

HOUSE BILL NO. 68

INTRODUCED BY K. KELKER

BY REQUEST OF THE DEPARTMENT OF MILITARY AFFAIRS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DEFINITIONS CONCERNING THE DUTY STATUS OF MONTANA NATIONAL GUARD MEMBERS; CLARIFYING WHAT DUTY STATUS IS COVERED BY THE PROVISIONS OF THE MONTANA NATIONAL GUARD CIVIL RELIEF ACT, THE MONTANA MILITARY SERVICE EMPLOYMENT RIGHTS ACT, AND THE UNIFORM PROBATE CODE; AMENDING SECTIONS 10-1-902, 10-1-1002, 10-1-1003, 10-1-1006, 10-1-1007, 10-1-1201, 19-2-707, 20-25-421, AND 72-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 10-1-902, MCA, is amended to read:

"10-1-902. Definitions. As used in this part, the following definitions apply:

(1) "Active duty" means at least 14 consecutive days of full-time state active military duty ordered by the governor pursuant to Article VI, section 13, of the Montana constitution, as defined in 10-1-1003, or of full-time national guard duty, as defined in 32 U.S.C. 101.

(2) "Dependent" means the spouse or minor child of a service member or any other person legally dependent on the service member for support.

(3) "Military service" means active duty with a Montana army or air national guard military unit.

(4) "Service member" means any member of the Montana army or air national guard serving on active duty."

Section 2. Section 10-1-1002, MCA, is amended to read:

"10-1-1002. Purpose -- legislative intent. The purpose of this part is to recognize the importance of the service performed by Montana national guard members and to protect the employment rights of national guard members who may be called to state active military duty when there is a state emergency or disaster. The legislature also supports the efforts and sacrifices of the employers of Montana national guard members and intends that this part will provide a means for national guard members and employers to work cooperatively to

1 resolve any workplace issues."

2

3 **Section 3.** Section 10-1-1003, MCA, is amended to read:

4 **"10-1-1003. Definitions.** Unless the context requires otherwise, as used in this part, the following  
5 definitions apply:

6 (1) "Department" means the department of labor and industry established in 2-15-1701.

7 (2) "Elected official" means an official duly elected or appointed to any state or local judicial, legislative,  
8 or executive elective office of the state, a district, or a political subdivision of the state, including a school district  
9 or any other local district.

10 (3) (a) "Employer" means any public or private person or entity providing employment in Montana.

11 (b) The term does not include the United States.

12 (4) "Federally funded military duty" means duty, including training, performed pursuant to orders issued  
13 under Title 10 or Title 32 of the United States Code and the time period, if any, required pursuant to a licensed  
14 physician's certification to recover from an illness or injury incurred while performing the duty.

15 (5) "Member" means a member of the state's organized militia provided for in 10-1-103.

16 (6) "Military service" includes both federally funded military duty and state ~~active~~ military duty.

17 (7) (a) "State ~~active~~ military duty" means duty performed by a member ~~when a disaster or an emergency~~  
18 ~~has been declared by the proper authority of the state~~ pursuant to Article VI, section 13, of the Montana  
19 constitution or 10-1-505 ~~to include~~ and the time period, if any, required pursuant to a licensed physician's  
20 certification to recover from an illness or injury incurred while performing the ~~active~~ state military duty.

21 (b) The term does not include federally funded military duty."

22

23 **Section 4.** Section 10-1-1006, MCA, is amended to read:

24 **"10-1-1006. Entitlement to leave of absence.** (1) A member ordered to state ~~active~~ military duty is  
25 entitled to a leave of absence from the person's employment during the period of that state ~~active~~ military duty.

26 (2) A leave of absence for state ~~active~~ military duty may not be deducted from any sick leave, vacation  
27 leave, military leave, or other leave accrued by the member unless the member desires the deduction."

28

29 **Section 5.** Section 10-1-1007, MCA, is amended to read:

30 **"10-1-1007. Right to return to employment without loss of benefits -- exceptions -- definition.** (1)

1 Subject to the provisions of this section, after a leave of absence for state ~~active~~ military duty, a member is  
2 entitled to return to employment with the same seniority, status, pay, health insurance, pension, and other benefits  
3 as the member would have accrued if the member had not been absent for the state ~~active~~ military duty.

