Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 192 (Substitute S-1 as reported)
Sponsor: Senator Jim Barcia
Committee: Commerce and Tourism

Date Completed: 2-8-08

RATIONALE

Public Act 133 of 1955 provides job protections for employees who may wish to pursue military service, and provides for the reemployment of employees after military service. Under the Act, an employer may not deny an employee's request for a leave for induction or entry into military service, for a determination of physical fitness to enter the service, or for the performance of military training duties. Following release from service, an employer must reemploy the person if he or she applies within 15 days, and returning employees must be reemployed in a position according to a specified priority order. A violation of the Act is a misdemeanor punishable by up to 90 days' imprisonment and/or a maximum fine of $500. It has been suggested that returning military personnel should be given a longer period after service to return to employment, and that the Act's employment protections should be enhanced in additional ways.

CONTENT

The bill would amend Public Act 133 of 1955 to do all of the following:

-- Refer specifically to performing service in the Armed Forces or National Guard in a provision prohibiting an employer from denying an employee's request for a leave of absence for military service.
-- Require an employer to reemploy an employee following service if he or she gave written notice within 45 days after service, or within 90 days after service if it were for more than 180 days, rather than if he or she applies for employment within 15 days.
-- Revise the Act's priorities for reemployment.
-- Provide that an employee would not be entitled to reemployment if he or she were absent for an uninterrupted period of five years, rather than a cumulative period of five years.
-- Allow a qualified employee who was denied reemployment to file a civil action, and require his or her reinstatement and payment of his or her attorney fees.

Request for Leave of Absence

Under the Act, an employer may not deny an employee's request for a leave of absence for the purpose of being inducted into or entering into active service, active State service, or the service of the United States, for the purpose of determining his or her physical fitness to enter the service, or for performing training duty as an officer or enlisted member of the military or naval forces of Michigan or the United States The bill would refer to performing service, rather than performing training duty, and would include service in active State service or under Title 10 (Armed Forces) or Title 32 (National Guard) of the U.S. Code.

"Service" means active service, active State service, or in the service of the United States. "Active service" means service, including active State service or special duty required by law, regulation, or pursuant to order of the Governor, and includes continuing service of an active member of the National Guard and the defense force in

fulfilling that active member's commission, appointment, or enlistment.

"Active state service", as applied to the National Guard and the defense force, means military service in support of civil authorities, at the request of local authorities, including support in the enforcement of laws prohibiting the importation, sale, delivery, possession, or use of a controlled substance, if ordered by the Governor or as otherwise provided in the Act.

"Uniformed service" means the Armed Forces, the reserve component, the National Guard in active service or active State service, the commissioned corps of the Public Health Service, and any other category of persons designated by the President or Governor in time of war or national emergency.

Reemployment

Currently, following release from service, training duty, or rejection, an employee must be reemployed if he or she applies to the employer for reemployment within 15 days following service, release, or rejection. Under the bill, the employer would have to reemploy the employee if he or she gave written notice to the employer within 45 days following release from service, release from duty, or rejection. Reemployment would be required if the employee notified the employer within 90 days, if the service were for more than 180 days.

Under the Act, a returning employees must be reemployed in a position according to the following order of priority:

-- Following service of one to 90 days, the position that the person would have held if his or her continuous employment with the employer had not been interrupted by service, if the person were qualified to perform the duties of that position.
-- Following service of one to 90 days, the position that the person held on the date service began, only if he or she is not qualified for the position described above and after the employer has made reasonable efforts to qualify the person.
-- Following service of 91 or more days, a position described above or any other position of lesser status or pay that the person is qualified to perform, only if he or she is not qualified and cannot become qualified with reasonable efforts by the employer for the position he or she had when service began.

The bill, in the third priority, would refer to a position that was the nearest approximation in status and pay to a position described in the first two options, rather than any other position of lesser status or pay.

An employee is not entitled to reemployment under the Act if he or she has a cumulative period of service in the uniformed services, with respect to the employer relationship for which he or she seeks reemployment, that exceeds five years, except for specified periods of service. Under the bill, this provision would apply to an uninterrupted five-year period rather than a cumulative period of five years.

Civil Action

The bill specifies that an employee who met the requirements for reemployment, and was denied reemployment after giving the employer written notice, could bring an action against the employer in the circuit court for the employee's county of residence. The employee would have to be awarded reinstatement and reasonable attorney fees.

MCL 32.273

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Many Michigan National Guard units have been deployed into active duty in recent years, to serve in the wars in Iraq and Afghanistan. This service is in addition to more traditional National Guard service on State duty, pursuant to the order of the Governor, such as responding to disasters and other emergencies. Also, all of the branches of the U.S. Armed Forces are actively involved in recruiting new members, and many Michigan citizens have answered those calls. Since these various types of military personnel make great sacrifices of their personal lives and livelihood, both State and Federal law protect their careers

by requiring the individuals' reemployment upon completion of military service. While current law prohibits an employer from denying a leave of absence to an employee for the purpose of performing military service, and gives an employee returning from military service an entitlement to reemployment, the bill would offer further protections to employees who served.

Public Act 133 requires an employer to reemploy a returning service member if he or she applies for reemployment within 15 days following service. By lengthening that time frame to 45 days, or to 90 days if the person's military service lasted for more than 180 days, the bill would give returning military personnel more time to assimilate back into civilian life after serving in the military. Also, under the bill, a returning employee would not have to apply for reemployment but merely would have to notify the employer.

Currently, if a person's service is for 91 days or longer, he or she may be placed in a position of lesser status or pay. By referring, instead, to a position that was the nearest approximation in status and pay to a position the person previously held or would have held if his or her continuous employment had not been interrupted by military service, the bill could offer better job opportunities to the returning employee.

In addition, under the Act, an employee generally is not entitled to reemployment if he or she has a cumulative period of service, with respect to the same employer, that exceeds five years. The cumulative aspect of this provision could negatively affect someone who was a long-time employee of a single employer and had been deployed over the years for several short-term assignments. The bill would avoid this situation by referring to an uninterrupted period of service that exceeded five years. An employer still would not have to maintain a position for an absent service member for an unreasonable amount of time.

Supporting Argument

A violation of Public Act 133 is a criminal offense, which serves as a deterrent against employers' failing to provide returning workers with reemployment opportunities. Unlike the Federal law that provides for reemployment rights of uniformed service members, however, the State statute does not provide a civil remedy for military personnel wrongly denied reemployment. While the Attorney General or a local prosecutor may pursue criminal charges against an employer who violates the Act, the employee still may be left without gainful employment. The bill would bring Michigan law in line with Federal law in this regard by providing that a person could bring a civil action and be awarded job reinstatement and reasonable attorney fees if he or she met the requirements for, but were denied, reemployment.

Response: The Federal remedy also includes compensation for any loss of wages or benefits suffered by reason of the employer's failure to comply with reemployment requirements.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Under the bill, aggrieved employees would be allowed reimbursement for reasonable attorney fees. These reimbursements would be paid by private employers, local units of government, or the State, depending on the employees' place of employment. The potential amount of these reimbursements is indeterminate and is totally dependent on the number of grievances filed.

Fiscal Analyst: Joe Carrasco

A0708\s192a

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.