

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 484

BY SENATORS ROMANO, LEONHARDT, PLYMALE AND

KESSLER

[Introduced February 2, 2016;

Referred to the Committee on Military; and then to the

Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §21-17-1, §21-17-2, §21-17-3, §21-17-4, §21-17-5, §21-17-6, §21-17-7, §21-
 3 17-8, §21-17-9, §21-17-10 and §21-17-11, all relating to creating Service Member's
 4 Employment Protection Act; designating a short title; stating public policy behind the act;
 5 defining terms; requiring employers to restore service members to positions of
 6 employment under certain circumstances; requiring employers to provide copy of a job
 7 offer under certain circumstances; designating terms of restoration required under the
 8 article; authorizing a stay of civil proceedings in certain circumstances; authorizing credit
 9 or refund of school tuition in certain circumstances; creating civil penalty assessed by
 10 Division of Labor against employers for violating the article; creating exceptions to the
 11 article; and requiring Division of Labor maintain a public list of employers who have been
 12 fined for violating the article.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §21-17-1, §21-17-2, §21-17-3, §21-17-4, §21-17-5, §21-17-6, §21-17-7, §21-
 3 17-8, §21-17-9, §21-17-10 and §21-17-11, all to read as follows:

ARTICLE 17. SERVICE MEMBER’S EMPLOYMENT PROTECTION ACT.

§21-17-1. Short title.

1 This article may be cited as the Service Member's Employment Protection Act.

§21-17-2. Public Policy.

1 As a guide to the interpretation and application of this article, the public policy of the state
 2 is declared as follows:

3 The State of West Virginia is dedicated to the urgent task of strengthening and expediting
 4 the national defense under the emergent conditions which are threatening the peace and security
 5 of this nation. It is the considered judgment of the Legislature that the wage earners of West
 6 Virginia who respond to their country's call to service in this time of crisis, are deserving of every

7 protection of their employment status which the law may afford, and that repetition of the
8 regrettable experience existing after the great war of 1917-1918, wherein returning service men
9 and women were subjected to serious discrimination with regard to tenure and other rights of
10 employment, must be avoided, since any form of economic discrimination against returning
11 service men and women is a serious menace to the entire social fabric of the United States of
12 America and the State of West Virginia.

13 The State of West Virginia has a long history of contributing greatly to the United States
14 of America's military forces. By safeguarding the employment and the rights and privileges
15 inhering in the employment contract, of service men and women, the State of West Virginia
16 encourages its workers to participate to the fullest extent in the national defense program and
17 thereby heightens the contribution of our state to the protection of our heritage of liberty and
18 democracy.

§21-17-3. Definitions.

1 The term "persons in the military service", as used in this article, includes the following
2 persons and no others: All members of the Army of the United States, the United States Navy,
3 the Marine Corps, the Air Force, the Coast Guard and all members of the state Militia called into
4 the service or training of the United States of America or of this state. The term "military service",
5 as used in this article, signifies federal service or active duty with any branch of service heretofore
6 referred to as well as training or education under the supervision of the United States preliminary
7 to induction into the military service. The term "military service" also includes any period of active
8 duty with the State of West Virginia pursuant to the orders of the President of the United States
9 or the Governor. The term "military service" also includes any period of active duty by members
10 of the National Guard who are called to active duty pursuant to an order of the Governor of this
11 state or an order of a Governor of any other state as provided by law.

12 The foregoing definitions apply both to voluntary enlistment and to induction into service
13 by draft or conscription.

14 The term "political subdivision", as used in this article, means any county commission;
15 municipality; county board of education; any instrumentality established by a county or
16 municipality; any separate corporation or instrumentality established by one or more counties or
17 municipalities, as permitted by law; or any public body charged by law with the performance of a
18 government function and whose jurisdiction is coextensive with one or more counties or
19 municipalities.

§21-17-4. Service member reinstatement.

1 (a) Each person in the employ of a private employer or of the State of West Virginia or a
2 political subdivision, except as in this section provided, who for the purpose of entering the military
3 service, has left or leaves the employ and actually entered the military service as herein defined
4 and who thereafter; (1) Receives a certificate or other evidence of honorable discharge or
5 satisfactory completion of his or her military service under the laws of the United States; (2) is at
6 the time of the discharge or completion of military service, still qualified to perform the duties of
7 the position of employment which he or she has left; and (3) makes application for reemployment
8 within ninety days after he or she is relieved from military service, or from hospitalization
9 continuing after discharge for a period of not more than one year, shall be restored by the
10 employer to the position of employment which he or she left with the same increases in status,
11 seniority and wages that were earned during his or her term of military service by employees in
12 like positions who were on the job at the time the returning serviceman entered the service, or to
13 a position of like seniority, status and pay, unless the employer's circumstances have so changed
14 as to make it impossible or unreasonable to do so; however, if the employee otherwise qualified
15 for reemployment is not qualified to perform the duties of the position of employment which he or
16 she has left to enter military service, by reason of disability sustained during service but qualified
17 to perform the duties of any other position in the employ of the employer, he or she shall be
18 restored to such other position the duties of which he or she is qualified to perform as will provide
19 him or her like seniority, status, and pay, or the nearest approximation thereof consistent with the

