

2 By Representative

3 **SSB 5263** - H COMM AMD **ADOPTED 4/5/01**
4 By Committee on Commerce & Labor

5

6 Strike everything after the enacting clause and insert the
7 following:

8 "NEW SECTION. **Sec. 1.** A new section is added to chapter 73.16 RCW
9 to read as follows:

10 (1) It is the intent of the legislature to guarantee employment
11 rights of members of the reserve and national guard forces who are
12 called to active duty. The federal uniformed services employment and
13 reemployment rights act of 1994 protects all such federal personnel.
14 The legislature intends that similar provisions should apply to all
15 such state personnel. Therefore, the legislature intends for this act
16 to ensure protections for state-activated personnel similar to those
17 provided by federal law for federal-activated personnel.

18 (2) The purposes of this chapter are to:

19 (a) Encourage noncareer service in the uniformed services by
20 eliminating or minimizing the disadvantages to civilian careers and
21 employment that can result from such service;

22 (b) Minimize the disruption to the lives of persons performing
23 service in the uniformed services as well as to their employers, their
24 fellow employees, and their communities, by providing for the prompt
25 reemployment of such persons upon their completion of such service; and

26 (c) Prohibit discrimination against persons because of their
27 service in the uniformed services.

28 (3) Therefore, the legislature intends that the governmental
29 agencies of the state of Washington, and all the political subdivisions
30 thereof, should be model employers in carrying out the provisions of
31 this chapter.

32 **Sec. 2.** RCW 73.16.015 and 1951 c 29 s 2 are each amended to read
33 as follows:

34 Any veteran entitled to the benefits of RCW 73.16.010 may enforce
35 his or her rights hereunder by civil action in ((the)) superior
36 court((s)).

1 **Sec. 3.** RCW 73.16.031 and 1953 c 212 s 1 are each amended to read
2 as follows:

3 (~~As used in RCW 73.16.031 through 73.16.061, the term:~~
4 "Resident" means any person residing in the state.) The
5 definitions in this section apply throughout this chapter unless the
6 context clearly requires otherwise.

7 (1) "Attorney general" means the attorney general of the state of
8 Washington or any person designated by the attorney general to carry
9 out a responsibility of the attorney general under this chapter.

10 (2) "Benefit," "benefit of employment," or "rights and benefits"
11 means any advantage, profit, privilege, gain, status, account, or
12 interest (other than wages or salary for work performed) that accrues
13 by reason of an employment contract or agreement or an employer policy,
14 plan, or practice and includes rights and benefits under a pension
15 plan, a health plan, an employee stock ownership plan, insurance
16 coverage and awards, bonuses, severance pay, supplemental unemployment
17 benefits, vacations, and the opportunity to select work hours or
18 location of employment.

19 (3) "Employee" means a person in a position of employment.

20 (4) "Employer" means the person, firm, or corporation, the state,
21 or any elected or appointed public official currently having control
22 over the position that has been vacated.

23 (5) "Health plan" means an insurance policy or contract, medical or
24 hospital service agreement, membership or subscription contract, or
25 other arrangement under which health services for individuals are
26 provided or the expenses of such services are paid.

27 (6) "Notice" means any written or verbal notification of an
28 obligation or intention to perform service in the uniformed services
29 provided to an employer by the employee who will perform such service
30 or by the uniformed service in which such service is to be performed.

31 (7) "Position of employment" means any position (other than
32 temporary) wherein a person is engaged for a private employer, company,
33 corporation, or the state(~~(, municipality, or political subdivision~~
34 thereof)).

35 (8) "Qualified," with respect to an employment position, means
36 having the ability to perform the essential tasks of the position.

37 (9) "Rejectee" means a person rejected because he or she is not,
38 physically or otherwise, qualified to enter the uniformed service.

1 (10) "Resident" means any person residing in the state with the
2 intent to remain other than on a temporary or transient basis.

3 (11) "Seniority" means longevity in employment together with any
4 benefits of employment which accrue with, or are determined by,
5 longevity in employment.

6 (12) "Service in the uniformed services" means the performance of
7 duty on a voluntary or involuntary basis in a uniformed service under
8 competent authority and includes active duty, active duty for training,
9 initial active duty for training, inactive duty training, full-time
10 national guard duty (including state-ordered active duty), and a period
11 for which a person is absent from a position of employment for the
12 purpose of an examination to determine the fitness of the person to
13 perform any such duty.

