

1 HB115
2 203982-1
3 By Representative Chestnut
4 RFD: Military and Veterans Affairs
5 First Read: 04-FEB-20

8 SYNOPSIS: Under existing law, in time of war, armed
9 conflict, or emergency proclaimed by the Governor
10 or by the President of the United States, the
11 provisions of the federal Uniformed Services
12 Employment and Reemployment Rights Act (USERRA)
13 apply to any active member of the Alabama National
14 Guard, or a member of the national guard of another
15 state who is employed in the State of Alabama and
16 called or ordered to state active duty or federally
17 funded duty for other than training.

18 Under USERRA, a person who is a member of,
19 applies to be a member of, performs, has performed,
20 applies to perform, or has an obligation to perform
21 service in the uniformed services may not be denied
22 initial employment, reemployment, retention in
23 employment, promotion, or any benefit of employment
24 by an employer on the basis of that membership,
25 performance of service, or obligation.

26 This bill would extend application of USERRA
27 to active members of other uniformed services.

1 This bill would make it a violation of state
2 law to deny a person, who is a member of, applies
3 to be a member of, performs, has performed, applies
4 to perform, or has an obligation to perform service
5 in the uniformed services, initial employment,
6 reemployment, retention in employment, promotion,
7 or any benefit of employment by an employer on the
8 basis of that membership, performance of service,
9 or obligation or to discriminate against any member
10 of the uniformed services for exercising those
11 rights and would create a state cause of action
12 against persons who violate those provisions.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

17
18 Relating to rights of members in the military; to
19 amend Section 31-12-2, Code of Alabama 1975, to extend
20 application of the federal Uniformed Services Employment and
21 Reemployment Rights Act to active members of other uniformed
22 services; to make it a violation of state law to deny a
23 person, who is a member of, applies to be a member of,
24 performs, has performed, applies to perform, or has an
25 obligation to perform service in the uniformed services,
26 initial employment, reemployment, retention in employment,
27 promotion, or any benefit of employment by an employer on the

1 basis of that membership, performance of service, or
2 obligation and prohibit discrimination against any member of
3 the uniformed services for exercising his or her rights under
4 state law; and to create a state cause of action against
5 persons who violate those provisions.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Section 31-12-2, Code of Alabama 1975, is
8 amended to read as follows:

9 "§31-12-2.

10 "(a) Whenever any active member of the Alabama
11 National Guard, or a member of the national guard of another
12 state who is employed in this state, in time of war, armed
13 conflict, or emergency proclaimed by the Governor or by the
14 President of the United States, ~~shall be~~ is called or ordered
15 to state active duty or federally funded duty for other than
16 training, ~~the provisions of the federal Servicemembers Civil~~
17 ~~Relief Act and the federal Uniformed Services Employment and~~
18 ~~Reemployment Rights Act~~ shall apply.

19 "(b) Whenever any active member of the Alabama
20 National Guard or a member of the national guard of another
21 state who is employed in this state, Naval Militia, the
22 Alabama State Guard organized in lieu of the National Guard,
23 the civilian auxiliary of the United States Air Force known as
24 the Civil Air Patrol, the National Disaster Medical System, or
25 of any other reserve component of the uniformed services of
26 the United States, in time of war, armed conflict, or
27 emergency proclaimed by the Governor or by the President of

1 the United States, is called or ordered to state active duty
2 or federally funded duty for other than training, the federal
3 Uniformed Services Employment and Reemployment Rights Act
4 shall apply.

5 ~~"(b)~~ (c) Those active members as defined in
6 subsection (a) called or ordered to active duty for a period
7 of 30 consecutive days or more shall be eligible for military
8 differential pay pursuant to Section 31-12-5 and restoration
9 of annual or sick leave pursuant to Section 31-12-8."