20 circumstances in his or her case, unless, in the case of a private employer, the employer's
21 circumstances have so changed as to make it impossible or unreasonable to do so.

22 (b) If an employee enters military service and the position of employment which he or she
23 left is filled by one or more employees who later enter military service, the employees shall, upon
24 release from military service, be given preference in the matter of employment in the order in
25 which they entered military service, and the employer may not be required to retain more than
26 one of them in his or her employ.

27 (c) Each person in the employ of a private employer or of the State of West Virginia or a
28 political subdivision, except as in this section provided, who, for the purpose of entering the
29 military service, has left or leaves that employ but who has been rejected for lack of proper
30 qualifications, shall likewise be restored by the employer to the position of employment which he
31 or she left with the same seniority status and wage increases that an employee who was on the
32 job at the time he or she left to enter the military service earned during the time the service rejected
33 person was away from his or her employment because of his or her attempt to enter the military
34 service, or to a position of like seniority, status and pay: *Provided*, That at the time of the rejection
35 he or she is qualified to perform the duties of the position of employment which he or she has left
36 and has made application for reemployment within ninety days after receipt of official notice of
37 the rejection.

38 (d) The employment restoration provisions of this section do not apply to an employee of
39 the state who was employed before entering or attempting to enter the military service in a position
40 in a department or other agency in the executive branch involving principal administrative
41 responsibility for the determination of policy or for the way these policies are carried out.

§21-17-5. Copy of employment offer.

1 (a) If an employer has given an individual a date upon which that individual is to commence
2 performing services for the employer but the individual is called to active military duty pursuant to
3 a declaration of war by the congress or by the President under the War Powers Act or by the

4 Governor in time of declared emergency or for quelling civil insurrection before the date on which
5 the individual's services were to have commenced, then the employer, upon request made by the
6 individual, shall provide the individual with a written copy of the employment offer. The written
7 copy of the employment offer must include at least the following:

8 (1) A statement repeating the offer of work and the date on which the services were to be
9 first performed.

10 (2) A statement describing the job title or duties to be performed.

11 (3) A statement showing the remuneration offered.

12 (4) The signature of the employer.

13 (b) If an individual, upon honorable discharge from the military or satisfactory completion
14 of his or her military service under the laws of the United States, is at the time of discharge or
15 completion of duty still qualified to perform the duties of the position for which he or she was first
16 offered employment, and if the individual makes application with the employer within ninety days
17 after he or she is relieved from military service, then the individual shall be given preference for
18 employment with that employer. If circumstances have so changed as to make it impossible or
19 unreasonable for the employer to employ the individual immediately, however, the individual shall
20 remain eligible to begin that employment for a period of up to one year after the date the individual
21 first notified the employer of his or her desire to perform those services.

22 (c) This section does not apply if the original offer of work was limited to part-time
23 employment, temporary employment, or casual labor.

24 (d) Nothing in this section may require an employer to hold a job position open, violate any
25 employment law, collectively bargained employment recall, or other employment obligation, or
26 create additional employment to satisfy the requirements of this section.

§21-17-6. Terms of restoration.

1 (a) Any person who is restored or seeks to be restored to a position in accordance with
2 the provisions of this article, is considered as having been on furlough or leave of absence during

3 his or her military service and shall be so restored without loss of seniority and is entitled to
4 participate in insurance or other benefits offered by the employer pursuant to established rules
5 and practices relating to employees on furlough or leave of absence in effect with the employer
6 at the time the person entered military service. That person may not be discharged from the
7 position without cause within one year after the restoration.

8 (b) If an employer provides health insurance, an exclusion or waiting period may not be
9 imposed in connection with coverage of a health or physical condition of a person entitled to
10 participate in that insurance under this section, or a health or physical condition of any other
11 person who is covered by the insurance by reason of the coverage of that person if: (1) The
12 condition arose before or during that person's period of military service; (2) an exclusion or waiting
13 period would not have been imposed for the condition during a period of coverage resulting from
14 participation by that person in the insurance; and (3) the condition of that person has not been
15 determined to be service connected.