14 (13) "State" means the state of Washington, including the agencies
15 and political subdivisions thereof.

16 (14) "Temporary position" means a position of short duration which,
17 after being vacated, ceases to exist and wherein the employee has been
18 advised as to its temporary nature prior to his or her engagement.

19 ~~(("Employer" means the person, firm, corporation, state and any~~
20 ~~political subdivision thereof, or public official currently having~~
21 ~~control over the position which has been vacated.~~

22 ~~"Rejectee" means a person rejected because he is not, physically or~~
23 ~~otherwise, qualified to enter the service.))~~

24 (15) "Undue hardship," in the case of actions taken by an employer,
25 means actions requiring significant difficulty or expense when
26 considered in light of:

27 (a) The nature and cost of the action needed under this chapter;

28 (b) The overall financial resources of the facility or facilities
29 involved in the provision of the action; the number of persons employed
30 at such facility; the effect on expenses and resources; or the impact
31 otherwise of such action upon the operation of the facility; and

32 (c) The type of operation or operations of the employer, including
33 the composition, structure, and functions of the work force of such
34 employer, the geographic separateness, administrative, or fiscal
35 relationship of the facility or facilities in question to the employer.

36 (16) "Uniformed services" means the armed forces, the army national
37 guard, and the air national guard of any state, territory,
38 commonwealth, possession, or district when engaged in active duty for
39 training, inactive duty training, full-time national guard duty, or

1 state active duty, the commissioned corps of the public health service,
2 the coast guard, and any other category of persons designated by the
3 president of the United States in time of war or national emergency.

4 NEW SECTION. Sec. 4. A new section is added to chapter 73.16 RCW
5 to read as follows:

6 (1) A person who is a member of, applies to be a member of,
7 performs, has performed, applies to perform, or has an obligation to
8 perform service in a uniformed service shall not be denied initial
9 employment, retention in employment, promotion, or any benefit of
10 employment by an employer on the basis of that membership, application
11 for membership, performance of service, application for service, or
12 obligation.

13 (2) An employer may not discriminate in employment against or take
14 any adverse employment action against any person because such person
15 (a) has taken an action to enforce a protection afforded any person
16 under this chapter, (b) has testified or otherwise made a statement in
17 or in connection with any proceeding under this chapter, (c) has
18 assisted or otherwise participated in an investigation under this
19 chapter, or (d) has exercised a right provided for in this chapter.
20 The prohibition in this subsection (2) applies with respect to a person
21 regardless of whether that person has performed service in the
22 uniformed services.

23 (3) An employer shall be considered to have engaged in actions
24 prohibited:

25 (a) Under subsection (1) of this section, if the person's
26 membership, application for membership, service, application for
27 service, or obligation for service in the uniformed services is a
28 motivating factor in the employer's action, unless the employer can
29 prove that the action would have been taken in the absence of such
30 membership, application for membership, service, application for
31 service, or obligation for service; or

32 (b) Under subsection (2) of this section if the person's (i) action
33 to enforce a protection afforded any person under this chapter, (ii)
34 testimony or making of a statement in or in connection with any
35 proceeding under this chapter, (iii) assistance or other participation
36 in an investigation under this chapter, or (iv) exercise of a right
37 provided for in this chapter, is a motivating factor in the employer's
38 action, unless the employer can prove that the action would have been

1 taken in the absence of such person's enforcement action, testimony,
2 statement, assistance, participation, or exercise of a right.

3 **Sec. 5.** RCW 73.16.033 and 1953 c 212 s 2 are each amended to read
4 as follows:

5 Any person who is a resident of this state or is employed within
6 this state, and who voluntarily or upon ~~((demand))~~ order from competent
7 authority, vacates a position of employment ~~((to determine his physical~~
8 ~~fitness to enter, or, who actually does enter upon active duty or~~
9 ~~training in the Washington National Guard, the armed forces of the~~
10 ~~United States, or the United States public health service))~~ for service
11 in the uniformed services, shall, provided he or she meets the
12 requirements of RCW 73.16.035, be reemployed forthwith: PROVIDED, That
13 the employer need not reemploy such person if circumstances have so
14 changed ~~((as to make it impossible, unreasonable, or against the public~~
15 ~~interest for him to do so))~~ such that reemployment would be impossible
16 or unreasonable due to a change in the employer's circumstances, or
17 would impose an undue hardship on the employer: PROVIDED FURTHER, That
18 this section shall not apply to a temporary position.

