or any other benefits based on the timing, frequency, duration,
6 or nature of the person's active service or service in the uniformed services so long
7 as the requirements under par. (a) are met.

8 (4) REEMPLOYMENT POSITIONS. (a) *Prompt reemployment required.* 1. Subject
9 to subds. 3. and 4. and par. (b), an employer shall reemploy a person who is entitled
10 to reemployment under sub. (3) and whose period of active service was for less than
11 91 days promptly on completion of that period of active service in the position of
12 employment in which the person would have been employed if the continuous
13 employment of the person with the employer had not been interrupted by that active
14 service so long as the person is qualified to perform the duties of that position or, if
15 after reasonable efforts by the employer to qualify the person to perform those duties
16 the person is not qualified to perform those duties, in the position of employment in
17 which the person was employed on the date on which the person's period of active
18 service began.

19 2. Subject to subds. 3. and 4. and par. (b), an employer shall reemploy a person
20 who is entitled to reemployment under sub. (3) and whose period of active service was
21 for more than 90 days promptly on completion of that period of active service in the
22 position of employment in which the person would have been employed if the
23 continuous employment of the person with the employer had not been interrupted
24 by that active service or in a position of employment of like seniority, status, and pay
25 so long as the person is qualified to perform the duties of that position or, if after

1 reasonable efforts by the employer to qualify the person to perform those duties the
2 person is not qualified to perform those duties, in the position of employment in
3 which the person was employed on the date on which the person's period of active
4 service began or in a position of employment of like seniority, status, and pay.

5 3. Subject to par. (b), in the case of a person who has a disability that was
6 incurred in or aggravated during a period of active service and who, after reasonable
7 efforts by the employer to accommodate the disability, is not qualified due to the
8 disability to perform the duties of the position of employment in which the person
9 would have been employed if the continuous employment of the person with the
10 employer had not been interrupted by the active service, the employer shall reemploy
11 the person promptly on completion of that period of active service in any other
12 position that is equivalent to that position in seniority, status, and pay, the duties of
13 which the person is qualified to perform or would become qualified to perform with
14 reasonable efforts by the employer, or, if there is no other position of employment
15 available that is equivalent to that position in seniority, status, and pay, in a position
16 that is the nearest approximation to that equivalent position in terms of seniority,
17 status, and pay, consistent with the person's circumstances.

18 4. Subject to par. (b), in the case of a person who is not qualified to be employed
19 in the position of employment in which the person would have been employed if the
20 continuous employment of the person with the employer had not been interrupted
21 by the person's active service or in the position of employment in which the person
22 was employed on the date on which the person's period of active service began for any
23 reason other than disability incurred in or aggravated during a period of active
24 service and who cannot become qualified to be so employed with reasonable efforts
25 by the employer, the employer shall reemploy the person promptly on completion of

SECTION 1

1 that period of active service in any other position ^{and} that is the nearest approximation
 2 to the position of employment in which the person would have been employed if the
 3 continuous employment of the person with the employer had not been interrupted
 4 by that active service that the person is qualified to perform, with full seniority, or
 5 if no position of employment that is the nearest approximation to that position is
 6 available, in a position of employment ^{and} that is the nearest approximation to the
 7 position of employment in which the person was employed on the date on which the
 8 person's period of active service began that the person is qualified to perform, with
 9 full seniority. ^{employment}

10 (b) *Multiple returning employees.* 1. If 2 or more persons who are entitled to
 11 reemployment under sub. (3) in the same position of employment have reported to
 12 the employer or applied for reemployment in that position, the person who left ~~the~~
 13 ~~position~~ first shall have the prior right to reemployment in that position.

14 2. A person who is entitled to reemployment under sub. (3), but who is not
 15 reemployed because of subd. 1., shall be entitled to reemployment as provided in par.
 16 (a) 1., 2., 3., or 4., whichever is applicable, in a position of employment that provides
 17 for similar status and pay as the position described in subd. 1., consistent with the
 18 person's circumstances, with full seniority.

19 (5) RIGHTS, BENEFITS, AND OBLIGATIONS. (a) *Seniority.* A person who is
 20 reemployed under this section is entitled to the seniority and other rights and
 21 benefits determined by seniority that the person had on the last day of employment
 22 before the person's active service began, plus all seniority and other rights and
 23 benefits determined by seniority that the person would have had if the continuous
 24 employment of the person with the employer had not been interrupted by that active
 25 service.



1 (b) *Continuation of benefits.* 1. Subject to subds. 2. to 5., a person who is absent
2 from employment because of active service is considered to be on furlough or leave
3 of absence while performing the active service and is entitled to receive all rights and
4 benefits not determined by seniority that are generally provided by the employer to
5 employees having similar seniority, status, and pay who are on furlough or leave of
6 absence under a contract, agreement, policy, practice, or plan that is in effect on the
7 day on which the active service began or that is established while the person is
8 performing the active service.

9 2. If an employer shows that a person who is absent from a position of
10 employment because of active service has knowingly provided written notice of the
11 person's intent not to return to a position of employment with the employer after that
12 active service and, in doing so, was aware of the specific rights and benefits under
13 subd. 1. that the person would lose while absent from the position of employment,
14 the person is not entitled to the rights and benefits specified in subd. 1. while absent
15 from employment.

16 3. A person who is considered to be on furlough or leave of absence under subd.
17 1. while performing active service is not entitled to any benefit to which the person
18 would not otherwise be entitled if the person had remained continuously employed.

19 4. An employer may require a person who is considered to be on furlough or
20 leave of absence under subd. 1. while performing active service to pay the employee
21 cost, if any, of any benefit that is continued under subd. 1. to the same extent that
22 other employees who are on furlough or leave of absence are so required.

23 5. A person who is absent from a position of employment because of active
24 service is entitled to receive coverage under a health benefit plan during the absence
25 and on reemployment as provided in sub. (6).

1 (c) *Protection from discharge.* An employer that reemploys under this section
2 a person whose period of active service lasted for more than 30 days, but less than
3 181 days, may not discharge the person within 180 days after the date of
4 reemployment except for cause. An employer that reemploys under this section a
5 person whose period of active service lasted for more than 180 days may not
6 discharge the person within one year after the date of reemployment except for
7 cause.

8 (6) CONTINUATION OF HEALTH CARE COVERAGE. (a) *Option to continue coverage.*
9 Notwithstanding s. 632.897, if a person who has coverage under a health benefit plan
10 in connection with the person's employment is absent from a position of employment
11 because of active service, the insurer that issued the health benefit plan shall permit
12 the person, and the person's dependents, to continue coverage under the health
13 benefit plan until the first to occur of the following:

14 1. Eighteen months have elapsed since the person's absence from the position
15 of employment began.

16 2. The day after the date on which the person is required under sub. (3) (e) to
17 report to the employer or apply for reemployment.

18 (b) *Payment of premiums.* A person who elects to continue coverage under par.
19 (a) and who is absent from a position of employment for 30 days or less may not be
20 required to pay more than the employee share, if any, of the cost of the coverage. A
21 person who elects to continue coverage under par. (a) and who is absent from a
22 position of employment for more than 30 days may be required to pay up to 102% of
23 the full premium for that coverage for the period of continued coverage that exceeds
24 30 days.

