

## LEGISLATIVE BILL 722

Approved by the Governor April 19, 2002

Introduced by Schimek, 27

AN ACT relating to military leave; to amend sections 48-230, 48-231, 55-160, 55-161, 55-164, and 55-165, Reissue Revised Statutes of Nebraska, and section 79-990, Revised Statutes Supplement, 2001; to change and eliminate provisions relating to absence from employment for military purposes; to change provisions relating to penalties as prescribed; to harmonize provisions; to repeal the original sections; and to outright repeal sections 55-162 and 55-163, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 48-230, Reissue Revised Statutes of Nebraska, is amended to read:

48-230. Any person who violates ~~the provisions of~~ sections 48-225 to 48-231 ~~and 55-161~~ shall be guilty of a Class IV misdemeanor. Such person shall be prohibited from receiving any compensation from public funds until he or she complies with ~~the provisions of~~ sections 48-225 to 48-231. ~~and 55-161.~~

Sec. 2. Section 48-231, Reissue Revised Statutes of Nebraska, is amended to read:

48-231. The county attorneys, in their respective counties, shall prosecute, before any court of appropriate jurisdiction, all persons charged with violating ~~the provisions of~~ sections 48-225 to 48-231. ~~and 55-161.~~

Sec. 3. Section 55-160, Reissue Revised Statutes of Nebraska, is amended to read:

55-160. (1) All employees, including elected officials of the State of Nebraska, or any political subdivision thereof, who are shall be members of the National Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, and Coast Guard Reserve, shall be entitled to a military leave of absence from their respective duties, without loss of pay, on all days during which they are when employed with or without pay under the orders or authorization of competent authority in the active service of the state or of the United States. Members who normally work or are normally scheduled to work one hundred twenty hours or more in three consecutive weeks shall receive a military leave of absence of one hundred twenty hours each calendar year. Members who normally work or are normally scheduled to work less than one hundred twenty hours in three consecutive weeks shall receive a military leave of absence each calendar year equal to the number of hours they normally work or would normally be scheduled to work, whichever is greater, in three consecutive weeks. Such military leave of absence may be taken in hourly increments and, for not to exceed fifteen workdays in any one calendar year. Such leave of absence shall be in addition to the regular annual leave of the persons named herein in this section.

(2) When the Governor of this state shall declare declares that a state of emergency exists, and any of the persons named in this section are ordered to active service of the state, a state of emergency an additional leave of absence will be granted until such member is released from active service of the state by competent authority. A military leave of absence shall not be used during a state of emergency declared by the Governor. Other forms of leave may be granted. During a state of emergency During the additional leave of absence because of the call of the Governor, any official or employee subject to the provisions of this section shall receive such portion of his or her normal salary or compensation as will equal the loss he may suffer while minus the state active duty base pay he or she receives in active service of the state. Governmental officers serving a term of office shall receive their compensation as provided by law.

Sec. 4. Section 55-161, Reissue Revised Statutes of Nebraska, is amended to read:

55-161. All (1) The parts of the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. Chapter 43, listed in subdivisions (a) through (j) of this subsection or any other parts referred to by such parts, in existence and effective as of January 1, 2001, are adopted as Nebraska law. This section shall be applicable to all persons employed in the State of Nebraska and shall include all officers and permanent employees, including teachers employed on a one-year contract basis and elected officials, of the state, or of any of its agencies or political subdivisions. The Legislature hereby adopts:

(a) Section 4301(a) -- Purposes;  
(b) Section 4302 -- Relation to other law and plans or agreements;  
(c) Section 4303(2), (4), (7) through (13), (15), and (16) and those portions of subparagraph (3) not relating to employment in a foreign country -- Definitions;  
(d) Section 4304 -- Character of service;  
(e) Section 4311 -- Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited;  
(f) Section 4312 -- Reemployment rights of persons who serve in the uniformed services;  
(g) Section 4313 with the exception of that portion of subparagraph (a) dealing with reemployment of federal employees -- Reemployment positions;  
(h) Section 4316 -- Rights, benefits, and obligations of persons absent from employment for service in a uniformed service;  
(i) Section 4317 -- Health plans; and  
(j) Section 4318 -- Employee pension benefit plans.  
(2) This section applies to all members performing duty in active service of the state.

(3) ~~7~~ who leave a position other than temporary to undergo military training with the armed forces of the United States or undertake military duty in the active service of the state, shall be entitled to a leave of absence from such civil employment for the period of such training or service, not to exceed four years, plus in each case any additional period in which he was unable to obtain orders relieving him from active duty, plus any period of time hospitalized incident to active duty, without loss of status or efficiency rating, and without loss of pay during the first fifteen workdays of such leave of absence. Such pay for the first fifteen workdays shall not be construed as being in addition to the pay provided for in section 55-160. The proper appointing authority or employer may make a temporary appointment to fill any vacancy created by the absence of an officer or employee pursuant to this section. such leave of absence. When such person is separated from such training or service under honorable conditions, or upon his discharge from hospitalization incident to that duty, such employee shall be entitled to return to his former position with such seniority, status, pay, and vacation as he would have had if he had not been absent for such purpose, if he is still qualified to perform the duties of his former position, and if he makes application within thirty days after he is released from such training or service. If such person is not qualified to perform the duties of such position upon his return by reason of disability sustained during the training or service but is qualified to perform the duties of any other position in the employ of the employer, he shall be restored to such other position, the duties of which he is qualified to perform, as will provide him with the same seniority, status, and pay, or the nearest proximation thereof consistent with the circumstances in his case. Such person officer or employee shall not be discharged from his or her former or new position without justifiable cause within one year after reinstatement. It shall be the duty of the

(4) The Commissioner of Labor ~~to~~ shall enforce the provisions of this section.

