

First Extraordinary Session, 2002

HOUSE BILL NO. 15

BY REPRESENTATIVES DOWNER, FUTRELL, FAUCHEUX, PRATT, ALARIO, E. ALEXANDER, R. ALEXANDER, ANSARDI, BALDONE, BAUDOIN, BAYLOR, BEARD, BOWLER, BROOME, BRUCE, BRUNEAU, CAPELLA, K. CARTER, CAZAYOUX, CLARKSON, CRANE, CROWE, CURTIS, DAMICO, DARTEZ, DEVILLIER, DEWITT, DIEZ, DOERGE, DURAND, ERDEY, FARRAR, FLAVIN, FRITH, FRUGE, FUTRELL, GALLOT, GLOVER, GREEN, GUILLORY, HAMMETT, HEATON, HEBERT, HILL, HONEY, HOPKINS, HUDSON, HUNTER, HUTTER, ILES, L. JACKSON, M. JACKSON, JOHNS, KATZ, KENNEY, LAFLEUR, LANCASTER, LANDRIEU, LEBLANC, LUCAS, MARTINY, MCCALLUM, MCDONALD, MCVEA, MONTGOMERY, MORRELL, MORRISH, MURRAY, NEVERS, PIERRE, PINAC, PITRE, POWELL, QUEZAIRE, RIDDLE, ROMERO, SCALISE, SCHWEGMANN, SHAW, GARY SMITH, JACK SMITH, JANE SMITH, JOHN SMITH, SNEED, STELLY, STRAIN, THOMPSON, TOOMY, TOWNSEND, TUCKER, WADDELL, WALSWORTH, WELCH, WOOTON, AND WRIGHT AND SENATOR ULLO

AN ACT

To amend and reenact R.S. 29:38(A), 403(9), and 422 and to enact R.S. 29:403(3.1) and (3.2), relative to military affairs; to provide for benefits and rights of persons called to service in the uniformed services; to provide for applicability; to provide for notice requirements; to provide for reemployment rights of persons called to duty in the national guard of this state and of any other state; to define certain terms under the Military Service Relief Act; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 29:38(A), 403(9), and 422 are hereby amended and reenacted and R.S. 29:403(3.1) and (3.2) are hereby enacted to read as follows:

§38. Reemployment of persons called to duty in state military forces and national guard of other states

A. Any person who is called or ordered to active duty ~~by the this state, whether such person is a member~~ in the service of the national guard of ~~the this state~~ or of any other state, the state militia or any other military force of this state and who has performed satisfactorily, shall, upon his release and return from such military duty or recovery from disease or injury resulting therefrom, under honorable conditions, be reinstated in or restored to the same or comparable position of employment, except a temporary position, which he held at the time he was called to such duty. Such person shall report to his place of employment within seventy-two hours after his release from duty or recovery from disease or injury resulting therefrom, as the case may be, and his employer or his employer's successor, whether an agency of the state or its political subdivision or a private employer, shall reinstate or restore such person in the same or comparable position which he left at the time of his call to duty at no less compensation than that which he was receiving at the time of his call to duty or to a position of like seniority, status, benefits, and pay. However, if such person is not qualified ~~to perform the~~ or capable of performing the essential functions and duties of the same position by reason of disability sustained during his call to duty, but is otherwise qualified by reason of education, training, or experience to perform another position in the employ of the employer or his successor, the

employer or his successor shall employ such person in ~~another~~ that other or comparable position, the essential functions and duties of which he is physically capable and qualified to perform, that will provide like seniority, status, benefits, and pay or ~~the nearest approximation thereof consistent with the circumstances of the case~~ provided the employment does not pose a direct threat or significant risk to the health and safety of the individual or others that cannot be eliminated by reasonable accommodation. Any such person called to duty shall, if he has performed satisfactorily and has been released under honorable conditions, be entitled to a certificate to that effect, signed by such person's commanding officer.

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§403. Definitions

As used in this Part, the following terms shall have the definitions ascribed in this Section unless the context clearly requires otherwise:

* * *

(3.1) "Disability" means a physical or mental impairment, which substantially limits one or more of the major life activities, or a record of such impairment. Major life activities include caring for one's self, walking, hearing, speaking, breathing, learning, performing manual tasks, and working.

(3.2) "Essential functions" means the fundamental job duties of the employment position the disabled person held or desires.

* * *

(9) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service

under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty. "Service in the uniformed services" also means service in the armed forces of the United States pursuant to authorization by the United States Congress or presidential proclamation pursuant to the War Powers Resolution (50 U.S.C. 1541 et seq.). "Service in the uniformed ~~service~~ services" also means state active duty by members of the national guard who are activated pursuant to a call of the governor of this state or of any other state as provided for by law.

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§422. Enforcement of Soldiers' and Sailors' Civil Relief Act of 1940, as amended; Uniformed Services Employment and Reemployment Rights Act; notice requirements

A.(1) The provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, (50 App. U.S.C. 501 et seq.) (SSCRA) and the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.) (USERRA) are adopted and made a part of this Part, and all of the benefits, protections, and rights provided in SSCRA and USERRA shall be applicable to all persons called to service in the uniformed services as defined in R.S. 29:403(9) and shall be enforceable pursuant to the provisions of this Section.

(2) The Department of Labor shall make available the following notice that every employer shall post in a conspicuous place in each employment establishment:

"If you are in the national guard, military reserves, or active in the military, you have certain protected employment and reemployment rights, freedom from discrimination rights, and civil relief rights under federal law 38 U.S.C. 4301 et seq. (USERRA) and 50 App. U.S.C. 501 et seq. (SSCRA) and state law R.S. 29:401 et seq. (MSRA). If you feel that you have been discriminated against or denied such rights on account of your service in the uniformed services, contact the Employer Support Guard and Reserve Committee at 1-800-336-4590."

~~A.~~ B. The district courts of this state shall have jurisdiction over proceedings involving the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and the Uniformed Services Employment and Reemployment Rights Act, which shall be governed by the rules applicable to ordinary proceedings.

~~B.~~ C. The district and appellate courts shall give preference in scheduling such proceedings, upon the motion of any person in the uniformed services, or the person's attorney, who presents certification that the person has performed service in the uniformed services or is in service in the uniformed services.

Section 2. The provisions of this Act shall have both retroactive and prospective application and shall also specifically be applicable to all persons called to service in the uniformed services as of September 11, 2001, and as now defined in R.S. 29:403(9).

Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor

and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____