1 (c) *Reinstatement on reemployment.* If a person's coverage under a health
2 benefit plan in connection with his or her employment was terminated because of the
3 person's active service and if after returning from that active service the person is
4 reemployed under sub. (3), coverage under the health benefit plan shall be reinstated
5 for the person and the person's dependents immediately upon reemployment. With
6 respect to the reinstated coverage, no exclusion or waiting period may be imposed
7 that would not have been imposed had the coverage not been terminated because of
8 the active service. ✓

9 (7) ENFORCEMENT. (a) *Complaint.* Any person who believes that his or her
10 employer has failed or refused, or is about to fail or refuse, to provide to the person
11 any reemployment right or benefit to which the person is entitled under this section
12 may file a complaint with the adjutant general, in such form as the adjutant general
13 may prescribe by rule, summarizing the allegations that form the basis of the
14 complaint. The adjutant general shall investigate the complaint and, if the adjutant
15 general is reasonably satisfied that the person is entitled to the rights or benefits
16 sought, the adjutant general shall endeavor to resolve the complaint by conference,
17 conciliation, or persuasion. If the adjutant general is not reasonably satisfied that
18 the person is entitled to the rights or benefits sought, the adjutant general may
19 refuse to endeavor to resolve the complaint and shall notify the person who filed the
20 complaint that the person may proceed under par. (b) 2. to enforce the person's rights
21 under this section. If the adjutant general is not able to resolve the complaint, the
22 adjutant general shall notify the person who filed the complaint that the person may
23 proceed under par. (b) 1. or 2. to enforce the person's rights under this section.

24 (b) *Enforcement procedures.* 1. A person who receives notification under par.
25 (a) that the adjutant general was unable to resolve the person's complaint may

SECTION 1

1 request the adjutant general to refer the complaint to counsel, which may include the
2 attorney general, appointed by the governor on the recommendation of the adjutant
3 general for the purpose of prosecuting complaints under this subdivision who shall
4 file a complaint for appropriate relief with the department of workforce development
5 or, if the person is an employee of a state agency, as defined in s. 111.32 (6) (a), the
6 personnel commission.

7 2. Subdivision 1. does not preclude a person who has chosen not to file a
8 complaint with the adjutant general under par. (a), whose complaint the adjutant
9 general has refused to endeavor to resolve under par. (a), or who has chosen not to
10 request the adjutant general to refer his or her complaint to counsel under subd. 1.
11 from filing a complaint for appropriate relief with the department of workforce
12 development or, if the person is an employee of a state agency, with the personnel
13 commission.

14 3. The department of workforce development or the personnel commission shall
15 process a complaint filed under subd. 1. or 2. in the same manner that employment
16 discrimination complaints are processed under s. 111.39.

17 (c) *Retaliation prohibited.* An employer may not discharge or otherwise
18 discriminate against any person for filing a complaint or attempting to enforce a
19 right provided under this section or for testifying or assisting in any action or
20 proceeding to enforce a right provided under this section.

21 (d) *Remedies.* If the department of workforce development or the personnel
22 commission finds that an employer has failed or refused, or is about to fail or refuse,
23 to provide any reemployment right or benefit to which a person is entitled under this
24 section or has discharged or otherwise discriminated against any person in violation

1 of par. (c), the department of workforce development or the personnel commission
2 may order the employer to do any one or more of the following:

3 1. Take such action as will fully vindicate the rights and benefits of the person
4 under this section.

5 2. Compensate the person for any loss ^{of} wages, salary, or other benefits
6 suffered because of the failure or refusal to provide reemployment rights or benefits
7 under this section or the discharge or other discrimination.

8 3. Pay the person, as liquidated damages, an amount that is equal to the
9 amount ordered under subd. 2. if the department of workforce development or the
10 personnel commission finds that the failure or refusal to provide reemployment
11 rights or benefits under this section or the discharge or other discrimination was
12 willful.

13 4. Pay the person costs and reasonable actual attorney fees, if the person is not
14 represented by counsel appointed under par. (b) 1.

15 (8) RULES. The department of military affairs shall promulgate rules
16 implementing this section.

17 SECTION 2. 106.54 (7) of the statutes is created to read:

18 106.54 (7) The division shall receive complaints under s. 21.80 (7) (b) 1. or 2.
19 and shall process the complaints in the same manner that employment
20 discrimination complaints are processed under s. 111.39.

21 SECTION 3. 230.32 (7) of the statutes is created to read:

22 230.32 (7) Any employee who is absent from state service because the employee
23 is in active service, as defined in s. 21.80 (1) (a), is entitled to all reemployment rights
24 and benefits provided under s. 21.80.

25 SECTION 4. 230.45 (1) (m) of the statutes is created to read:

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1 230.45 (1) (m) Receive complaints under s. 21.80 (7) (b) 1. or 2. and, except as
2 provided in sub. (1m), process the complaints in the same manner that employment
3 discrimination complaints are processed under s. 111.39.

4 SECTION 5. Nonstatutory provisions.

5 (1) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
6 the department of military affairs shall promulgate the rules required under section
7 21.80 (8) of the statutes, as created by this act, for the period before the effective date
8 of the permanent rules promulgated under section 21.80 (8) of the statutes, as
9 created by this act, but not to exceed the period authorized under section 227.24 (1)
10 (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of
11 the statutes, the department of military affairs is not required to provide evidence
12 that promulgating a rule under this subsection as an emergency rule is necessary for
13 the preservation of the public peace, health, safety, or welfare and is not required to
14 provide a finding of emergency for a rule promulgated under this subsection.

15 (2) TRANSITIONAL PROVISIONS; PERSONS IN ACTIVE SERVICE ON EFFECTIVE DATE.

16 (a) *Reemployment*. A person who is performing active service, as defined in
17 section 21.80 (1) (a) of the statutes, as created by this act, on the effective date of this
18 paragraph is entitled to the reemployment rights and benefits provided in section
19 21.80 of the statutes, as created by this act, if, subject to section 21.80 (1) (d) of the
20 statutes, as created by this act, all of the following apply:

21 1. The person or an appropriate officer in the national guard or the state
22 defense force has given advanced notice of the active service to the person's employer,
23 unless the giving of that notice was precluded by military necessity or was otherwise
24 impossible or unreasonable.

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(3)

1 2. The cumulative length of all absences from a position of employment with
 2 the employer by reason of active service or service in the uniformed services, as
 3 defined in 38 USC 4303 (13), whether before or after the effective date of this
 4 subdivision, does not exceed five years, except as provided in section 21.80 (3) (c) of
 5 the statutes, as created by this act. (5)

6 3. The person reports to the employer as required under section 21.80 (3) (e)
 7 1. of the statutes, as created by this act, or applies for reemployment under section
 8 21.80 (3) (e) 2. or 3. of the statutes, as created by this act, whichever is applicable, on
 9 or after the effective date of this subdivision.

10 4. The person's service in the national guard or the state defense force has not
 11 been terminated under other than honorable conditions.

12 (b) *Health coverage.* A person who is performing active service, as defined in
 13 section 21.80 (1) (a) of the statutes, as created by this act, on the effective date of this
 14 paragraph or a dependent or personal representative of the person may elect to
 15 continue coverage under a health benefit plan, as defined in section 632. 745 (11) of
 16 the statutes, as provided in section 21.80 (6) (a) of the statutes, as created by this act.
 17 If such an election is made, the health benefit plan shall remain in effect for the
 18 remaining portion of the 18-month period that began when the person left
 19 employment to perform active service or until the day after the date on which the
 20 person is required under section 21.80 (3) (e) of the statutes, as created by this act,
 21 to report to the employer or apply for reemployment, whichever occurs first.

