



Ohio Legislative Service Commission

Bill Analysis

Abby McMahon

Sub. H.B. 423*

131st General Assembly

(As Reported by S. State and Local Government)

Reps. Perales, Butler, Hackett, Henne, T. Johnson, M. O'Brien, S. O'Brien, Landis, Retherford, Rezabek, Schaffer, Terhar, Hambley, Amstutz, Anielski, Antonio, Arndt, Baker, Barnes, Bishoff, Boccieri, Boose, Boyce, Boyd, Brenner, Brown, Buchy, Burkely, Celebrezze, Conditt, Craig, Cupp, Derickson, Dever, Dovilla, Driehaus, Fedor, Ginter, Green, Grossman, Hagan, Hall, Hayes, Hill, Huffman, G. Johnson, Koehler, Kunze, LaTourette, Leland, Lepore-Hagan, Maag, Manning, McClain, McColley, Patterson, Ramos, Reece, Roegner, Rogers, Ruhl, Ryan, Scherer, Schuring, Sears, Sheehy, Slaby, Sprague, Strahorn, Sweeney, Sykes, Thompson, Young

BILL SUMMARY

Call to service orders

- Exempts from disclosure under the Public Records Act orders for active military service or other documentation about the call to order of an individual serving or with previous service in the United States Armed Forces and their reserves, or in the Ohio organized militia.
- Mandates that a call to order or other documentation regarding a call to order becomes a public record 15 years after the published date or effective date of the call to order.

Reemployment and reinstatement of benefits

- Grants reemployment and reinstatement rights to a person employed in Ohio who is absent from employment due to service in a militia organized under the laws of a state, district, or territory outside of Ohio.

* This analysis was prepared before the report of the Senate State and Local Government Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

CONTENT AND OPERATION

Call to service orders exempted from disclosure

The Public Records Act requires a public office or person responsible for public records to promptly prepare a public record when requested and make it available to the requester for inspection at all reasonable times during regular business hours, or to make copies of the requested public record available to the requester at cost and within a reasonable period of time. The bill adds orders for active military service or other documentation regarding the call to order of an individual serving or with previous service in the United States Armed Forces, including a reserve component, or the Ohio organized militia (the Ohio National Guard, Ohio Naval Militia, and the Ohio Military Reserve) to the list of records that are **not** "public records," thus exempting these call to service orders from disclosure under the Act. However, the bill provides that a call to order or other documentation regarding a call to order becomes a public record 15 years after the published date or effective date of the call to order.¹ In other words, the public record exemption "sunset" for each call to order or other documentation about a call to order 15 years after the published date or effective date of the call to order.

The Public Records Act applies to all "public offices," meaning any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government, except for the nonprofit corporation commonly known as JobsOhio.² A "public record" is a record kept by any public office, including state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio kept by the nonprofit or for-profit entity operating the alternative school.³ A "record" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, that serves to document the office's organization, functions, policies, decisions, procedures, operations, or other activities.⁴

Reemployment and reinstatement of benefits

The bill grants reemployment and reinstatement rights to a person who works in Ohio but who is absent from employment due to service in a militia organized under

¹ R.C. 149.43(A)(1)(ff); R.C. 5923.01, not in the bill.

² R.C. 149.011(A), not in the bill.

³ R.C. 149.43(A)(1).

⁴ R.C. 149.011(G), not in the bill.



the laws of a state, district, or territory outside of Ohio. Under continuing law, that person may sue regarding denial of the person's rights in a court of common pleas if the employer is a private business or a local government entity. The person may sue in the Ohio Court of Claims if the employer is a state employer.⁵ Any person who denies reemployment or reinstatement rights to a qualifying person may be fined up to \$1,000, imprisoned for up to six months, or both.⁶

Background – current protections

The federal Uniformed Services Employment and Reemployment Rights Act of 1994⁷ (USERRA) provides reemployment and reinstatement rights to members of the armed forces, Army National Guard or Air Force National Guard members, and the Commissioned Corps of the Public Health Services. Current Ohio law extends those rights to members of the Ohio Organized Militia.⁸

USERRA protections

Under USERRA, subject to various exceptions, a person who is serving in the Army, Marine Corps, Navy, Air Force, Coast Guard, National Guard, or the U.S. Public Health Service Commissioned Corps (the "uniformed services") is entitled to reemployment and reinstatement rights if all of the following apply:

- The person (or an appropriate officer) provides advance written or verbal notice of service to the person's employer.
- The aggregate length of the absence and of all previous absences from the position of employment with that employer by reason of service does not exceed five years.
- The person submits a report or an application for reemployment to the employer that satisfies specified requirements.⁹

An employee, when absent from employment to serve in the military, is considered to be on a furlough or leave of absence and is entitled to the seniority and other rights and benefits determined by seniority that the employee had on the date military service began plus the additional seniority and rights and benefits that the

⁵ R.C. 5903.02(A) to (C).

⁶ R.C. 5903.99, not in the bill.

⁷ 38 United States Code (U.S.C.) 4301 *et seq.*

⁸ R.C. 5903.02 and 5919.29, not in the bill.

⁹ 38 U.S.C. 4303 and 4312.



employee would have attained if the employee had remained continuously employed. In addition, the employee is entitled to other rights not based on seniority, including rights the employee had before service, and also those that became effective while in the service.¹⁰

Depending on the type of employer, a person entitled to reemployment and reinstatement rights under USERRA who is denied those rights may seek redress through the Secretary of Labor or federal or state courts.¹¹

Ohio law protections

Current Ohio law provides the same reemployment and reinstatement rights that USERRA provides to members of the uniformed services. Ohio law also extends the same rights to any person who is absent from employment due to service in the Ohio National Guard, the Ohio Naval Militia, or the Ohio Military Reserve, collectively referred to as the Ohio Organized Militia.¹²

Under continuing Ohio law, a person who is denied reemployment or reinstatement rights may sue in the appropriate court as described under "**Reemployment and reinstatement of benefits**," above. If a person who qualifies for protection under both USERRA and Ohio law receives a remedy under USERRA, that person cannot receive a remedy under Ohio law. Any person who receives a remedy under Ohio law and subsequently receives an award under USERRA must reimburse the employer the value of the federal remedy or the state remedy, whichever is less.¹³

HISTORY

ACTION	DATE
Introduced	01-07-16
Reported, H. State Gov't	05-12-16
Passed House (96-0)	05-18-16
Reported, S. State and Local Gov't	---

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¹⁰ 38 U.S.C. 4313 and 4316.

¹¹ 38 U.S.C. 4322 and 4323.

¹² R.C. 5903.02(B) and 5923.01(B), not in the bill.

¹³ R.C. 5903.02(B), (C) and (G).

