

**Commerce & Labor Committee**

**SSB 5263**

**Brief Description:** *Changing provisions relating to employment rights of members of reserve and national guard forces.*

**Sponsors:** *By Senate Committee on Labor, Commerce & Financial Institutions (originally sponsored by Senators Snyder, Rasmussen and Gardner).*

**Brief Summary of Substitute Bill**

- *Prohibits employment discrimination because of certain military service.*
- *Makes additional persons eligible for re-employment following certain military service.*
- *Modifies deadlines and other criteria for seeking re-employment following certain military service.*
- *Modifies provisions governing enforcement of these re-employment rights.*

**Hearing Date:** *3/27/01*

**Staff:** *Jill Reinmuth (786-7134).*

**Background:**

*Federal law (the Federal Uniformed Services Employment and Re-employment Rights Act of 1994) gives certain re-employment rights to members of certain uniformed services. Likewise, state law provides such rights to state residents who vacate a position of employment to enter the armed services, the Washington National Guard, or the United States Public Health Service.*

**Eligibility:** *In general, a person is eligible for re-employment to his or her former position or to a position of like seniority, status, and pay, if he or she:*

- *is a resident of the state;*
- *is honorably discharged; and*
- *served four years or less.*

*Application: An eligible person must apply for re-employment within 90 days of his or her discharge, and return to his or her job within three months of discharge.*

*Benefits: The re-employed person must be treated as if he or she was on leave with respect to health insurance, retirement plans, and other benefits.*

*Exceptions: An employer is not required to re-employ a person if:*

- *re-employment would be impossible, unreasonable, or against the public interest because of changed circumstances; or*
- *employment was in temporary position.*

*Enforcement: The county prosecuting attorney must bring an action against the employer if an employer fails to comply with state law governing re-employment rights.*

*Alternatively, a person not wishing to pursue his or her rights through the prosecuting attorney may bring an action against the employer.*

#### ***Summary of Bill:***

*The re-employment rights of members of certain uniformed services are modified to include persons who have completed state-ordered active duty, and to make state law similar to federal law.*

*Eligibility: In addition to a person who is a resident of the state, the persons who are eligible for re-employment include:*

- *a person who is employed in the state;*
- *a person who is employed by employers doing business in the state; and*
- *a member of the National Guard of other jurisdictions.*

*Application: The deadlines for applying for re-employment depend on the type and length of service:*

- *If a person served less than 31 days or was absent from employment to take an examination to determine fitness to perform certain military service, the person must report to the employer on the next regularly scheduled work day after completion of service and expiration of an eight-hour period.*
- *If a person served more than 30 days, but less than 181 days, the person must apply for*

*re-employment within 14 days after completion of service.*

- *If a person served more than 180 days, he or she must apply for re-employment within 90 days after completion of service.*
- *If a person was hospitalized for an illness or injury incurred during his or her service, he or she must apply for re-employment after he or she recovers from the illness or injury, so long as the period of recovery does not exceed two years.*

*A person applying for re-employment must provide certain documentation to the employer. An employer may not deny re-employment, however, solely because the documentation was not readily available.*

*Benefits: A person may continue his or her employment-based health benefits for up to 18 months while serving in certain uniformed services. A person electing to continue his or her health benefits may be required to pay for the benefits. Upon re-employment, a person may have his or her pension benefits continue as if there was no break in service.*

*Prohibited Acts: An employer may not deny employment, re-employment, or any benefit of employment because the person is a member of a uniformed service. An employer also may not retaliate against a person who has exercised or taken action to enforce re-employment rights, or who has participated in a proceeding or investigation related to enforcement of re-employment rights.*

*Exceptions: An employer is not required to re-employ a person if:*

- *re-employment would be impossible, unreasonable because of a change in the employer's circumstances; or*
- *re-employment would impose an undue hardship on the employer; or*
- *employment was for a brief, non-recurrent period and there was no reasonable expectation that the employment relationship would continue indefinitely.*

*Enforcement: The attorney general (rather than the prosecuting attorney) must bring an action against the employer if an employer fails to comply with state law governing re-employment rights, the service was state duty not covered under federal law, and the Employer Support for Guard and Reserve Ombudsman has not been unable to resolve it. Alternatively, a person not wishing to pursue his or her rights through the attorney general may bring an action against the employer.*

*In addition, the burden of proof is shifted to the employer in actions involving certain re-employment issues, such as whether re-employment is impossible or unreasonable or whether re-employment would impose an undue hardship on the employer.*

*Rules Authority: The bill does not contain provisions addressing the rule-making powers of an agency.*

***Appropriation: None.***

***Fiscal Note: Available.***

***Effective Date: The bill contains an emergency clause and takes effect immediately.***