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22 **SECTION 6. Initial applicability.**

23 (1) CONTINUATION OF BENEFITS. The creation of section 21.80 (5) (b) 1. to 4. of the
 24 statutes first applies to a person who is performing active service, as defined in
 25 section 21.80 (1) (a) of the statutes, as created by this act, on the effective date of this

→ treatment

1 subsection, except that the ~~creation~~^{the treatment} of section 21.80 (5) (b) 2. of the statutes first
 2 applies to a person who leaves a position of employment to perform active service on
 3 the effective date of this subsection.

4 (2) HEALTH COVERAGE. Subject to ^(CS)Section 5 (2) (b) of this act, the ~~creation~~^{the treatment} of
 5 section 21.80 (6) of the statutes first applies to a person who leaves a position of
 6 employment to perform active service on the effective date of this subsection.

7 (END)

use autoref C from p. 21
 use autoref B from p. 20
 use autoref A from p. 20

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#

SEC #. 111.91(2)(gm) of the statute is needed to read:

#

^(B)
111.91(2)(gm) Reemployment rights of employees under ~~employees~~ under s. 230.32(7).

Basford, Sarah

From: Basford, Sarah
Sent: Monday, October 15, 2001 9:14
To: Rep.Musser
Subject: LRB -3956 (attached)

Sent as PDF

10/15/2001

Barman, Mike

From: Kolka, Kathie
Sent: Monday, October 15, 2001 2:13 PM
To: LRB.Legal
Subject: Draft review: LRB-3956/1 Topic: Remployment rights of uniformed service members

It has been requested by <Kolka, Kathie> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB-3956/1 Topic: Remployment rights of uniformed service members

Nelson, Robert P.

From: McArdle, Terrence
Sent: Monday, October 15, 2001 8:44 PM
To: Nelson, Robert P.
Subject: FW: Changes to LRB 3956/1 for Ass'Bly Vet's & Mil Affairs Hearing @ 0830 17 Oct 01



Doc1.doc

> -----Original Message-----

> From: McArdle, Terrence
> Sent: Monday, October 15, 2001 6:52 PM
> To: 'robert.nelson2@legis.state.wi.us'
> Subject: Changes to LRB 3956/1 for Ass'Bly Vet's & Mil Affairs
> Hearing @ 0830 17 Oct 01

>

> Bob, If you are not the specific Drafting Attorney responsible for
> this
> bill, in the overall, would you please get it to him ASAP so these
> changes
> can possibly be made before the 0830 hearing tomorrow 17 Oct 01. I'll
> be
> prepared to give the changes to the committee at the hearing but it
> sure
> would be cleaner to do it in an LRB draft. Thanks for all your help
> and
> that of your fellow attorneys at LRB on these projects. Terry McArdle
>
> <<Doc1.doc>>

WING-JA

15 Oct 01 @1840HRS

MEMORANDUM FOR: Bob Nelson, or appropriate LRB Drafting Attorney

SUBJECT: Quick Changes to LRB 3956/1

1. There are a number of minor but essential changes that should be made to LRB 3956/1 before the Assembly Veterans and Military Affairs Committee takes up this legislation at 0830 hours tomorrow morning. I will attempt to itemize them as quickly as I can.
2. Page 5 line 6: change the 38 USC 502 (f) to **32 USC 502 (f)**
3. Page 7 line 15: insert between "by the" and "federal secretary" the following phrase "**Adjutant General or the**"
4. Page 8 line 7: insert between "for training," and "because of war" the following phrase "**because of a state emergency declared by the Governor,**"
5. Page 21 line 2: either delete the word "advanced" or insert a reference to **21.80 (3) (b)** as also being applicable to the "notice" requirement for this section.
6. These changes should make the bill if not perfect, at least acceptable to the broad majority of the committee.

Terry McArdle
Terence J. McArdle
LTC, JA, WIARNG
Dep. State Judge Advocate

Memo

To: Rep. Musser

(The Bill's Requestor)

Attached is a fiscal estimate prepared for your 2001 draft that has not yet been introduced.

LRB Number: LRB 3956

Version: "/ 1 "

Entered In Computer And Copy Sent To Requestor Via E-Mail: 10 / 15 / 2001

Fiscal Estimate Prepared By: (agency abbr.) DNA

If you have questions about the attached fiscal estimate, you may contact the agency/ individual who prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

* * * * *

To: LRB – Legal Section PA's

Subject: Fiscal Estimate Received For A Un-Introduced Draft

- If this is **re-drafted** to a new version please attach this early fiscal estimate to the back of the draft's file between the old version and the new version.
- If this draft gets **introduced** ... and the version of the attached fiscal estimate is correct ... please write the drafts intro. number below and give this fiscal estimate to Mike (or Lynn) to process.

THIS DRAFT WAS INTRODUCED AS: 2001 _____

- If this draft gets **introduced** ... and the version of the attached fiscal estimate is for a previous version ... please attach this early fiscal estimate to the back of the draft's file between the old version and the new version. Have Mike (or Lynn) get the ball rolling on getting a fiscal estimate prepared for the introduced version.

Emery, Lynn

From: Emery, Lynn
Sent: Monday, October 15, 2001 4:15 PM
To: Rep.Musser
Subject: LRB-3956/1 (FE by DMA - attached - for your review)



FE-3956DMA.pdf

FE-3956DMA.pdf

Fiscal Estimate - 2001 Session

Original Updated Corrected Supplemental

LRB Number 01-3956/1		Introduction Number	
Subject Remployment rights of uniformed service members			
Fiscal Effect			
State:			
<input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate			
<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations		<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs	
Local:			
<input type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate			
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts			
Fund Sources Affected		Affected Ch. 20 Appropriations	
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS			
Agency/Prepared By		Authorized Signature	Date
DMA/ Lucinda Fritchen (608) 242-3156		Lucinda Fritchen (608) 242-3156	10/15/01

Fiscal Estimate Narratives

DMA 10/15/01

LRB Number 01-3956/1	Introduction Number	Estimate Type	Original
Subject			
Employment rights of uniformed service members			

Assumptions Used in Arriving at Fiscal Estimate

The Department of Military Affairs has approximately 30 employees that could potentially be called into active military service. At this time the Department has 3 individuals on active duty and have been notified by 10 individuals that they have been put on "alert" status. The Department's employees have a variety of funding mechanisms using GPR, Program Revenue and Federal funds. The funding for the 3 people currently on active duty is as follows: one individual is funded with 40% GPR/60% federal funds, the other two are reimbursed 100% by federal funds through our Cooperative Agreements with National Guard Bureau. The cost of replacing these individuals would require additional funds, only to the extent the replacement employee and the use of the 30 days of active military active duty pay by the full-time employee, would overlap. There will also be some additional advertising and recruitment costs, should replacement workers be needed. Given the rather rapid pace of the active duty call ups and the time given to respond, it is unclear exactly what impact this situation will have on the Department's GPR funds. The amount of funding required will also be affected by the amount of active duty time each individual has remaining and the length of deployment. The 30 days active military leave is replenished on January 1st. so additional costs could be incurred as the length of service required increases.

