

By Representative Conway

1 **HB 1285** - H COMM AMD  
2 By Committee on Commerce & Labor

3 On page 3, beginning on line 20, strike all of section 2 and  
4 insert the following:

5 "Sec. 2. RCW 73.16.033 and 2001 c 133 s 5 are each amended to  
6 read as follows:

7 (1) Any person who is a resident of this state or is employed  
8 within this state, and who voluntarily or upon order from competent  
9 authority, vacates a position of employment for service in the  
10 uniformed services, shall, provided he or she meets the requirements of  
11 RCW 73.16.035, be reemployed forthwith(~~(: PROVIDED, That the)~~).

12 (2) An employer ((need)) is not required to reemploy ((such)) a  
13 person under this chapter if:

14 (a) Circumstances have so changed such that reemployment would be  
15 impossible or unreasonable due to a change in the employer's  
16 circumstances(~~(, or))~~;

17 (b) Reemployment would impose an undue hardship on the employer  
18 (~~(: PROVIDED FURTHER, That this section shall not apply to a temporary~~  
19 position)); or

20 (c) The employment from which the person leaves to serve in the  
21 uniformed services is for a brief, nonrecurrent period and there is no  
22 reasonable expectation that such employment will continue indefinitely  
23 or for a significant period.

24 (3) If such person is still qualified to perform the duties of his  
25 or her former position, he or she shall be restored to that position or  
26 to a position of like seniority, status and pay. If he or she is not  
27 so qualified as a result of disability sustained during his or her  
28 service in the uniformed services, but is nevertheless qualified to  
29 perform the duties of another position, under the control of the same  
30 employer, he or she shall be reemployed in such other position:  
31 PROVIDED, That such position shall provide him or her with like

1 seniority, status, and pay, or the nearest approximation thereto  
2 consistent with the circumstances of the case."

3 On page 4, beginning on line 5, strike all of section 3 and insert  
4 the following:

5 **"Sec. 3.** RCW 73.16.035 and 2001 c 133 s 6 are each amended to  
6 read as follows:

7 (1) In order to be eligible for the benefits of this chapter, an  
8 applicant must comply with the following requirements:

9 (a) The applicant must notify his or her employer as to his or her  
10 membership in the uniformed services within a reasonable time of  
11 accepting employment or becoming a member of the uniformed services.  
12 An employer may not take any action prohibited in RCW 73.16.032 against  
13 a person because the person provided notice of membership in the  
14 uniformed services to the employer.

15 (b) The applicant must furnish a receipt of an honorable, or under  
16 honorable conditions discharge, report of separation, certificate of  
17 satisfactory service, or other proof of having satisfactorily completed  
18 his or her service. Rejectees must furnish proof of orders for  
19 examination and rejection.

20 (c) The applicant must make written application to the employer or  
21 his or her representative as follows:

22 (i) In the case of an applicant whose period of service in the  
23 uniformed services was less than thirty-one days, by reporting to the  
24 employer:

25 (A) Not later than the beginning of the first full regularly  
26 scheduled work period on the first full calendar day following the  
27 completion of the period of service and the expiration of eight hours  
28 after a period allowing for the safe transportation of the applicant  
29 from the place of that service to the applicant's residence; or

30 (B) As soon as possible after the expiration of the eight-hour  
31 period in (c)(i)(A) of this subsection, if reporting within that period  
32 is impossible or unreasonable through no fault of the applicant;

33 (ii) In the case of an applicant who is absent from a position of  
34 employment for a period of any length for the purposes of an  
35 examination to determine the applicant's fitness to perform service in  
36 the uniformed services, by reporting in the manner and time referred to  
37 in (c)(i) of this subsection;

1 (iii) In the case of an applicant whose period of service in the  
2 uniformed services was for more than thirty days but less than one  
3 hundred eighty-one days, by submitting an application for reemployment  
4 with the employer not later than fourteen days after the completion of  
5 the period of service or if submitting such application within such  
6 period is impossible or unreasonable through no fault of the applicant,  
7 the next first full calendar day when submission of such application  
8 becomes possible;

9 (iv) In the case of an applicant whose period of service in the  
10 uniformed services was for more than one hundred eighty days, by  
11 submitting an application for reemployment with the employer not later  
12 than ninety days after the completion of the period of service;

