

1 HB455
2 197867-2
3 By Representative Chestnut
4 RFD: Military and Veterans Affairs
5 First Read: 16-APR-19

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8 SYNOPSIS: Under existing law, all officers and
9 employees of the State of Alabama, or other agency
10 or political subdivision of the State of Alabama,
11 or officers or employees of any public or private
12 business or industry who are active members of the
13 Alabama National Guard, Naval Militia, the Alabama
14 State Guard organized in lieu of the National
15 Guard, the Civil Air Patrol, the National Disaster
16 Medical System, or of any other reserve component
17 of the uniformed services of the United States, are
18 entitled to military leave of absence from their
19 respective civil duties and occupations on all days
20 that they are engaged in field or coast defense or
21 other training or on other service ordered under
22 the National Defense Act, the Public Health
23 Security and Bioterrorism Preparedness and Response
24 Act of 2002, or of the federal laws governing the
25 United States reserves, without loss of pay, time,
26 efficiency rating, annual vacation, or sick leave.

1 This bill would create a private right of
2 action against violators of this existing law.

3 This bill would prohibit discrimination
4 against any member of the uniformed services for
5 exercising his or her rights as provided by law.

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 Relating to military leave of absence; to amend
12 Section 31-2-13, Code of Alabama 1975, to create a private
13 right of action against violators of the military leave of
14 absence law; and to add Sections 31-2-13.1 and 31-2-13.2 to
15 the Code of Alabama 1975, to prohibit discrimination against
16 any member of the uniformed services for exercising his or her
17 rights as provided by law.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Section 31-2-13, Code of Alabama 1975, is
20 amended to read as follows:

21 "§31-2-13.

22 "(a) Military leave of absence. All officers and
23 employees of the State of Alabama, or of any county,
24 municipality, or other agency or political subdivision
25 thereof, or officers or employees of any public or private
26 business or industry who are active members of the Alabama
27 National Guard, Naval Militia, the Alabama State Guard

1 organized in lieu of the National Guard, the civilian
2 auxiliary of the United States Air Force known as the Civil
3 Air Patrol, the National Disaster Medical System, or of any
4 other reserve component of the uniformed services of the
5 United States, shall be entitled to military leave of absence
6 from their respective civil duties and occupations on all days
7 that they are engaged in field or coast defense or other
8 training or on other service ordered under the National
9 Defense Act, the Public Health Security and Bioterrorism
10 Preparedness and Response Act of 2002, or of the federal laws
11 governing the United States reserves, without loss of pay,
12 time, efficiency rating, annual vacation, or sick leave.
13 Notwithstanding the foregoing, no person granted a leave of
14 absence with pay shall be paid for more than 168 working hours
15 per calendar year, and those persons shall be entitled, in
16 addition thereto, to be paid for no more than 168 working
17 hours at any one time while called by the Governor to duty in
18 the active service of the state. This section shall apply to
19 all schools and institutions of learning supported by state
20 funds.

21 "(b) Credit for active federal service. Service in
22 the National Guard or Naval Militia of Alabama, when called,
23 drafted, or ordered into the service of the United States,
24 shall be considered as equivalent service in the Alabama
25 National Guard or Naval Militia for any and all state purposes
26 regarding privileges, honors, pay, allowances, and exemptions

1 provided by law for members of the National Guard and Naval
2 Militia of Alabama.

3 "(c) A person who is a member of the uniformed
4 services shall not be denied initial employment, reemployment,
5 retention in employment, promotion, or any benefit of
6 employment by an employer on the basis of that membership,
7 performance of service, or obligation.

8 "(d) An employer may not discriminate in employment
9 against or take any adverse employment action against any
10 person because the person has engaged in any of the following:

11 "(1) Taken an action to enforce a protection
12 afforded any person under this chapter.

13 "(2) Testified or otherwise made a statement in or
14 in connection with any proceeding under this chapter.

15 "(3) Assisted or otherwise participated in an
16 investigation under this chapter.

17 "(4) Exercised a right provided for in this chapter.