Long-Range Fiscal Implications

Fiscal Estimate - 2001 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 01-3956/1	Introduction Number
------------------------------------	----------------------------

Subject Reemployment rights of uniformed service members
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Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs
Local: <input checked="" type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue 5. Types of Local Government Units Affected <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts

Fund Sources Affected <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS 445(1) (a)	Affected Ch. 20 Appropriations
--	---------------------------------------

Agency/Prepared By DWD/ LeAnna Ware (608) 266-1997	Authorized Signature Kimberly Markham (608) 267-3200	Date 10/17/01
--	--	-------------------------

Copy sent to Rep. Musser 10/17/01
 → FE is for old "1" version. draft is now a "2"
 → Intro. as AB 572

Fiscal Estimate Narratives

DWD 10/17/01

LRB Number 01-3956/1	Introduction Number	Estimate Type	Original
Subject Reemployment rights of uniformed service members			

Assumptions Used in Arriving at Fiscal Estimate

This bill specifies that employers must allow all employees, with certain exceptions, to return to employment after service in the national guard or state defense force. Employees who are denied re-employment, or are about to be denied, may file a complaint with the department, either directly or through the adjutant general. The Equal Rights Division of the Department of Workforce Development would process these complaints in the same manner as a complaint under the Wisconsin Fair employment Law (111.39 stats.) The division estimates that it will receive less than ten cases per year that allege violations of this provision. Passage of this legislation would therefore have no significant impact on the workload of the division. Informational brochures on the law that are published by the Equal Rights Division will need to be reprinted at a cost of \$2,000 GPR. This cost will be absorbed by the agency.

This bill is also unlikely to have any significant impact on local government costs since only the small number of local governments that have a related case would have costs.

Long-Range Fiscal Implications

The department expects no long range fiscal impact.

Fiscal Estimate Worksheet - 2001 Session

Detailed Estimate of Annual Fiscal Effect

Original
 Updated
 Corrected
 Supplemental

LRB Number 01-3956/1		Introduction Number	
Subject			
Reemployment rights of uniformed service members			
I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):			
\$2,000 for reprinting of informational brochures.			
II. Annualized Costs:		Annualized Fiscal Impact on funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes		\$0	0
(FTE Position Changes)		(0.0 FTE)	(0.0 FTE)
State Operations - Other Costs		0	0
Local Assistance		0	0
Aids to Individuals or Organizations			
TOTAL State Costs by Category		\$0	\$0
B. State Costs by Source of Funds			
GPR		0	0
FED		0	0
PRO/PRS		0	0
SEG/SEG-S		0	0
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)			
		Increased Rev	Decreased Rev
GPR Taxes		\$0	\$0
GPR Earned		0	0
FED		0	0
PRO/PRS		0	0
SEG/SEG-S			
TOTAL State Revenues		\$0	\$0
NET ANNUALIZED FISCAL IMPACT			
		<u>State</u>	<u>Local</u>
NET CHANGE IN COSTS		\$0	\$
NET CHANGE IN REVENUE		\$0	\$
Agency/Prepared By		Authorized Signature	Date
DWD/ LeAnna Ware (608) 266-1997		Kimberly Markham (608) 267-3200	10/17/01



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3956/T(2)
GMM/PJK/RAC:cs:kjf (RMR)

Now!!!

2001 BILL

1 **AN ACT to create** 21.80, 106.54 (7), 111.91 (2) (gm), 230.32 (7) and 230.45 (1) (m)
2 of the statutes; **relating to:** reemployment rights after national guard or state
3 defense force service, providing an exemption from emergency rule-making
4 procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Introduction

Under current federal law, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides certain reemployment rights and benefits to persons who are absent from employment because of service in the armed forces or the national guard under federal law (service in the uniformed services). USERRA, however, does not cover person who are absent from employment because of service in the national guard or the state defense force under state law or because of certain service in the national guard under federal law that is not considered to be service in the uniformed services under USERRA (active service). This bill provides for persons who are absent from employment because of active service under state law certain reemployment rights and benefits that are parallel to the reemployment rights and benefits that are provided under USERRA for persons who are absent from employment because of service in the uniformed services under federal law.

Entitlement to reemployment rights

The bill requires any employer, including the state, employing one or more persons on a permanent basis to reemploy a person who is entitled to reemployment

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under the bill promptly on completion of the person's active service unless the employer's circumstances have so changed as to make reemployment of the person impossible or unreasonable, the position that the person left to perform active service was for a brief, nonrecurrent period and there was no reasonable expectation that the employment would continue, or, in the case of a person who is not qualified for reemployment, the accommodations, training, or effort required to qualify the person for reemployment would pose an unreasonable hardship on the employer. A person is entitled to reemployment under the bill if all of the following prerequisites are met:

1. The employer has been given advanced notice of the active service, unless the giving of advanced notice was precluded by military necessity or was otherwise impossible or unreasonable.

2. Subject to certain exceptions, the cumulative length of all absences from employment with the employer because of active service or service in the uniformed services does not exceed five years.

3. The person reports back to work or applies for reemployment within the time frames required under the bill. If the person was in active service for less than 31 days, the person must report back to work at the first full regularly-scheduled work period following completion of the active service, plus a reasonable time for safe transportation home and an eight-hour rest period. If the person was in active service for more than 30, but less than 181, days, the person must apply for reemployment within 14 days after completion of the active service. If the person was in active service for more than 180 days, the person must apply for reemployment within 90 days after completion of the active service. In addition, the bill extends those periods for reporting back to work or applying for reemployment by up to two years for hospitalization or convalescence for an illness or injury incurred in or aggravated during the active service.

4. The person's service in the national guard or state defense force was not terminated under other than honorable conditions.

A person who is performing active service on the effective date of the bill is entitled to reemployment under the bill if the person reports back to work or applies for reemployment on or after the effective date of the bill and otherwise meets the prerequisites for reemployment under the bill.

Reemployment positions

The bill specifies the type of position in which a person must be reemployed on returning from active service as follows:

1. If the person was in active service for less than 91 days, the person must be reemployed in the position in which the person would have been employed if the person's employment had not been interrupted by the active service so long as the person is qualified to perform the duties of the position or, if after reasonable efforts by the employer to qualify the person to perform those duties the person is not qualified to perform those duties, in the position in which the person was employed before the active service.

2. If the person was in active service for more than 90 days, the person must be reemployed in the position in which the person would have been employed if the

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person's employment had not been interrupted by the active service or in a position of like seniority, status, and pay so long as the person is qualified to perform the duties of the position or, if after reasonable efforts by the employer to qualify the person to perform those duties the person is not qualified to perform those duties, in the position in which the person was employed before the active service or in a position of like seniority, status, and pay.

3. If the person has a disability that was incurred in or aggravated during the active service and if after reasonable efforts by the employer to accommodate the disability the employee is not qualified due to the disability to perform the duties of the position in which the person would have been employed if the person's employment had not been interrupted by the active service, the person must be reemployed in any other position that is equivalent to that position in seniority, status, and pay, the duties of which the person is qualified to perform or would be qualified to perform with reasonable efforts by the employer, or, if no equivalent position is available, in a position that is the nearest approximation to that equivalent position in terms of seniority, status, and pay, consistent with the person's circumstances.

4. If the person is not qualified to be employed in the position in which the person would have been employed if the person's employment had not been interrupted by the active service or in the position in which the person was employed before the active service for any reason other than disability incurred in or aggravated during the active service and cannot become qualified to be so employed with reasonable efforts by the employer, the person must be reemployed in any other position that the person is qualified to perform and that is the nearest approximation to the position in which the person would have been employed if the person's employment had not been interrupted by the active service or, if no position that is the nearest approximation to that position is available, in a position that the person is qualified to perform and that is the nearest approximation to the position in which the person was employed before the active service began.