13 (v) In the case of an applicant who is hospitalized for, or  
14 convalescing from, an illness or injury incurred or aggravated during  
15 the performance of service in the uniformed services, at the end of the  
16 period that is necessary for the applicant to recover from such illness  
17 or injury, the applicant shall submit an application for reemployment  
18 with such employer. The period of recovery may not exceed two years.  
19 This two-year period shall be extended by the minimum time required to  
20 accommodate the circumstances beyond the applicant's control that make  
21 reporting within the two-year period impossible or unreasonable;

22 (vi) In the case of an applicant who fails to report or apply for  
23 employment or reemployment within the appropriate period specified in  
24 this subsection (1)(c), the applicant does not automatically forfeit  
25 his or her entitlement to the rights and benefits conferred by this  
26 chapter, but is subject to the conduct rules, established policy, and  
27 general practices of the employer pertaining to explanations and  
28 discipline with respect to absence from scheduled work.

29 (d) An applicant who submits an application for reemployment shall  
30 provide to the applicant's employer, upon the request of that employer,  
31 documentation to establish that:

32 (i) The application is timely;

33 (ii) The applicant has not exceeded the service limitations set  
34 forth in this section, except as permitted under (c)(v) of this  
35 subsection; and

36 (iii) The applicant's entitlement to the benefits under this  
37 chapter has not been terminated pursuant to (e) of this subsection.

38 (e) The applicant must return and reenter the office or position  
39 within the appropriate period specified in (c) of this subsection after

1 serving four years or less in the uniformed services other than state-  
2 ordered active duty: PROVIDED, That any period of additional service  
3 imposed by law, from which one is unable to obtain orders relieving him  
4 or her from active duty, will not affect reemployment rights.

5 (f) The applicant must return and reenter the office or position  
6 within the appropriate period specified in (c) of this subsection after  
7 serving twelve weeks or less in a calendar year in state-ordered active  
8 duty: PROVIDED, That the governor, when declaring an emergency that  
9 necessitates a longer period of service, may extend the period of  
10 service in state-ordered active duty to up to twelve months after which  
11 the applicant is eligible for the benefits of this chapter.

12 (2) The failure of an applicant to provide documentation that  
13 satisfies rules adopted pursuant to subsection (1)(c) of this section  
14 shall not be a basis for denying reemployment in accordance with the  
15 provisions of this chapter if the failure occurs because such  
16 documentation does not exist or is not readily available at the time of  
17 the request of the employer. If, after such reemployment,  
18 documentation becomes available that establishes that the applicant  
19 does not meet one or more of the requirements referred to in subsection  
20 (1)(d) of this section, that applicant's employer may terminate the  
21 employment of the person and the provision of any rights or benefits  
22 afforded the person under this chapter.

23 (3) An employer may not delay or attempt to defeat a reemployment  
24 obligation by demanding documentation that does not then exist or is  
25 not then readily available.

26 (4) The application in subsection (1) of this section is not  
27 required if the giving of such application is precluded by military  
28 necessity or, under all of the relevant circumstances, the giving of  
29 such notice is otherwise impossible or unreasonable. A determination  
30 of military necessity for the purposes of this subsection shall be made  
31 by the adjutant general of the state of Washington military department  
32 and is not subject to judicial review.

33 (5) In any proceeding involving an issue of whether (a)  
34 reemployment is impossible or unreasonable because of a change in an  
35 employer's circumstances, (b) reemployment would impose an undue  
36 hardship on the employer, or (c) the employment is for a (~~temporary~~  
37 position)) brief, nonrecurrent period, and there is no reasonable  
38 expectation that the employment will continue indefinitely or for a  
39 significant period, the employer has the burden of proving the

1 impossibility or unreasonableness, undue hardship, or the brief ((or))  
2 nonrecurrent nature of the employment without a reasonable expectation  
3 of continuing indefinitely or for a significant period."

**EFFECT:** Makes state law conform with federal law by striking references to temporary positions, and inserting references to employment that is for a brief, nonrecurrent period- and for which there is no reasonable expectation that such employment will continue indefinitely or for a significant period.-