

## HOUSE BILL No. 2155

By Committee on Veterans, Military and Homeland Security

1-28

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1 AN ACT concerning militia; relating to reemployment of persons called to  
2 duty; amending K.S.A. 48-517 and repealing the existing section.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 48-517 is hereby amended to read as follows: 48-  
6 517. (a) Any person *employed in the state of Kansas* who is called or  
7 ordered to active duty by ~~the~~ *this state, or any other state*, whether such  
8 person is a member of the Kansas national guard, Kansas air national  
9 guard, the Kansas state guard or other military force of this state, *or any*  
10 *other state*, and who gave notice thereof to the person's employer, upon  
11 satisfactory performance of and release and return from such military duty  
12 or recovery from disease or injury resulting ~~therefrom~~ *from such military*  
13 *duty*, under honorable conditions, shall be reinstated in or restored to the  
14 position of employment, except a temporary position, which the person  
15 held at the time the person was called to duty. The person shall report to  
16 the person's place of employment within 72 hours after release from duty  
17 or recovery from disease or injury resulting ~~therefrom~~ *from such military*  
18 *duty*, as the case may be, and the person's employer or the employer's  
19 successor in interest, whether an agency of the state, a political subdivision  
20 of the state or a private employer, shall reinstate or restore the person in  
21 the same position which the person left at the time of the person's call to  
22 duty at no less compensation than that which the person was receiving at  
23 the time of the person's call to duty or to a position of like seniority, status  
24 and pay. However, if the person is not qualified to perform the duties of  
25 the same position by reason of disability sustained during the person's call  
26 to duty but is qualified to perform another position in the employ of the  
27 employer or the employer's successor, the employer or the employer's  
28 successor in interest shall employ such person in another position, the  
29 duties of which the person is qualified to perform, that will provide like  
30 seniority, status and pay or the nearest approximation thereof consistent  
31 with the circumstances of the case. Any person called to duty shall receive,  
32 upon release under honorable conditions, documentation of honorable  
33 service to ~~the~~ *this state or any other state*, as provided by the adjutant  
34 general.

35 (b) Any person who is restored to the person's position in accordance  
36 with the provisions of subsection (a) shall be considered as having been on

1 temporary leave of absence during the period for which the person is  
2 called to active duty, shall be restored without loss of seniority, shall be  
3 entitled to participate in any benefits offered by the employer pursuant to  
4 established rules and practices relating to employees on leave of absence  
5 in effect with the employer at the time the person was called to duty as  
6 provided ~~herein~~ *in this section* and shall not be discharged from the  
7 person's position without cause within one year after restoration to the  
8 position.

9 (c) It is understood and declared to be the intent of this section that  
10 any person who is restored to a position in accordance with the provisions  
11 of subsections (a) and (b) shall be restored in such manner as to give the  
12 person such status in the person's employment as the person would have  
13 enjoyed if the person had continued in such employment continuously  
14 from the time of the person's answering the call to state duty until the time  
15 of the person's restoration to such employment.

16 (d) An application on behalf of a person claiming to be entitled to any  
17 right or benefit under this section may be made to the attorney general. If  
18 the attorney general is reasonably satisfied that the person is entitled to the  
19 right or benefit sought, the attorney general may appear on behalf of and  
20 act as attorney for the person on whose behalf the application is submitted  
21 and may commence an action in the district court of the county for  
22 appropriate relief for the person. The district court of the county where the  
23 employer of a person claiming a right or benefit under this section, or the  
24 successor in interest to such employer, maintains a place of business shall  
25 have jurisdiction of any action filed by or on behalf of such person. If the  
26 court determines that the employer or the employer's successor in interest  
27 has failed to comply with the provisions of this section, the court may  
28 order the employer or the employer's successor in interest to: (1) Comply  
29 with the provisions of this section; and (2) compensate the person for any  
30 loss of wages or benefits suffered by reason of the failure of the employer  
31 or employer's successor in interest to comply with the provisions of this  
32 section. In addition, the court may order the employer or the employer's  
33 successor in interest to pay the person an additional amount equal to the  
34 amount authorized by subsection (d)(2) if the court determines that the  
35 employer or the employer's successor in interest willfully failed to comply  
36 with the provisions of this section. No fees or court costs shall be taxed  
37 against any person commencing an action under this subsection. The  
38 employer or the employer's successor in interest shall be deemed the only  
39 necessary party defendant to any such action.

40 (e) In any case in which two or more persons who are entitled to be  
41 restored to a position under the provisions of this section or of any law  
42 relating to similar reemployment or reinstatement benefits left the same  
43 position in order to enter ~~the~~ *this state's or any other state's* call to duty,

1 the person who left the position first shall have the prior right to be  
2 restored thereto, without prejudice to the reemployment rights of the other  
3 person or persons to be restored.

4 (f) Upon request, the adjutant general shall provide technical  
5 assistance to any person claiming to be entitled to any right or benefit  
6 under this section and, when appropriate, to the employer or employer's  
7 successor in interest. The adjutant general shall investigate the person's  
8 claim and attempt to resolve the claim by making reasonable efforts to  
9 ensure that the employer or employer's successor in interest complies with  
10 the provisions of this section. If such efforts are not successful, the  
11 adjutant general shall notify the person of the results of the investigation  
12 and the person's entitlement to proceed as provided by subsection (d).

13 (g) (1) An employer or an employer's successor in interest shall not  
14 be required to reemploy a person under this section if:

15 (A) The circumstances of the employer or the employer's successor in  
16 interest have so changed as to make reemployment of the person  
17 impossible or unreasonable;

18 (B) reemployment of the person would impose an undue hardship on  
19 the employer or the employer's successor in interest; or

20 (C) the employment from which the person leaves to serve in military  
21 duty is for a brief, nonrecurrent period and there is no reasonable  
22 expectation that such employment will continue indefinitely or for a  
23 significant period.

24 (2) As used in subsection ~~(f)~~(g)(1), "undue hardship" means actions  
25 requiring significant difficulty or expense, when considered in light of:

26 (A) The nature and cost of the action needed under this act;

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

31 (C) the overall financial resources of the employer or the employer's  
32 successor in interest; the overall size of the business of the employer or the  
33 employer's successor in interest with respect to the number of employees;  
34 the number, type and location of its facilities; and

35 (D) the type of operation or operations of the employer or the  
36 employer's successor in interest, including the composition, structure and  
37 functions of the work force of such employer or successor in interest; the  
38 geographic separateness, administrative, or fiscal relationship of the  
39 facility or facilities in question to the employer or successor in interest.

40 Sec. 2. K.S.A. 48-517 is hereby repealed.

41 Sec. 3. This act shall take effect and be in force from and after its  
42 publication in the statute book.