Seniority and other rights and benefits

The bill also specifies that a person who is absent from employment because of active service is entitled to certain other rights and benefits as follows:

1. On reemployment, the person is entitled to the seniority and other rights and benefits determined by seniority that the person would have had if the person's employment had not been interrupted by the active service.

2. While absent from employment, the person is considered to be on furlough or leave of absence and is entitled to all rights and benefits not determined by seniority that are generally provided by the employer to employees having similar seniority, status, and pay who are on furlough or leave of absence.

3. While absent from employment, the person may continue health coverage for the person and his or her dependents for up to 18 months or until the day after the date on which the person is required to report back to work or apply for reemployment, whichever occurs first. If the person's health coverage is terminated because the person is in active service, the person is entitled to reinstatement of health coverage on reemployment with no exclusion or waiting period that would not

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have been imposed had the coverage not been terminated because of the active service. A person who is performing active service on the effective date of the bill or a dependent or personal representative of the person may elect to continue health coverage for the remainder of that 18-month period or until the day after the date on which the person is required to report back to work or apply for reemployment, whichever occurs first.

4. The person may not be discharged from employment, except for cause, for 180 days after reemployment, if the active service was for more than 30 days, but less than 181 days, and for one year after reemployment, if the active service was for more than 180 days.

Enforcement

Finally, the bill provides a procedure for the enforcement of a person's rights under the bill. Specifically, the bill permits a person who believes that his or her employer has failed or refused, or is about to fail or refuse, to provide to the person any reemployment right or benefit to which the person is entitled under the bill to file a complaint with the adjutant general who must then investigate the complaint. If the adjutant general is reasonably satisfied that the person is entitled to the rights or benefits sought, the adjutant general must endeavor to resolve the complaint by conference, conciliation, or persuasion. If the adjutant general is not able to resolve the complaint, the person may request the adjutant general to refer the complaint to counsel appointed by the governor for the purpose of prosecuting such complaints who must file a complaint for appropriate relief with the department of workforce development (DWD) or, if the person is an employee of a state agency, the personnel commission. The bill also permits a person to file a complaint with DWD or the personnel commission on the person's own behalf without filing a complaint with the adjutant general or requesting the adjutant general to refer the complaint to counsel.

DWD or the personnel commission must process the complaint in the same manner that employment discrimination complaints are processed under the fair employment law. If DWD or the personnel commission finds that an employer has failed or refused, or is about to fail or refuse, to provide any reemployment right or benefit to which a person is entitled under the bill or has discharged or otherwise discriminated against any person in retaliation for attempting to enforce any rights provided under the bill, DWD or the personnel commission may order the employer to do any one or more of the following:

1. Take such action as will fully vindicate the rights and benefits of the person under the bill.

2. Compensate the person for any loss of wages, salary, or other benefits suffered because of the failure or refusal to provide reemployment rights or benefits or the discharge or other discrimination.

3. Pay the person, as liquidated damages, an amount that is equal to the amount of compensation ordered, if DWD or the personnel commission finds that the failure or refusal to provide reemployment rights or benefits or the discharge or other discrimination was willful.

4. Pay the person costs and reasonable actual attorney fees, if the person is not represented by counsel appointed by the governor.

BILL

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 21.80 of the statutes is created to read:

2 **21.80 Reemployment rights after national guard or state defense force**

3 **service.** (1) **DEFINITIONS.** In this section: **(32)**

4 (a) "Active service" means active service in the national guard or the state
5 defense force under an order of the governor issued under this chapter or active
6 service in the national guard under ~~38~~ USC 502 (f) that is not considered to be service
7 in the uniformed services.

8 (b) "Employer" means a person engaging in any activity, enterprise, or business
9 in this state employing one or more persons on a permanent basis. "Employer"
10 includes the state and any office, department, independent agency, authority,
11 institution, association, society, or other body in state government created or
12 authorized to be created by the constitution or any law, including the legislature and
13 the courts. "Employer" also includes a successor-in-interest of a person employing
14 an individual who has provided notice to that person under sub. (3) (a).

15 (c) "Health benefit plan" has the meaning given in s. 632.745 (11).

16 (d) "Qualified" means having the ability to perform the essential tasks of an
17 employment position.

18 (e) "Reasonable efforts" means, with respect to an action required by an
19 employer under sub. (4) (a) 1., 2., 3., or 4., an action that does not place an undue
20 hardship on the employer.

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1 (f) "Service in the uniformed services" has the meaning given in 38 USC 4303
2 (13).

3 (g) "Undue hardship" means, with respect to an action required by an employer
4 under sub. (4) (a) 1., 2., 3., or 4., significant difficulty or expense, when considered
5 in light of all of the following:

6 1. The nature and cost of the action.

7 2. The overall financial resources of the facility involved in providing the action,
8 the number of persons employed at the facility, the effect of providing the action on
9 the resources and finances of the facility, and any other impact of the action on the
10 operation of the facility.

11 3. The overall financial resources of the employer, the number of persons
12 employed by the employer, and the number, type, and location of the employer's
13 facilities.

14 4. The type of operation of the employer, including the composition, structure,
15 and functions of the employer's workforce, the geographic separateness from the
16 employer of the facility involved in providing the action, and the administrative and
17 financial relationship of the facility to the employer.

18 (2) MORE GENEROUS RIGHTS PERMITTED. Nothing in this section prohibits an
19 employer from providing employees who are called into active service with
20 reemployment rights and benefits that are more generous to the employee than the
21 rights and benefits provided under this section.

22 (3) REEMPLOYMENT RIGHTS. (a) *Prerequisites*. Subject to par. (d), any person who
23 is absent from a position of employment because of active service is entitled to the
24 reemployment rights and benefits specified in this section if all of the following apply:

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1 1. Except as provided in par. (b), the person or an appropriate officer in the
2 national guard or the state defense force has given advanced notice of the active
3 service to the person's employer.

4 2. Except as provided in par. (c), the cumulative length of the absence from the
5 position of employment and of all previous absences from a position of employment
6 with the employer by reason of active service or service in the uniformed services
7 does not exceed 5 years.

8 3. Except as provided in par. (f), the person reports to the employer or submits
9 an application for reemployment to the employer as required under par. (e).

10 4. The person's service in the national guard or the state defense force has not
11 been terminated under other than honorable conditions.

*rules promulgated by the
adjutant general and*

12 (b) *Notice not required.* No notice is required under par. (a) 1. if the giving of
13 that notice is precluded by military necessity or is otherwise impossible or
14 unreasonable. A determination of military necessity for purposes of this paragraph
15 shall be made according to regulations promulgated by the federal secretary of
16 defense and is not subject to judicial review.

the adjutant general or

17 (c) *Length of absence limit.* The periods of service in the uniformed services
18 described in 38 USC 4312 (c) (1) to (4) and all of the following periods of active service
19 are not included in calculating the 5-year period specified in par. (a) 2.:

20 1. Any period of active service beyond that 5-year period that is required to
21 complete an initial period of obligated active service.

22 2. Any period of active service for which the person, through no fault of the
23 person's own, was unable to obtain orders releasing the person from a period of active
24 service before the expiration of the 5-year period.