4 (2) (a) If a member was a probationary employee when ordered to state ~~active~~ military duty, the employer  
5 may require the member to resume the member's probationary period from the date when the member's leave  
6 of absence for state ~~active~~ military duty began.

7 (b) An employer may decide whether or not to authorize the member to accrue sick leave, vacation  
8 leave, military leave, or other leave benefits during the member's leave of absence for state ~~active~~ military duty.  
9 However, the member may not be provided with lesser leave accrual benefits than are provided to all other  
10 employees of the employer in a similar but nonmilitary leave status.

11 (c) (i) An employer's health plan must provide that:

12 (A) a member may elect to not remain covered under the employer's health plan while the member is  
13 on state ~~active~~ military duty but that when the member returns, the member may resume coverage under the plan  
14 without the plan considering the employee to have incurred a break in service; and

15 (B) a member may elect to remain on the employer's health plan while the member is on state ~~active~~  
16 military duty without being required to pay more than the regular employee share of the premium, except as  
17 provided in subsection (2)(c)(ii).

18 (ii) If a member's state ~~active~~ military duty qualifies the member for coverage under the state of Montana's  
19 health insurance plan as an employee of the department of military affairs, the employer's health plan may require  
20 the member to pay up to 102% of the full premium for continued coverage.

21 (iii) A health insurance plan covering an employee who is a member serving on state ~~active~~ military duty  
22 is not required to cover any illness or injury caused or aggravated by state ~~active~~ military duty.

23 (iv) If the member is a state employee prior to being ordered to state ~~active~~ military duty, the member  
24 does not become qualified as an employee of the department of military affairs for the purposes of health plan  
25 coverage until the member's state ~~active~~ military duty qualifies the member to be considered an employee of the  
26 department of military affairs pursuant to 2-18-701.

27 (d) An employer's pension plan must provide that when a member returns to employment from state  
28 ~~active~~ military duty:

29 (i) the member's period of state ~~active~~ military duty may constitute service with the employer or  
30 employers maintaining the plan for the purposes of determining the nonforfeitability of the member's accrued

1 benefits and for the purposes of determining the accrual of benefits under the plan; and

2 (ii) if the member elects to receive credit and makes the contributions required to accrue the pension  
3 benefits that the member would have accrued if the member had not been absent for the state ~~active~~ military duty,  
4 then the employer shall pay the amount of the employer contribution that would have been made for the member  
5 if the member had not been absent.

6 (e) An employer is not obligated to allow the member to return to employment after the member's  
7 absence for state ~~active~~ military duty if:

8 (i) the member is no longer qualified to perform the duties of the position, subject to the provisions of  
9 49-2-303 prohibiting employment discrimination because of a physical or mental disability;

10 (ii) the member's position was temporary and the temporary employment period has expired;

11 (iii) the member's request to return to employment was not done in a timely manner;

12 (iv) the employer's circumstances have changed so significantly that the member's continued employment  
13 with the employer cannot reasonably be expected; or

14 (v) the member's return to employment would cause the employer an undue hardship.

15 (3) (a) For the purposes of this section and except as provided in subsection (3)(b), "timely manner"  
16 means:

17 (i) for state ~~active~~ military duty of up to 30 days, the member returned to employment the next regular  
18 work shift following safe travel time plus 8 hours;

19 (ii) for state ~~active~~ military duty of 30 days to 180 days, the member returned to employment within 14  
20 days of termination of state ~~active~~ military duty; and

21 (iii) for state ~~active~~ military duty of more than 180 days, the member returned to employment within 90  
22 days of termination of the state ~~active~~ military duty.

23 (b) If there are extenuating circumstances that preclude the member from returning to employment within  
24 the time period provided in subsection (3)(a) through no fault of the member, then for the purposes of this section  
25 "timely manner" means within the time period specified by the adjutant general provided for in 2-15-1202."  
26

27 **Section 6.** Section 10-1-1201, MCA, is amended to read:

28 **"10-1-1201. Death while on state duty -- death benefit payment -- certification -- rules.** (1) The  
29 department of administration shall, upon certification by the department as provided in subsection (2), make a  
30 death benefit payment by state warrant in the amount of \$50,000 to the beneficiary, as provided in subsection

1 (3), of a member of the national guard who dies in the line of duty performed pursuant to state ~~active~~ military duty  
2 ~~or state duty for special work~~ orders.