19 If such person is still qualified to perform the duties of his or
20 her former position, he or she shall be restored to that position or to
21 a position of like seniority, status and pay. If he or she is not so
22 qualified as a result of disability sustained during his or her
23 service~~((, or during the determination of his fitness for service))~~ in
24 the uniformed services, but is nevertheless qualified to perform the
25 duties of another position, under the control of the same employer, he
26 or she shall be reemployed in such other position: PROVIDED, That such
27 position shall provide him or her with like seniority, status, and pay,
28 or the nearest approximation thereto consistent with the circumstances
29 of the case.

30 **Sec. 6.** RCW 73.16.035 and 1969 c 16 s 1 are each amended to read
31 as follows:

32 (1) In order to be eligible for the benefits of ~~((RCW 73.16.031~~
33 ~~through 73.16.061))~~ this chapter, an applicant must comply with the
34 following requirements:

35 ~~((1) He))~~ (a) The applicant must notify his or her employer as to
36 his or her membership in the uniformed services within a reasonable
37 time of accepting employment or becoming a member of the uniformed

1 services. An employer may not take any action prohibited in section 4
2 of this act against a person because the person provided notice of
3 membership in the uniformed services to the employer.

4 (b) The applicant must furnish a receipt of an honorable, or under
5 honorable conditions discharge, report of separation, certificate of
6 satisfactory service, or other proof of having satisfactorily completed
7 his or her service. Rejectees must furnish proof of orders for
8 examination and rejection.

9 ~~((2) He))~~ (c) The applicant must make written application to the
10 employer or his or her representative ~~((within ninety days of the date~~
11 ~~of his separation or release from training and service. Rejectees must~~
12 ~~apply within thirty days from date of rejection))~~ as follows:

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

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

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

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

29 (iii) In the case of an applicant whose period of service in the
30 uniformed services was for more than thirty days but less than one
31 hundred eighty-one days, by submitting an application for reemployment
32 with the employer not later than fourteen days after the completion of
33 the period of service or if submitting such application within such
34 period is impossible or unreasonable through no fault of the applicant,
35 the next first full calendar day when submission of such application
36 becomes possible;

37 (iv) In the case of an applicant whose period of service in the
38 uniformed services was for more than one hundred eighty days, by

1 submitting an application for reemployment with the employer not later
2 than ninety days after the completion of the period of service;

3 (v) In the case of an applicant who is hospitalized for, or
4 convalescing from, an illness or injury incurred or aggravated during
5 the performance of service in the uniformed services, at the end of the
6 period that is necessary for the applicant to recover from such illness
7 or injury, the applicant shall submit an application for reemployment
8 with such employer. The period of recovery may not exceed two years.
9 This two-year period shall be extended by the minimum time required to
10 accommodate the circumstances beyond the applicant's control that make
11 reporting within the two-year period impossible or unreasonable;

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

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

22 (i) The application is timely;

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

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

28 ~~((3) If, due to the necessity of hospitalization, while on active~~
29 ~~duty, he is released or placed on inactive duty and remains~~
30 ~~hospitalized, he is eligible for the benefits of RCW 73.16.031 through~~
31 ~~73.16.061: PROVIDED, That such hospitalization does not continue for~~
32 ~~more than one year from date of such release or inactive status:~~
33 ~~PROVIDED FURTHER, That he applies for his former position within ninety~~
34 ~~days after discharge from such hospitalization.~~

35 ~~(4) He))~~ (e) The applicant must return and reenter the office or
36 position within ((three months)) the appropriate period specified in
37 (c) of this subsection after serving four years or less in the
38 uniformed services other than state-ordered active duty: PROVIDED,
39 That any period of additional service imposed by law, from which one is

1 unable to obtain orders relieving him or her from active duty, will not
2 affect ((his)) reemployment rights.