BILL**SECTION 1**

1 3. Any period of active service that was performed to fulfill any additional
2 training requirements determined and certified in writing by the federal secretary
3 of the army, the federal secretary of the air force, or the adjutant general to be
4 necessary for professional development or for completion of skill training or
5 retraining.

because of an ~~emergency~~ emergency declared by the governor,
state

6 4. Any period of active service that was performed by a person who was ordered
7 to, or retained in, active service, other than for training, because of a war or national
8 emergency declared by the president of the United States or Congress, because of
9 insurrection, rebellion, riot, invasion, or resistance to the execution of the laws of this
10 state or of the United States, or in support of an operational mission, a critical
11 mission, or any other requirement of the uniformed services.

12 (d) *Exceptions.* An employer is not required to reemploy a person under this
13 section if the employer shows that any of the following apply:

14 1. The employer's circumstances have so changed as to make reemployment of
15 the person impossible or unreasonable.

16 2. The position of employment that the person left to perform active service was
17 for a brief, nonrecurrent period and there was no reasonable expectation that the
18 position of employment would continue indefinitely or for a significant period of time.

19 3. In the case of a person who is entitled to reemployment under sub. (4) (a) 3.
20 or 4., the accommodations, training, or effort required under sub. (4) (a) 3. or 4. would
21 pose an undue hardship on the employer.

22 (e) *Return procedures.* 1. Subject to subds. 4. and 5., if a person who has been
23 absent from a position of employment because of active service that lasted for less
24 than 31 days, who has been absent from a position of employment for any period of
25 time for the purpose of an examination to determine the person's fitness to perform

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1 active service, or who has been absent from a position of employment because the
2 person was hospitalized for or was convalescing from an illness or injury that was
3 incurred in or aggravated during the performance of that active service wishes to
4 receive the reemployment rights and benefits specified in this section, the person
5 must notify the person's employer of the person's intent to return to the position of
6 employment by reporting to the employer by no later than the beginning of the first
7 full regularly-scheduled work period on the first full calendar day following the
8 completion of the active service, examination, or period of hospitalization or
9 convalescence, a period of time that allows for the safe transportation of the person
10 from the place of active service, examination, hospitalization, or convalescence to the
11 person's residence, and a rest period of 8 hours following that transportation period
12 or, if through no fault of the person's own reporting to the employer within that time
13 is impossible or unreasonable, by reporting to the employer as soon as possible after
14 that 8-hour rest period.

15 2. Subject to subds. 4. and 5., if a person who has been absent from a position
16 of employment because of active service that lasted for more than 30 days, but less
17 than 181 days, or who has been absent from a position of employment because the
18 person was hospitalized for or was convalescing from an illness or injury that was
19 incurred in or aggravated during the performance of that active service wishes to
20 receive the reemployment rights and benefits specified in this section, the person
21 must notify the person's employer of the person's intent to return to the position of
22 employment by submitting to the employer an application for reemployment by no
23 later than 14 days after the completion of the active service, hospitalization, or
24 convalescence or, if through no fault of the person's own submitting the application
25 within that time is impossible or unreasonable, by submitting to the employer an

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1 application for reemployment by no later than the first full calendar day on which
2 submission of the application becomes possible.

3 3. Subject to subds. 4. and 5., if a person who has been absent from a position
4 of employment because of active service that lasted for more than 180 days or who
5 has been absent from a position of employment because the person was hospitalized
6 for or was convalescing from an illness or injury that was incurred in or aggravated
7 during the performance of that active service wishes to receive the reemployment
8 rights and benefits specified in this section, the person must notify the person's
9 employer of the person's intent to return to the position of employment by submitting
10 to the employer an application for reemployment by no later than 90 days after the
11 completion of the active service, hospitalization, or convalescence or, if through no
12 fault of the person's own submitting the application within that time is impossible
13 or unreasonable, by submitting to the employer an application for reemployment by
14 no later than the first full calendar day on which submission of the application
15 becomes possible.

16 4. The period of hospitalization or convalescence specified in subds. 1., 2., and
17 3. may not exceed 2 years, except that if through no fault of the person's own it is
18 impossible or unreasonable for the person to report to the employer within the time
19 specified in subd. 1. or to apply for reemployment within the time specified in subd.
20 2. or 3., that 2-year period shall be extended by the minimum period of time required
21 to accommodate the circumstances that made it impossible or unreasonable for the
22 person to report or apply as so required.

23 5. A person who fails to report to the person's employer within the time specified
24 in subd. 1. or who fails to apply for reemployment within the time specified in subd.
25 2. or 3. does not automatically forfeit the reemployment rights and benefits specified

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1 in this section. Instead, the person shall be subject to the rules, policies, and
2 practices of the person's employer pertaining to discipline for unexcused absences
3 from work.

4 (f) *Documentation.* 1. A person who submits an application for reemployment
5 under par. (e) 2. or 3. must, on the request of the person's employer, provide to the
6 employer documentation to establish that the application was submitted within the
7 time limits specified in par. (e) 2. or 3., that the person's cumulative length of all
8 absences from employment with the employer because of active service or service in
9 the uniformed services does not, except as permitted under par. (c), exceed 5 years,
10 and that the person's service was not terminated under other than honorable
11 conditions.

12 2. An employer may not refuse to reemploy a person who fails to provide any
13 of the documentation specified in subd. 1. because that documentation does not exist
14 or is not readily available at the time the employer requests that documentation. If
15 after the person is reemployed documentation becomes available that establishes
16 that the person does not meet a requirement specified in subd. 1., the employer may
17 terminate the person's employment and the provision of any rights and benefits
18 afforded to the person under this section.

19 3. An employer may not delay or attempt to defeat a reemployment right that
20 the employer is obligated to provide under this section by demanding documentation
21 that does not exist or is not readily available at the time of the demand.

22 (g) *Veterans preferences.* The right of a person to reemployment under this
23 subsection does not entitle the person to retention, preference, or displacement
24 rights over any person who has a superior claim under s. 45.35 (4), 62.13 (4) (d), 63.08

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1 (1) (f), 63.37, 63.39 (2m), 66.0509 (1), 230.15 (2m), 230.16 (7) or (7m), 230.21 (1m),
2 230.25, or 230.275.

3 (h) *Prohibited bases for denial of reemployment.* In determining a person's
4 right to reemployment and other benefits under this section, an employer may not
5 deny reemployment or any other benefits based on the timing, frequency, duration,
6 or nature of the person's active service or service in the uniformed services so long
7 as the requirements under par. (a) are met.

8 (4) REEMPLOYMENT POSITIONS. (a) *Prompt reemployment required.* 1. Subject
9 to subds. 3. and 4. and par. (b), an employer shall reemploy a person who is entitled
10 to reemployment under sub. (3) and whose period of active service was for less than
11 91 days promptly on completion of that period of active service in the position of
12 employment in which the person would have been employed if the continuous
13 employment of the person with the employer had not been interrupted by that active
14 service so long as the person is qualified to perform the duties of that position or, if
15 after reasonable efforts by the employer to qualify the person to perform those duties
16 the person is not qualified to perform those duties, in the position of employment in
17 which the person was employed on the date on which the person's period of active
18 service began.

19 2. Subject to subds. 3. and 4. and par. (b), an employer shall reemploy a person
20 who is entitled to reemployment under sub. (3) and whose period of active service was
21 for more than 90 days promptly on completion of that period of active service in the
22 position of employment in which the person would have been employed if the
23 continuous employment of the person with the employer had not been interrupted
24 by that active service or in a position of employment of like seniority, status, and pay
25 so long as the person is qualified to perform the duties of that position or, if after

BILL

1 reasonable efforts by the employer to qualify the person to perform those duties the
2 person is not qualified to perform those duties, in the position of employment in
3 which the person was employed on the date on which the person's period of active
4 service began or in a position of employment of like seniority, status, and pay.

