

SUBSTITUTE FOR
HOUSE BILL NO. 4292

A bill to amend 1955 PA 133, entitled
"An act to provide for the granting of military leaves and
providing re-employment protection for officers and enlisted men of
the military or naval forces of the state or of the United States,"
by amending section 3 (MCL 32.273), as amended by 2002 PA 121.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) An employee who requests a leave from his or her
2 employment shall not be denied a leave of absence by his or her
3 employer for the purpose of being inducted into or entering into
4 active service, active state service, or the service of the United
5 States, for the purpose of determining his or her physical fitness
6 to enter the service, or for performing ~~training duty~~ as an officer
7 or enlisted member of the military or naval forces of this state or
8 of the United States **IN ACTIVE STATE SERVICE OR UNDER TITLE 10 OR**
9 **TITLE 32 OF THE UNITED STATES CODE.** ~~Following release from service,~~
10 ~~training duty, or rejection, the employee shall, if he or she makes~~

~~application to his or her employer for reemployment within 15~~ **IF**
THE EMPLOYEE GIVES WRITTEN NOTICE TO THE EMPLOYER WITHIN 90 days
following **RELEASE FROM** service, release **FROM DUTY**, or rejection, ~~be~~
~~reemployed in a position of employment~~ **THE EMPLOYER SHALL REEMPLOY**
THE EMPLOYEE in the following order of priority:

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

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

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

(2) A person who is reemployed under this section is entitled
to the seniority and other rights and benefits that are determined
by seniority that the person had on the date of the commencement of
service plus the additional seniority and rights and benefits that
the person would have attained if the person had been continually

1 employed.

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

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

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

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

24 (c) Any service performed as required pursuant to 10 ~~U.S.C.~~
25 **USC** 10147, under 32 ~~U.S.C.~~ **USC** 502(a) or 503, or to fulfill
26 additional training requirements determined and certified in
27 writing by the appropriate service secretary to be necessary for

1 professional development or for completion of skill training or
2 retraining.

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

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

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

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

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

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

24 (5) An employee is not entitled to the benefits under this
25 section if the service of the employee in any of the uniformed
26 services is terminated under any of the following circumstances:

27 (a) A separation of the person from the uniformed service or

1 national guard with a dishonorable or bad conduct discharge.

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

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

7 (d) A dropping from the rolls pursuant to 10 ~~U.S.C.~~ **USC**
8 1161(b).

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

14 (7) ~~(6)~~ As used in this section:

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

21 (b) "Active state service", as applied to the national guard
22 and the defense force, means military service in support of civil
23 authorities, at the request of local authorities, including, but
24 not limited to, support in the enforcement of laws prohibiting the
25 importation, sale, delivery, possession, or use of a controlled
26 substance, if ordered by the governor or as otherwise provided in
27 this act. As used in this subdivision, "controlled substance" means

1 that term as defined in section 7104 of the public health code,
2 1978 PA 368, MCL 333.7104.

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

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

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