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

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

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

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

31 (5) In any proceeding involving an issue of whether (a)
32 reemployment is impossible or unreasonable because of a change in an
33 employer's circumstances, (b) reemployment would impose an undue
34 hardship on the employer, or (c) the employment is for a temporary
35 position, the employer has the burden of proving the impossibility or
36 unreasonableness, undue hardship, or the brief or nonrecurrent nature
37 of the employment without a reasonable expectation of continuing
38 indefinitely or for a significant period.

1 **Sec. 7.** RCW 73.16.051 and 1953 c 212 s 5 are each amended to read
2 as follows:

3 Any person who is entitled to be restored to a position in
4 accordance with (~~the provisions of RCW 73.16.031, 73.16.033,~~
5 ~~73.16.035, and 73.16.041~~) this chapter shall be considered as having
6 been on furlough or leave of absence, from his or her position of
7 employment, during his or her period of active military duty or
8 service, and he or she shall be so restored without loss of seniority.
9 He or she shall further be entitled to participate in insurance,
10 vacations, retirement pay, and other benefits offered by the employer
11 pursuant to established rules and practices relating to employees on
12 furlough or leave of absence in effect with the employer at the time
13 such person was ordered into the service; and he or she shall not be
14 discharged from such position without cause within one year after
15 restoration(~~(: PROVIDED, That no employer shall be required to make~~
16 ~~any payment to keep insurance or retirement rights current during such~~
17 ~~period of military service)~~)).

18 **NEW SECTION. Sec. 8.** A new section is added to chapter 73.16 RCW
19 to read as follows:

20 (1) If a person, or the person's dependents, have coverage under a
21 health plan in connection with the person's position of state
22 employment, and the person is absent from his or her position of state
23 employment by reason of service in the uniformed services, the plan
24 shall provide that the person may elect to continue the coverage as
25 provided in this section. The maximum period of coverage of a person
26 and person's dependents under such an election shall be the lesser of:

27 (a) The eighteen-month period beginning on the date on which the
28 person's absence begins; or

29 (b) The day after the date on which the person fails to apply for
30 or return to a position of state employment, as determined under RCW
31 73.16.035.

32 (2) A person who elects to continue health plan coverage under this
33 section may be required to pay not more than one hundred two percent of
34 the full premium under the plan associated with the coverage for the
35 state employer's other employees, except that in the case of a person
36 who performs service in the uniformed services for less than thirty-one
37 days, the person may not be required to pay more than the employee
38 share, if any, for the coverage.

1 (3) Except as provided in subsection (2) of this section, if a
2 person's coverage under a health plan was terminated because of service
3 in the uniformed services, an exclusion or waiting period may not be
4 imposed in connection with the reinstatement of the coverage upon
5 reemployment under this chapter if an exclusion or waiting period would
6 not have been imposed under a health plan had coverage of the person by
7 the plan not been terminated as a result of his or her service. This
8 subsection applies to the person who is reemployed and to any dependent
9 who is covered by the plan because of the reinstatement of the coverage
10 of the person.

11 NEW SECTION. **Sec. 9.** A new section is added to chapter 73.16 RCW
12 to read as follows:

13 (1)(a) In the case of a right provided under any state law
14 governing pension benefits for state employees, the right to pension
15 benefits of a person reemployed under this chapter shall be determined
16 under this section.

17 (b) A person reemployed under this chapter shall be treated as not
18 having incurred a break in service with the state because of the
19 person's period of service in the uniformed services.

20 (c) Each period served by a person in the uniformed services shall,
21 upon reemployment under this chapter, be deemed to constitute service
22 with the state for the purpose of determining the nonforfeitability of
23 the person's accrued benefits and for the purpose of determining the
24 accrual of benefits under the plan.

25 (2) When the state is reemploying a person under this chapter, the
26 state is liable to an employee pension benefit plan for funding any
27 obligation of the plan to provide the pension benefits described in
28 this section and shall allocate the amounts of any employer
29 contribution for the person in the same manner and to the same extent
30 the allocation occurs for other employees during the period of service.
31 For purposes of determining the amount of such liability and any
32 obligation of the plan, earnings and forfeitures shall not be included.
33 For purposes of determining the amount of such liability and purposes
34 of a state law governing pension benefits for state employees, service
35 in the uniformed services that is deemed under subsection (1) of this
36 section to be service with the state shall be deemed to be service with
37 the state under the terms of the plan or any applicable collective
38 bargaining agreement.