5 3. Subject to par. (b), in the case of a person who has a disability that was
6 incurred in or aggravated during a period of active service and who, after reasonable
7 efforts by the employer to accommodate the disability, is not qualified due to the
8 disability to perform the duties of the position of employment in which the person
9 would have been employed if the continuous employment of the person with the
10 employer had not been interrupted by the active service, the employer shall reemploy
11 the person promptly on completion of that period of active service in any other
12 position that is equivalent to that position in seniority, status, and pay, the duties of
13 which the person is qualified to perform or would become qualified to perform with
14 reasonable efforts by the employer, or, if there is no other position of employment
15 available that is equivalent to that position in seniority, status, and pay, in a position
16 that is the nearest approximation to that equivalent position in terms of seniority,
17 status, and pay, consistent with the person's circumstances.

18 4. Subject to par. (b), in the case of a person who is not qualified to be employed
19 in the position of employment in which the person would have been employed if the
20 continuous employment of the person with the employer had not been interrupted
21 by the person's active service or in the position of employment in which the person
22 was employed on the date on which the person's period of active service began for any
23 reason other than disability incurred in or aggravated during a period of active
24 service and who cannot become qualified to be so employed with reasonable efforts
25 by the employer, the employer shall reemploy the person promptly on completion of

BILL

1 that period of active service in any other position that the person is qualified to
2 perform and that is the nearest approximation to the position of employment in
3 which the person would have been employed if the continuous employment of the
4 person with the employer had not been interrupted by that active service, with full
5 seniority, or if no position of employment that is the nearest approximation to that
6 position is available, in a position of employment that the person is qualified to
7 perform and that is the nearest approximation to the position of employment in
8 which the person was employed on the date on which the person's period of active
9 service began, with full seniority.

10 (b) *Multiple returning employees.* 1. If 2 or more persons who are entitled to
11 reemployment under sub. (3) in the same position of employment have reported to
12 the employer or applied for reemployment in that position, the person who left
13 employment first shall have the prior right to reemployment in that position.

14 2. A person who is entitled to reemployment under sub. (3), but who is not
15 reemployed because of subd. 1., shall be entitled to reemployment as provided in par.
16 (a) 1., 2., 3., or 4., whichever is applicable, in a position of employment that provides
17 for similar status and pay as the position described in subd. 1., consistent with the
18 person's circumstances, with full seniority.

19 (5) **RIGHTS, BENEFITS, AND OBLIGATIONS.** (a) *Seniority.* A person who is
20 reemployed under this section is entitled to the seniority and other rights and
21 benefits determined by seniority that the person had on the last day of employment
22 before the person's active service began, plus all seniority and other rights and
23 benefits determined by seniority that the person would have had if the continuous
24 employment of the person with the employer had not been interrupted by that active
25 service.

BILL

1 (b) *Continuation of benefits.* 1. Subject to subds. 2. to 5., a person who is absent
2 from employment because of active service is considered to be on furlough or leave
3 of absence while performing the active service and is entitled to receive all rights and
4 benefits not determined by seniority that are generally provided by the employer to
5 employees having similar seniority, status, and pay who are on furlough or leave of
6 absence under a contract, agreement, policy, practice, or plan that is in effect on the
7 day on which the active service began or that is established while the person is
8 performing the active service.

9 2. If an employer shows that a person who is absent from a position of
10 employment because of active service has knowingly provided written notice of the
11 person's intent not to return to a position of employment with the employer after that
12 active service and, in doing so, was aware of the specific rights and benefits under
13 subd. 1. that the person would lose while absent from the position of employment,
14 the person is not entitled to the rights and benefits specified in subd. 1. while absent
15 from employment.

16 3. A person who is considered to be on furlough or leave of absence under subd.
17 1. while performing active service is not entitled to any benefit to which the person
18 would not otherwise be entitled if the person had remained continuously employed.

19 4. An employer may require a person who is considered to be on furlough or
20 leave of absence under subd. 1. while performing active service to pay the employee
21 cost, if any, of any benefit that is continued under subd. 1. to the same extent that
22 other employees who are on furlough or leave of absence are so required.

23 5. A person who is absent from a position of employment because of active
24 service is entitled to receive coverage under a health benefit plan during the absence
25 and on reemployment as provided in sub. (6).

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1 (c) *Protection from discharge.* An employer that reemploys under this section
2 a person whose period of active service lasted for more than 30 days, but less than
3 181 days, may not discharge the person within 180 days after the date of
4 reemployment except for cause. An employer that reemploys under this section a
5 person whose period of active service lasted for more than 180 days may not
6 discharge the person within one year after the date of reemployment except for
7 cause.

8 **(6) CONTINUATION OF HEALTH CARE COVERAGE.** (a) *Option to continue coverage.*
9 Notwithstanding s. 632.897, if a person who has coverage under a health benefit plan
10 in connection with the person's employment is absent from a position of employment
11 because of active service, the insurer that issued the health benefit plan shall permit
12 the person, and the person's dependents, to continue coverage under the health
13 benefit plan until the first to occur of the following:

14 1. Eighteen months have elapsed since the person's absence from the position
15 of employment began.

16 2. The day after the date on which the person is required under sub. (3) (e) to
17 report to the employer or apply for reemployment.

18 (b) *Payment of premiums.* A person who elects to continue coverage under par.
19 (a) and who is absent from a position of employment for 30 days or less may not be
20 required to pay more than the employee share, if any, of the cost of the coverage. A
21 person who elects to continue coverage under par. (a) and who is absent from a
22 position of employment for more than 30 days may be required to pay up to 102% of
23 the full premium for that coverage for the period of continued coverage that exceeds
24 30 days.

BILL

1 (c) *Reinstatement on reemployment.* If a person's coverage under a health
2 benefit plan in connection with his or her employment was terminated because of the
3 person's active service and if after returning from that active service the person is
4 reemployed under sub. (3), coverage under the health benefit plan shall be reinstated
5 for the person and the person's dependents immediately upon reemployment. With
6 respect to the reinstated coverage, no exclusion or waiting period may be imposed
7 that would not have been imposed had the coverage not been terminated because of
8 the active service.

9 (7) ENFORCEMENT. (a) *Complaint.* Any person who believes that his or her
10 employer has failed or refused, or is about to fail or refuse, to provide to the person
11 any reemployment right or benefit to which the person is entitled under this section
12 may file a complaint with the adjutant general, in such form as the adjutant general
13 may prescribe by rule, summarizing the allegations that form the basis of the
14 complaint. The adjutant general shall investigate the complaint and, if the adjutant
15 general is reasonably satisfied that the person is entitled to the rights or benefits
16 sought, the adjutant general shall endeavor to resolve the complaint by conference,
17 conciliation, or persuasion. If the adjutant general is not reasonably satisfied that
18 the person is entitled to the rights or benefits sought, the adjutant general may
19 refuse to endeavor to resolve the complaint and shall notify the person who filed the
20 complaint that the person may proceed under par. (b) 2. to enforce the person's rights
21 under this section. If the adjutant general is not able to resolve the complaint, the
22 adjutant general shall notify the person who filed the complaint that the person may
23 proceed under par. (b) 1. or 2. to enforce the person's rights under this section.