§21-17-7. Stay of civil proceedings.

1 During and for a period of fourteen days after a period of military service with the State of
2 West Virginia or in federal active duty service pursuant to the orders of the President of the United
3 States or the Governor, a court having jurisdiction over the enforcement of any civil obligation or
4 liability, the prosecution of any civil suit or proceeding or the entry or enforcement of any civil
5 order, writ, judgment or decree may stay, postpone or suspend the matter if the court determines
6 that a person's failure to meet the obligation is the direct result of the aforementioned period of
7 military service. The stay, postponement or suspension of proceedings does not in any way
8 modify any condition, obligation, term or liability agreed upon or incurred by a person in military
9 service including, but not limited to, accrued interest, late fees or penalties. No stay,
10 postponement, or suspension may be provided regarding any written agreement entered into, or
11 debt that is incurred, by the person during or after his or her period of military service.

§21-17-8. School attendance and tuition.

1 (a) Any person in military service with the State of West Virginia or in federal active duty
2 service pursuant to the orders of the President of the United States or the Governor shall receive
3 a full monetary credit or refund for funds paid to any West Virginia public university, college or
4 community college if the person is placed into a period of military service pursuant to the orders
5 of the President of the United States or the Governor and is unable to attend the university or
6 college for a period of seven or more days. Withdrawal from the course may not impact upon the
7 final grade point average of the person. If any person who has been enrolled in any West Virginia
8 public university, college or community college is unable to process his or her enrollment for the
9 upcoming term, he or she shall have any and all late penalties and or charges set aside, including
10 any and all late processing fees for books, lab fees and all items that were not in place because
11 the person was engaged in military service and was unable to enroll in the courses at the
12 appropriate time.

13 (b) A service member enrolled in an institution of higher learning who is unable, because
14 of his or her military service, to attend classes on a particular day or days has the right to be
15 excused and to reschedule a course examination administered on that day or days. The faculty
16 and administrative officials shall make available to the service member an equivalent opportunity
17 to make up any examination he or she has missed because of his or her military service.

18 (c) The rights set forth in this section are in addition to any rights afforded to persons in
19 military service with the State of West Virginia or in federal active duty service pursuant to the
20 orders of the President of the United States or the Governor under the policies of a West Virginia
21 public university, college, or community college.

22 (d) For the purposes of this section:

23 (1) "Military service" means any full-time training or duty, no matter how described under
24 federal or state law, for which a service member is ordered to report by the President, Governor
25 of a state, commonwealth or territory of the United States or other appropriate military authority.

26 (2) "Service member" means a resident of West Virginia who is a member of any

27 component of the U.S. Armed Forces or the National Guard of any state, the District of Columbia,
28 a commonwealth, or a territory of the United States.

§21-17-9. Employer's violation of article; penalty; employee's remedies.

1 (a) An employer's knowing violation of this article is a civil violation enforceable by the
2 Division of Labor with a mandatory minimum fine of not less than \$5,000 and a maximum fine of
3 \$10,000.

4 (b) If any employer fails or refuses to comply with this article, the circuit court of the county
5 in which the private employer maintains a place of business, or of the county where the state
6 employee performs most of his or her duties, upon the filing of a complaint by the person, is
7 entitled to the benefits of this article, to specifically require the employer to comply with this article
8 and to compensate that person for any loss of wages or benefits suffered by reason of the
9 employer's unlawful action, together with reasonable attorney's fees and costs. No fees or court
10 costs may be taxed against any person applying for the benefits of this article.

11 The court may give preference to the hearing and disposition of these cases over other
12 matters then pending before it.

§21-17-10. Exceptions.

1 This article is not applicable to workers employed on a temporary or casual basis.

§21-17-11. Division of Labor employer list.

1 The Division of Labor shall establish and maintain a statewide list of employers who have
2 been issued a fine for violating this article. The Division of Labor shall make the information in the
3 list available to the public on its official website and by any other means the Division of Labor
4 deems appropriate.

NOTE: The purpose of this bill is to create the Service Member's Employment Protection Act in order to support service members upon their return from serving the state and nation. The bill requires employers to restore service members to positions of employment under certain circumstances and requires employers to provide a copy of a job offer under certain circumstances and designates the terms of the restoration required under the article. The

bill authorizes a stay of civil proceedings in certain circumstances. It authorizes a credit or refund of school tuition. The bill provides for a civil penalty assessed by the Division of Labor against employers for violating the article. It creates exceptions to the article. And, the bill requires the Division of Labor maintain a public list of employers who have been fined for violating the article.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.