18 "(e) An employer shall be considered to have engaged
19 in actions prohibited:

20 "(1) Under subsection (c), if the person's
21 membership or obligation for service in the uniformed services
22 is a motivating factor in the employer's action, unless the
23 employer can prove that the action would have been taken in
24 the absence of the membership or obligation for service.

25 "(2) Under subsection (d), if the person's action to
26 enforce a protection afforded any person under this chapter,
27 testimony or making of a statement in or in connection with

1 any proceeding under this chapter, assistance or other
2 participation in an investigation under this chapter, or
3 exercise of a right provided for in this chapter, is a
4 motivating factor in the employer's action, unless the
5 employer can prove that the action would have been taken in
6 the absence of the person's enforcement action, testimony,
7 statement, assistance, participation, or exercise of a right.

8 "(f) For purposes of this chapter, "uniformed
9 services" means the Alabama National Guard, Naval Militia, the
10 Alabama State Guard organized in lieu of the National Guard,
11 the civilian auxiliary of the United States Air Force known as
12 the Civil Air Patrol, the National Disaster Medical System, or
13 of any other reserve component of the uniformed services of
14 the United States."

15 Section 2. Sections 31-2-13.1 and 31-2-13.2 are
16 added to the Code of Alabama 1975, to read as follows:

17 § 31-2-13.1.

18 (a) Any person whose absence from a position of
19 employment is necessitated by reason of service in the
20 uniformed services shall be entitled to the reemployment
21 rights and benefits and other employment benefits of this
22 chapter if all of the following are satisfied:

23 (1) The person, or an appropriate officer of the
24 uniformed service in which the service is performed, has given
25 advance written or verbal notice of the service to the
26 person's employer.

1 (2) The cumulative length of the absence and of all
2 previous absences from a position of employment with that
3 employer by reason of service in the uniformed services does
4 not exceed five years.

5 (3) Except as provided in subsection (f), the person
6 reports to, or submits an application for reemployment to, the
7 employer in accordance with subsection (e).

8 (b) No notice is required under subdivision (1) of
9 subsection (a) if the giving of the notice is precluded by
10 military necessity or, under all of the relevant
11 circumstances, the giving of the notice is otherwise
12 impossible or unreasonable. A determination of military
13 necessity for the purposes of this subsection shall be made
14 pursuant to regulations prescribed by the Secretary of Defense
15 and shall not be subject to judicial review.

16 (c) Subsection (a) applies to a person who is absent
17 from a position of employment by reason of service in the
18 uniformed services if the person's cumulative period of
19 service in the uniformed services, with respect to the
20 employer relationship for which a person seeks reemployment,
21 does not exceed five years, except that the period of service
22 shall not include any of the following:

23 (1) Service that is required, beyond five years, to
24 complete an initial period of obligated service.

25 (2) Service during which the person was unable to
26 obtain orders releasing the person from a period of service in

1 the uniformed services before the expiration of the five-year
2 period and the inability was through no fault of the person.

3 (3) Service performed as required pursuant
4 to Section 10147 of Title 10, or Section 502(a) or 503 of
5 Title 32, United States Code, or to fulfill additional
6 training requirements determined and certified in writing by
7 the Secretary concerned, to be necessary for professional
8 development, or for completion of skill training or
9 retraining.

10 (d) (1) An employer is not required to reemploy a
11 person under this section if any of the following are
12 satisfied:

13 a. The employer's circumstances have so changed as
14 to make the reemployment impossible or unreasonable.

15 b. In the case of a person entitled to reemployment
16 under this section the employment would impose an undue
17 hardship on the employer.

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

23 (2) In any proceeding involving an issue of whether
24 any of the conditions set forth in subdivision (1) exist, the
25 employer shall have the burden of proving the impossibility or
26 unreasonableness, undue hardship, or the brief or nonrecurrent

1 nature of the employment without a reasonable expectation of
2 continuing indefinitely or for a significant period.