24 (b) *Enforcement procedures.* 1. A person who receives notification under par.
25 (a) that the adjutant general was unable to resolve the person's complaint may

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1 request the adjutant general to refer the complaint to counsel, which may include the
2 attorney general, appointed by the governor on the recommendation of the adjutant
3 general for the purpose of prosecuting complaints under this subdivision who shall
4 file a complaint for appropriate relief with the department of workforce development
5 or, if the person is an employee of a state agency, as defined in s. 111.32 (6) (a), the
6 personnel commission.

7 2. Subdivision 1. does not preclude a person who has chosen not to file a
8 complaint with the adjutant general under par. (a), whose complaint the adjutant
9 general has refused to endeavor to resolve under par. (a), or who has chosen not to
10 request the adjutant general to refer his or her complaint to counsel under subd. 1.
11 from filing a complaint for appropriate relief with the department of workforce
12 development or, if the person is an employee of a state agency, with the personnel
13 commission.

14 3. The department of workforce development or the personnel commission shall
15 process a complaint filed under subd. 1. or 2. in the same manner that employment
16 discrimination complaints are processed under s. 111.39.

17 (c) *Retaliation prohibited.* An employer may not discharge or otherwise
18 discriminate against any person for filing a complaint or attempting to enforce a
19 right provided under this section or for testifying or assisting in any action or
20 proceeding to enforce a right provided under this section.

21 (d) *Remedies.* If the department of workforce development or the personnel
22 commission finds that an employer has failed or refused, or is about to fail or refuse,
23 to provide any reemployment right or benefit to which a person is entitled under this
24 section or has discharged or otherwise discriminated against any person in violation

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1 of par. (c), the department of workforce development or the personnel commission
2 may order the employer to do any one or more of the following:

3 1. Take such action as will fully vindicate the rights and benefits of the person
4 under this section.

5 2. Compensate the person for any loss of wages, salary, or other benefits
6 suffered because of the failure or refusal to provide reemployment rights or benefits
7 under this section or the discharge or other discrimination.

8 3. Pay the person, as liquidated damages, an amount that is equal to the
9 amount ordered under subd. 2. if the department of workforce development or the
10 personnel commission finds that the failure or refusal to provide reemployment
11 rights or benefits under this section or the discharge or other discrimination was
12 willful.

13 4. Pay the person costs and reasonable actual attorney fees, if the person is not
14 represented by counsel appointed under par. (b) 1.

15 (8) RULES. The department of military affairs shall promulgate rules
16 implementing this section.

17 **SECTION 2.** 106.54 (7) of the statutes is created to read:

18 106.54 (7) The division shall receive complaints under s. 21.80 (7) (b) 1. or 2.
19 and shall process the complaints in the same manner that employment
20 discrimination complaints are processed under s. 111.39.

21 **SECTION 3.** 111.91 (2) (gm) of the statutes is created to read:

22 111.91 (2) (gm) Reemployment rights of employees under s. 230.32 (7).

23 **SECTION 4.** 230.32 (7) of the statutes is created to read:

BILL

1 230.32 (7) Any employee who is absent from state service because the employee
2 is in active service, as defined in s. 21.80 (1) (a), is entitled to all reemployment rights
3 and benefits provided under s. 21.80.

4 **SECTION 5.** 230.45 (1) (m) of the statutes is created to read:

5 230.45 (1) (m) Receive complaints under s. 21.80 (7) (b) 1. or 2. and, except as
6 provided in sub. (1m), process the complaints in the same manner that employment
7 discrimination complaints are processed under s. 111.39.

8 **SECTION 6. Nonstatutory provisions.**

9 (1) **EMERGENCY RULES.** Using the procedure under section 227.24 of the statutes,
10 the department of military affairs shall promulgate the rules required under section
11 21.80 (8) of the statutes, as created by this act, for the period before the effective date
12 of the permanent rules promulgated under section 21.80 (8) of the statutes, as
13 created by this act, but not to exceed the period authorized under section 227.24 (1)
14 (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of
15 the statutes, the department of military affairs is not required to provide evidence
16 that promulgating a rule under this subsection as an emergency rule is necessary for
17 the preservation of the public peace, health, safety, or welfare and is not required to
18 provide a finding of emergency for a rule promulgated under this subsection.

19 (2) **TRANSITIONAL PROVISIONS; PERSONS IN ACTIVE SERVICE ON EFFECTIVE DATE.**

20 (a) *Reemployment.* A person who is performing active service, as defined in
21 section 21.80 (1) (a) of the statutes, as created by this act, on the effective date of this
22 paragraph is entitled to the reemployment rights and benefits provided in section
23 21.80 of the statutes, as created by this act, if, subject to section 21.80 (3) (d) of the
24 statutes, as created by this act, all of the following apply:

BILL

as described in section 21.80 (3) (b)
of the statutes, as created by this act

SECTION 6

1 1. The person or an appropriate officer in the national guard or the state
2 defense force has given advanced notice of the active service to the person's employer,
3 unless the giving of that notice was precluded by military necessity or was otherwise
4 impossible or unreasonable.

5 2. The cumulative length of all absences from a position of employment with
6 the employer by reason of active service or service in the uniformed services, as
7 defined in 38 USC 4303 (13), whether before or after the effective date of this
8 subdivision, does not exceed 5 years, except as provided in section 21.80 (3) (c) of the
9 statutes, as created by this act.

10 3. The person reports to the employer as required under section 21.80 (3) (e)
11 1. of the statutes, as created by this act, or applies for reemployment under section
12 21.80 (3) (e) 2. or 3. of the statutes, as created by this act, whichever is applicable, on
13 or after the effective date of this subdivision.

14 4. The person's service in the national guard or the state defense force has not
15 been terminated under other than honorable conditions.

16 (b) *Health coverage.* A person who is performing active service, as defined in
17 section 21.80 (1) (a) of the statutes, as created by this act, on the effective date of this
18 paragraph or a dependent or personal representative of the person may elect to
19 continue coverage under a health benefit plan, as defined in section 632.745 (11) of
20 the statutes, as provided in section 21.80 (6) (a) of the statutes, as created by this act.

21 If such an election is made, the health benefit plan shall remain in effect for the
22 remaining portion of the 18-month period that began when the person left
23 employment to perform active service or until the day after the date on which the
24 person is required under section 21.80 (3) (e) of the statutes, as created by this act,
25 to report to the employer or apply for reemployment, whichever occurs first.

BILL**SECTION 7****1 SECTION 7. Initial applicability.**

2 (1) CONTINUATION OF BENEFITS. The treatment of section 21.80 (5) (b) 1. to 4. of
3 the statutes first applies to a person who is performing active service, as defined in
4 section 21.80 (1) (a) of the statutes, as created by this act, on the effective date of this
5 subsection, except that the treatment of section 21.80 (5) (b) 2. of the statutes first
6 applies to a person who leaves a position of employment to perform active service on
7 the effective date of this subsection.

8 (2) HEALTH COVERAGE. Subject to SECTION 6 (2) (b) of this act, the treatment of
9 section 21.80 (6) of the statutes first applies to a person who leaves a position of
10 employment to perform active service on the effective date of this subsection.

11 (END)

Emery, Lynn

From: Kolka, Kathie
Sent: Tuesday, October 16, 2001 10:21 AM
To: LRB.Legal
Subject: Draft review: LRB-3956/2 Topic: Remployment rights of uniformed service members

It has been requested by <Kolka, Kathie> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB-3956/2 Topic: Remployment rights of uniformed service members