3 (2) Upon the death of the member, the department shall certify to the department of administration:

4 (a) the name and other identifying information of the member;

5 (b) that the member died in the line of duty performed pursuant to Article VI, section 13, of the Montana  
6 constitution or while on state duty for special work as provided in 10-1-505(2);

7 (c) that, at the time of the death of the member, the member was being paid or was to be paid for the  
8 member's military service from state and not federal military funds; and

9 (d) the name and address of the beneficiary, as provided in subsection (3), to whom payment must be  
10 made.

11 (3) The department of administration shall pay the death benefit to the member's surviving spouse. If  
12 there is no surviving spouse, the department of administration shall pay the death benefit to the member's  
13 surviving children in equal shares. If there are no surviving children, the department of administration shall pay  
14 the death benefit to the member's survivors pursuant to Title 72 as if the member had died intestate.

15 (4) The department and the department of administration may adopt rules to implement this section."  
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17 **Section 7.** Section 19-2-707, MCA, is amended to read:

18 **"19-2-707. Qualified military service.** Notwithstanding any other provision of state law governing a  
19 retirement system, contributions, benefits, and service credit for qualified military service are governed by section  
20 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights  
21 Act of 1994. Contributions, benefits, and service credit for state ~~active~~ military duty are governed by the Montana  
22 Military Service Employment Rights Act provided in Title 10, chapter 1, part 10."  
23

24 **Section 8.** Section 20-25-421, MCA, is amended to read:

25 **"20-25-421. Charges for tuition -- waivers.** (1) The regents may prescribe tuition rates, matriculation  
26 charges, and incidental fees for students in institutions under their jurisdiction.

27 (2) The regents may:

28 (a) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit  
29 2% of the full-time equivalent enrollment at that unit during the preceding year; however, when necessary, tuition  
30 may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any

1 WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student  
2 support fee by the reciprocal state;

3 (b) waive resident tuition for students at least 62 years of age;

4 (c) waive tuition and fees for:

5 (i) persons who have one-fourth Indian blood or more or are enrolled members of a state-recognized  
6 or federally recognized Indian tribe located within the boundaries of the state of Montana and who have been  
7 bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

8 (ii) persons designated by the department of corrections pursuant to 52-5-112 or 53-1-214;

9 (iii) residents of Montana who served with the armed forces of the United States in any of its wars and  
10 who were honorably discharged from military service;

11 (iv) children of residents of Montana who served with the armed forces of the United States in any of its  
12 wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the  
13 service of the armed forces of the United States;

14 (v) the spouses or children of residents of Montana who have been declared to be prisoners of war or  
15 missing in action; or

16 (vi) the spouse or children of a Montana national guard member who was killed or died as a result of  
17 injury, disease, or other disability incurred in the line of duty while serving on state ~~active~~ military duty;

18 (d) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the  
19 course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets  
20 the entrance requirements at the state university or college of the person's choice and is the surviving spouse  
21 or child of any of the following who were killed in the course and scope of employment:

22 (i) a paid or volunteer member of a municipal or rural fire department;

23 (ii) a law enforcement officer as defined in 7-32-201; or

24 (iii) a full-time highway patrol officer.

25 (3) If funds are available after the waivers provided for in subsection (2), the regents may waive tuition  
26 for up to 5,000 credits each academic year."

27

28 **Section 9.** Section 72-5-103, MCA, is amended to read:

29 **"72-5-103. Delegation of powers by parent or guardian.** (1) A parent or a guardian of a minor or  
30 incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not

1 exceeding 6 months, any powers regarding care, custody, or property of the minor child or ward, except the  
2 power to consent to marriage or adoption of a minor ward.

3 (2) The 6-month limitation provided in subsection (1) does not apply to:

4 (a) a member of the Montana national guard who serves for more than 180 continuous days on duty  
5 pursuant to Title 10 or Title 32 of the United States Code or on state active military duty pursuant to ~~Article VI,~~  
6 ~~section 13, of the Montana constitution as defined in 10-1-1003;~~

7 (b) a member of the active duty military forces of the United States; or

8 (c) a member of the federal reserves who serves for more than 180 continuous days on duty pursuant  
9 to Title 10 of the United States Code.

10 (3) As used in this section, "federal reserves" means the United States air force reserve, army reserve,  
11 navy reserve, marine corps reserve, or coast guard reserve."

12

13 NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

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