10 Section 2. (a) A person who is a member of, applies
11 to be a member of, performs, has performed, applies to
12 perform, or has an obligation to perform service in the
13 uniformed services shall not be denied initial employment,
14 reemployment, retention in employment, promotion, or
15 any benefit of employment by an employer on the basis of that
16 membership, application for membership, performance of
17 service, application for service, or obligation.

18 (b) An employer may not discriminate in employment
19 against or take any adverse employment action against any
20 person because the person has engaged in any of the following:

21 (1) Taken an action to enforce a protection afforded
22 any person under this section and Section 3 of this act.

23 (2) Testified or otherwise made a statement in or in
24 connection with any proceeding under this section and Section
25 3 of this act.

26 (3) Assisted or otherwise participated in an
27 investigation under this section and Section 3 of this act.

1 (4) Exercised a right provided for in this section
2 and Section 3 of this act.

3 (c) An employer shall be considered to have engaged
4 in actions prohibited:

5 (1) Under subsection (a), if the person's membership
6 or obligation for service in the uniformed services is a
7 motivating factor in the employer's action, unless the
8 employer can prove that the action would have been taken in
9 the absence of the membership or obligation for service.

10 (2) Under subsection (b), if the person's action to
11 enforce a protection afforded any person under this section
12 and Section 3 of this act, testimony or making of a statement
13 in or in connection with any proceeding under this section and
14 Section 3 of this act, assistance or other participation in an
15 investigation under this section and Section 3 of this act, or
16 exercise of a right provided for in this section and Section 3
17 of this act, is a motivating factor in the employer's action,
18 unless the employer can prove that the action would have been
19 taken in the absence of the person's enforcement action,
20 testimony, statement, assistance, participation, or exercise
21 of a right.

22 (d) Any person who is a current or former employee
23 and a current or former member of the uniformed services or a
24 person who has engaged in any actions under subsection (b)
25 whose rights under Section 2 or 3 of this act have been
26 violated by an employer may bring a cause of action against
27 the employer.

1 (e) For purposes of this section and Section 3 of
2 this act, "uniformed services" means the Alabama National
3 Guard, Naval Militia, the Alabama State Guard organized in
4 lieu of the National Guard, the civilian auxiliary of the
5 United States Air Force known as the Civil Air Patrol, the
6 National Disaster Medical System, or of any other reserve
7 component of the uniformed services of the United States.

8 Section 3. (a) Any person whose absence from a
9 position of employment is necessitated by reason of service in
10 the uniformed services shall be entitled to the reemployment
11 rights and benefits and other employment benefits of this
12 section and Section 2 of this act if all of the following are
13 satisfied:

14 (1) The person, or an appropriate officer of the
15 uniformed service in which the service is performed, has given
16 advance written or verbal notice of the service to the
17 person's employer.

18 (2) The cumulative length of the absence and of all
19 previous absences from a position of employment with that
20 employer by reason of service in the uniformed services does
21 not exceed five years, except that the period of service shall
22 not include any of the following:

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

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

10 (3) Except as provided in subsection (e), the person
11 reports to, or submits an application for reemployment to, the
12 employer in accordance with subsection (d).

13 (b) Notice is not required under subdivision (a)(1)
14 if the giving of the notice is precluded by military necessity
15 or, under all of the relevant circumstances, the giving of the
16 notice is otherwise impossible or unreasonable. A
17 determination of military necessity for the purposes of this
18 subsection shall be made pursuant to regulations prescribed by
19 the Secretary of Defense and shall not be subject to judicial
20 review.

21 (c)(1) An employer is not required to reemploy a
22 person under this section if any of the following are
23 satisfied:

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

26 b. The employment from which the person leaves to
27 serve in the uniformed services is for a brief, nonrecurrent

1 period and there is no reasonable expectation that the
2 employment will continue indefinitely or for a significant
3 period.

4 (2) In any proceeding involving an issue of whether
5 any of the conditions set forth in subdivision (1) exist, the
6 employer shall have the burden of proving the impossibility or
7 unreasonableness, or the brief or nonrecurrent nature of the
8 employment without a reasonable expectation of continuing
9 indefinitely or for a significant period.