1 (3) A person reemployed by the state under this chapter is entitled
2 to accrued benefits pursuant to subsection (1)(a) of this section that
3 are contingent on the making of, or derived from, employee
4 contributions or elective deferrals (as defined in section 402(g)(3) of
5 the internal revenue code of 1986) only to the extent the person makes
6 payment to the plan with respect to such contributions or deferrals.
7 No such payment may exceed the amount the person would have been
8 permitted or required to contribute had the person remained
9 continuously employed by the state throughout the period of uniformed
10 service. Any payment to the plan described in this subsection shall be
11 made during the period beginning with the date of reemployment and
12 whose duration is three times the period of the person's services, such
13 payment period in the uniformed services, not to exceed five years.

14 (4) For purposes of computing an employer's liability of the
15 employee's contributions under subsection (2) of this section, the
16 employee's compensation during the period of service shall be computed:

17 (a) At the rate the employee would have received but for the period
18 of service in subsection (1)(b) of this section; or

19 (b) In the case that the determination of such rate is not
20 reasonably certain, on the basis of the employee's average rate of
21 compensation during the twelve-month period immediately preceding such
22 period or if shorter, the period of employment immediately preceding
23 such period.

24 **Sec. 10.** RCW 73.16.061 and 1953 c 212 s 6 are each amended to read
25 as follows:

26 (1) In case any employer, his or her successor or successors fails
27 or refuses to comply with the provisions of RCW 73.16.031 through
28 73.16.061 and sections 4, 8, 9, and 13 of this act, the (~~prosecuting~~
29 ~~attorney of the county in which the employer is located~~) attorney
30 general shall bring action in the superior court in the county in which
31 the employer is located or does business to obtain an order to
32 specifically require such employer to comply with the provisions
33 (~~hereof~~) of this chapter, and, as an incident thereto, to compensate
34 such person for any loss of wages or benefits suffered by reason of
35 such employer's unlawful act if:

36 (a) The service in question was state duty not covered by the
37 uniformed services employment and reemployment rights act of 1994, P.L.
38 103-353 (38 U.S.C. Sec. 4301 et seq.); and

1 (b) The employer support for guard and reserve ombudsman, or his or
2 her designee, has inquired in the matter and has been unable to resolve
3 it.

4 (2) If the conditions in subsection (1)(a) and (b) of this section
5 are met, any such person who does not desire the services of the
6 ((prosecuting)) attorney general may, by private counsel, bring such
7 action.

8 **Sec. 11.** RCW 73.16.070 and 1941 c 201 s 5 are each amended to read
9 as follows:

10 The federal soldiers' and sailors' civil relief act of 1940, Public
11 Act No. 861(~~(, 76th congress)~~), is hereby specifically declared to
12 apply in proper cases in all the courts of this state.

13 NEW SECTION. **Sec. 12.** A new section is added to chapter 73.16 RCW
14 to read as follows:

15 An offset of any military pay for temporary service in the
16 uniformed services in a particular week against the salary of a bona
17 fide executive, administrative, or professional employee in a
18 particular week shall not be a factor in determining whether the
19 employee is exempt under RCW 49.46.010(5)(c).

20 NEW SECTION. **Sec. 13.** A new section is added to chapter 73.16 RCW
21 to read as follows:

22 This chapter shall not supersede, nullify, or diminish any federal
23 or state law, ordinance, rule, regulation, contract, agreement, policy,
24 plan, practice, or other matter that establishes a right or benefit
25 that is more beneficial to, or is in addition to, a right or benefit
26 provided for such person in this chapter.

27 NEW SECTION. **Sec. 14.** A new section is added to chapter 73.16 RCW
28 to read as follows:

29 The legislature declares that the public policies articulated in
30 chapter ..., Laws of 2001 (this act) depend on the procedures
31 established in chapter ..., Laws of 2001 (this act). No civil or
32 criminal action may be maintained relying on the public policies
33 articulated in chapter ..., Laws of 2001 (this act) without complying
34 with the procedures in this chapter. To that end, all civil actions
35 and civil causes of action for such injuries and all jurisdiction of

1 the courts of this state over such causes are hereby abolished, except
2 as provided in this chapter.

3 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and takes effect
6 immediately."

7 Correct the title.

--- END ---