



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5460/1
MPG&AJM:amn

2017 SENATE BILL 795

February 12, 2018 - Introduced by Senator TESTIN, cosponsored by Representative SKOWRONSKI. Referred to Committee on Workforce Development, Military Affairs and Senior Issues.

1 **AN ACT to amend** 102.475 (1), 230.45 (1) (d), 321.65 (3) (a) (intro.), 321.65 (3) (a)
2 1., 321.65 (3) (a) 4. and 321.65 (3) (f) 1.; and **to create** 20.465 (1) (dm), 321.67
3 and 321.68 of the statutes; **relating to:** reemployment rights, death benefits,
4 and continuation pay benefits of national guard and state defense force
5 members on state active duty and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill makes the following changes to laws administered by the Department of Military Affairs:

1. Requires DMA to continue paying a member of the national guard or state defense force who is injured in the performance of his or her duties while on state active duty. Continuation of pay for a member is at a rate equal to the rate of pay the member was receiving at the time of the injury. The bill provides that a member may receive continuation of pay only until the member is able to return to state active duty or the member's state active duty is terminated. Under the bill, the Department of Administration administers the continuation of pay for injured members of the national guard and state defense force in the same manner DOA administers continuation of pay for state employees.

2. Requires that DMA pay a death gratuity in the amount of \$100,000 to the designated beneficiary of a member of the national guard or state defense force who dies from an accidental injury while performing services growing out of and incidental to the member's employment on state active duty. Current law provides

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that the Department of Workforce Development pay a special death benefit, in an amount not less than \$50,000, to the dependents of a member of the national guard or state defense force who dies from an accidental injury while performing services growing out of and incidental to the member's service on state active duty. Under the bill, DWD does not pay that special death benefit for national guard or state defense force members.

3. Extends eligibility for reemployment rights of individuals returning from active state service to non-state residents and to individuals whose active state service occurred in a territory of the United States. Current law affords such reemployment rights for state residents whose active state service occurred in this or another state.

For further information see the *state* 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.** 20.465 (1) (dm) of the statutes is created to read:

2 20.465 (1) (dm) *Death gratuity.* A sum sufficient to defray all expenditures for
3 payment of the death gratuity under s. 321.67.

4 **SECTION 2.** 102.475 (1) of the statutes is amended to read:

5 102.475 (1) SPECIAL BENEFIT. If the deceased employee is a law enforcement
6 officer, correctional officer, fire fighter, rescue squad member, diving team member,
7 ~~national guard member or state defense force member on state active duty as~~
8 ~~described in s. 102.07 (9)~~ or if a deceased person is an employee or volunteer
9 performing emergency management activities under ch. 323 during a state of
10 emergency or a circumstance described in s. 323.12 (2) (c), who sustained an
11 accidental injury while performing services growing out of and incidental to that
12 employment or volunteer activity so that benefits are payable under s. 102.46 or
13 102.47 (1), the department shall voucher and pay from the appropriation under s.
14 20.445 (1) (aa) a sum equal to 75 percent of the primary death benefit as of the date
15 of death, but not less than \$50,000 to the persons wholly dependent upon the

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1 deceased. For purposes of this subsection, dependency shall be determined under ss.
2 102.49 and 102.51.

3 **SECTION 3.** 230.45 (1) (d) of the statutes is amended to read:

4 230.45 (1) (d) Hear appeals under s. ~~ss.~~ 230.36 (4) and 321.68 (4).

5 **SECTION 4.** 321.65 (3) (a) (intro.) of the statutes is amended to read:

6 321.65 (3) (a) *Prerequisites.* (intro.) Subject to par. (d), any person who is a
7 ~~resident of this state and~~ absent from a position of employment because of active
8 state service is entitled to the reemployment rights and benefits specified in this
9 section if all of the following apply:

10 **SECTION 5.** 321.65 (3) (a) 1. of the statutes is amended to read:

11 321.65 (3) (a) 1. Except as provided in par. (b), the person ~~or an appropriate~~
12 ~~officer in the national guard of this or another state or the state defense force~~ has
13 given advanced notice of the active state service to the person's employer.

14 **SECTION 6.** 321.65 (3) (a) 4. of the statutes is amended to read:

15 321.65 (3) (a) 4. In the case of active state service in the national guard in this
16 or another state or territory of the United States or the state defense force, the active
17 state service has not been terminated under other than honorable conditions.

18 **SECTION 7.** 321.65 (3) (f) 1. of the statutes is amended to read:

19 321.65 (3) (f) 1. A person who submits an application for reemployment under
20 par. (e) 2. or 3. must, on the request of the person's employer, provide to the employer
21 documentation to establish that the application was submitted within the time
22 limits specified in par. (e) 2. or 3., that the person's cumulative length of all absences
23 from employment with the employer because of active state service and federal active
24 duty does not, except as permitted under par. (c), exceed 5 years, and, in the case of
25 active state service in the national guard in this or another state or territory of the

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1 United States or the state defense force, that the person's service was not terminated
2 under other than honorable conditions.

3 **SECTION 8.** 321.67 of the statutes is created to read:

4 **321.67 Death gratuity; national guard and state defense force.** If a
5 national guard member or state defense force member dies from an accidental injury
6 while performing services growing out of and incidental to the member's
7 employment while the member is on state active duty, the department shall voucher
8 and pay from the appropriation under s. 20.465 (1) (dm) an amount equal to
9 \$100,000, to the member's designated beneficiary.

10 **SECTION 9.** 321.68 of the statutes is created to read:

11 **321.68 Continuation of payment.** (1) In this section, "injury" means a
12 mental or physical harm.

13 (2) The department of administration shall administer this section in the same
14 manner it administers s. 230.36.

15 (3) (a) If a member of the national guard or state defense force suffers injury
16 in the performance of his or her duties while on state active duty, the member shall
17 continue to be fully paid under s. 321.35 or 321.51 upon the same basis as paid prior
18 to the injury.

19 (b) The full pay under par. (a) shall continue while the member is unable to
20 return to active duty as the result of the injury or until the termination of his or her
21 state active duty. At any time during the member's period of disability the
22 department may, at the department's expense, order physical or medical
23 examinations to determine the degree of disability.

24 (4) A member denied benefits under this section may appeal to the employment
25 relations commission under s. 230.45 (1) (d).