10 (d) Subject to subsection (e), a person referred to
11 in subsection (a), upon the completion of a period of service
12 in the uniformed services, shall notify the employer of the
13 person's intent to return to a position of employment with the
14 employer as follows:

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

18 a. Not later than the beginning of the first full
19 regularly scheduled work period on the first full calendar day
20 following the completion of the period of service and the
21 expiration of eight hours after a period allowing for the safe
22 transportation of the person from the place of that service to
23 the person's residence; or

24 b. As soon as possible after the expiration of the
25 eight-hour period referred to in paragraph a., if reporting
26 within the period referred to in the paragraph is impossible
27 or unreasonable through no fault of the person.

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

6 (3) In the case of a person whose period of service
7 in the uniformed services was for more than 30 days, but less
8 than 181 days, by submitting an application for reemployment
9 with the employer not later than 14 days after the completion
10 of the period of service or if submitting the application
11 within the period is impossible or unreasonable through no
12 fault of the person, the next first full calendar day when
13 submission of the application becomes possible.

14 (4) In the case of a person whose period of service
15 in the uniformed services was for more than 180 days, by
16 submitting an application for reemployment with the employer
17 not later than 90 days after the completion of the period of
18 service.

19 (e) A person who is hospitalized for, or
20 convalescing from, an illness or injury incurred in, or
21 aggravated during, the performance of service in the uniformed
22 services, at the end of the period that is necessary for the
23 person to recover from the illness or injury, shall report to
24 the person's employer, in the case of a person described in
25 subdivision (d) (1) or submit an application for reemployment
26 with the employer, in the case of a person described in
27 subdivision (d) (2) or (d) (3). Except as provided in

1 subdivision (d) (2), the period of recovery may not exceed two
2 years. The two-year period shall be extended by the minimum
3 time required to accommodate the circumstances beyond the
4 person's control which make reporting within the period
5 specified in subdivision (d) (1) impossible or unreasonable.

6 (f) A person who fails to report or apply for
7 employment or reemployment within the appropriate period
8 specified in subsection (d) shall not automatically forfeit
9 the person's entitlement to the rights and benefits referred
10 to in subsection (a) but shall be subject to the conduct
11 rules, established policy, and general practices of the
12 employer pertaining to explanations and discipline with
13 respect to absence from scheduled work.

14 (g) In any determination of a person's entitlement
15 to protection under this act, the timing, frequency, and
16 duration of the person's training or service, or the nature of
17 the training or service, including voluntary service, in the
18 uniformed services, shall not be a basis for denying
19 protection of this act if the service does not exceed the
20 limitations set forth in subdivision (a) (2) and the notice
21 requirements established in subdivision (a) (1) and the
22 notification requirements established in subsection (d) are
23 met.

24 Section 4. (a) In any action under Section 2 or 3 of
25 this act, the court may award relief as follows:

26 (1) The court may require the employer to comply
27 with Section 2 or 3 of this act.

1 (2) The court may require the employer to compensate
2 the person for any loss of wages or benefits suffered by
3 reason of the employer's failure to comply with Section 2 or 3
4 of this act.

5 (3) The court may require the employer to pay the
6 person an amount equal to the amount referred to in
7 subdivision (2) as liquidated damages, if the court determines
8 that the employer's failure to comply was willful.

9 (b) No fees or court costs may be charged or taxed
10 against any person claiming rights under Section 2 or 3 of
11 this act.

12 (c) If a person who obtained private counsel to
13 bring an action or proceeding under Section 2 of this act
14 prevails in the action or proceeding, the court may award the
15 person reasonable attorney fees, expert witness fees, and
16 other litigation expenses.

17 Section 5. Notwithstanding any other provision of
18 law, this act does not apply to any officer or employee of the
19 federal government, State of Alabama, or of any political
20 subdivision thereof, or other public board or authority
21 appointed by state or local governing bodies.

22 Section 6. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.