3 (e) A person referred to in subsection (a), upon the
4 completion of a period of service in the uniformed services,
5 shall notify the employer of the person's intent to return to
6 a position of employment with the employer as follows:

7 (1) In the case of a person whose period of service
8 in the uniformed services was less than 31 days, by reporting
9 to the employer:

10 a. Not later than the beginning of the first full
11 regularly scheduled work period on the first full calendar day
12 following the completion of the period of service and the
13 expiration of eight hours after a period allowing for the safe
14 transportation of the person from the place of that service to
15 the person's residence; or

16 b. As soon as possible after the expiration of the
17 eight-hour period referred to in paragraph a., if reporting
18 within the period referred to in the paragraph is impossible
19 or unreasonable through no fault of the person.

20 (2) In the case of a person who is absent from a
21 position of employment for a period of any length for the
22 purposes of an examination to determine the person's fitness
23 to perform service in the uniformed services, by reporting in
24 the manner and time referred to in subdivision (1).

25 (3) In the case of a person whose period of service
26 in the uniformed services was for more than 30 days, but less
27 than 181 days, by submitting an application for reemployment

1 with the employer not later than 14 days after the completion
2 of the period of service or if submitting the application
3 within the period is impossible or unreasonable through no
4 fault of the person, the next first full calendar day when
5 submission of the application becomes possible.

6 (4) In the case of a person whose period of service
7 in the uniformed services was for more than 180 days, by
8 submitting an application for reemployment with the employer
9 not later than 90 days after the completion of the period of
10 service.

11 (f) A person who is hospitalized for, or
12 convalescing from, an illness or injury incurred in, or
13 aggravated during, the performance of service in the uniformed
14 services, at the end of the period that is necessary for the
15 person to recover from the illness or injury, shall report to
16 the person's employer, in the case of a person described in
17 subdivision (1) of subsection (e) or submit an application for
18 reemployment with the employer, in the case of a person
19 described in subdivision (2) or (3) of subsection (e). Except
20 as provided in subdivision (2) of subsection (e), the period
21 of recovery may not exceed two years. The two-year period
22 shall be extended by the minimum time required to accommodate
23 the circumstances beyond the person's control which make
24 reporting within the period specified in subdivision (1) of
25 subsection (e) impossible or unreasonable.

26 (g) A person who fails to report or apply for
27 employment or reemployment within the appropriate period

1 specified in subsection (e) shall not automatically forfeit
2 the person's entitlement to the rights and benefits referred
3 to in subsection (a) but shall be subject to the conduct
4 rules, established policy, and general practices of the
5 employer pertaining to explanations and discipline with
6 respect to absence from scheduled work.

7 (h) In any determination of a person's entitlement
8 to protection under this chapter, the timing, frequency, and
9 duration of the person's training or service, or the nature of
10 the training or service, including voluntary service, in the
11 uniformed services, shall not be a basis for denying
12 protection of this chapter if the service does not exceed the
13 limitations set forth in subsection (c) and the notice
14 requirements established in subdivision (1) of subsection (a)
15 and the notification requirements established in subsection
16 (e) are met.

17 § 31-2-13.2.

18 (a) In any action under this chapter, the court may
19 award relief as follows:

20 (1) The court may require the employer to comply
21 with this chapter.

22 (2) The court may require the employer to compensate
23 the person for any loss of wages or benefits suffered by
24 reason of the employer's failure to comply with this chapter.

25 (3) The court may require the employer to pay the
26 person an amount equal to the amount referred to in
27 subdivision (2) of this subsection as liquidated damages, if

1 the court determines that the employer's failure to comply
2 with this chapter was willful.

3 (b) No fees or court costs may be charged or taxed
4 against any person claiming rights under this chapter.

5 (c) In any action or proceeding to enforce this
6 chapter by a person under subdivision (2) of subsection (a)
7 who obtained private counsel for the action or proceeding, the
8 court may award any person under subdivision (2) of subsection
9 (a) who prevails in the action or proceeding reasonable
10 attorney fees, expert witness fees, and other litigation
11 expenses.

12 Section 3. This act shall become effective on the
13 first day of the third month following its passage and
14 approval by the Governor, or its otherwise becoming law.