(5) The Adjutant General shall perform duties assigned to the Secretary of Defense, Secretary of Veterans Affairs, or Secretary of Labor in the portions of 38 U.S.C. Chapter 43 adopted under this section.

Sec. 5. Section 55-164, Reissue Revised Statutes of Nebraska, is amended to read:

55-164. If any employer fails to comply with any of the provisions of ~~sections 55-160 to 55-163~~ section 55-160 or 55-161, the employee may, at his or her election, bring an action at law for damages for such noncompliance. ~~He~~ The employee may also apply to the courts for such equitable relief as may be just and proper under the circumstances.

Sec. 6. Section 55-165, Reissue Revised Statutes of Nebraska, is amended to read:

55-165. Any person, firm, or organization violating the provisions of ~~sections 55-160 to 55-164~~ section 55-160 or 55-161 shall be guilty of a Class IV misdemeanor, and, in addition thereto, shall restore to the employee all rights of which he or she has been illegally deprived.

Sec. 7. Section 79-990, Revised Statutes Supplement, 2001, is amended to read:

79-990. (1) Any member who is eligible for reemployment on or after December 12, 1994, pursuant to 38 U.S.C. chapter 43, as ~~such chapter existed on May 27, 2001~~ adopted under section 55-161, or who is eligible for reemployment under ~~sections 55-160 to 55-163~~ section 55-160 may pay to the retirement system after the date of his or her return from active military service, and within the period required by law, not to exceed five years, an

amount equal to the sum of all deductions which would have been made from the salary which he or she would have received during the period of military service for which creditable service is desired. If such payment is made, the member shall be entitled to credit for membership service in determining his or her annuity for the period for which contributions have been made and the board shall be responsible for any funding necessary to provide for the benefit which is attributable to this increase in the member's creditable service. The member's payments shall be paid as the trustees may direct, through direct payments to the retirement system or on an installment basis pursuant to a binding irrevocable payroll deduction authorization between the member and the school district. Creditable service may be purchased only in one-half-year increments, starting with the most recent year's salary.

(2) Under such rules and regulations as the board may prescribe, any member who was away from his or her position while on a leave of absence from such position authorized by the board of education of the school district by which he or she was employed at the time of such leave of absence or pursuant to any contractual agreement entered into by such school district may receive credit for any or all time he or she was on leave of absence. Such time shall be included in creditable service when determining eligibility for death, disability, termination, and retirement benefits. The member who receives the credit shall earn benefits during the leave based on salary at the level received immediately prior to the leave of absence. Such credit shall be received if such member pays into the retirement system (a) an amount equal to the sum of the deductions from his or her salary for the portion of the leave for which creditable service is desired, (b) any contribution which the school district would have been required to make for the portion of the leave for which creditable service is desired had he or she continued to receive salary at the level received immediately prior to the leave of absence, and (c) regular interest on these combined payments from the date such deductions would have been made to the date of repayment. Such amounts shall be paid as the trustees may direct, through direct payments to the retirement system or on an installment basis pursuant to a binding irrevocable payroll deduction authorization between the member and the school district over a period not to exceed five years from the date of the termination of his or her leave of absence. Interest on any delayed payment shall be at the rate of regular interest. Creditable service may be purchased only in one-half-year increments, starting with the most recent years' salary, and if payments are made on an installment basis, creditable service will be credited only as payment has been made to the retirement system to purchase each additional one-half-year increment. Leave of absence shall be construed to include, but not be limited to, sabbaticals, maternity leave, exchange teaching programs, full-time leave as an elected official of a professional association or collective-bargaining unit, or leave of absence to pursue further education or study. A leave of absence granted pursuant to this section shall not exceed four years in length, and in order to receive credit for the leave of absence, the member must have returned to employment with the school district within one year after termination of the leave of absence.

(3) Until one year after May 2, 2001, any member currently employed by the school district who resigned from full-time employment with the school district for maternity purposes prior to September 1, 1979, and was reemployed as a full-time employee by the school district before the end of the school year following the school year of such member's resignation may have such absence treated as though the absence was a leave of absence described in subsection (2) of this section. The period of such absence for maternity purposes shall be included in creditable service when determining the member's eligibility for death, disability, termination, and retirement benefits if the member submits satisfactory proof to the board that the prior resignation was for maternity purposes and the member complies with the payment provisions of subsection (2) of this section before the one-year anniversary of May 2, 2001.

Sec. 8. Original sections 48-230, 48-231, 55-160, 55-161, 55-164, and 55-165, Reissue Revised Statutes of Nebraska, and section 79-990, Revised Statutes Supplement, 2001, are repealed.

Sec. 9. The following sections are outright repealed: Sections 55-162 and 55-163, Reissue Revised Statutes of Nebraska.