



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 535

131st General Assembly  
(As Introduced)

**Reps.** Perales, Butler, Thompson, Boose, Retherford, Bishoff, Grossman, Rezabek, M. O'Brien, Phillips

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## BILL SUMMARY

- 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.

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## CONTENT AND OPERATION

### 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 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.<sup>1</sup> 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.<sup>2</sup>

### Background – current protections

The federal Uniformed Services Employment and Reemployment Rights Act of 1994<sup>3</sup> (USERRA) provides reemployment and reinstatement rights to members of the armed forces, Army National Guard or Air Force National Guard members, and the

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<sup>1</sup> R.C. 5903.02(A) to (C).

<sup>2</sup> R.C. 5903.99, not in the bill.

<sup>3</sup> 38 United States Code (U.S.C.) 4301 *et seq.*

Commissioned Corps of the Public Health Services. Current Ohio law extends those rights to members of the Ohio Organized Militia.<sup>4</sup>

### **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.<sup>5</sup>

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 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.<sup>6</sup>

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.<sup>7</sup>

### **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

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<sup>4</sup> R.C. 5903.02 and 5919.29, not in the bill.

<sup>5</sup> 38 U.S.C. 4303 and 4312.

<sup>6</sup> 38 U.S.C. 4313 and 4316.

<sup>7</sup> 38 U.S.C. 4322 and 4323.



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.<sup>8</sup>

Under continuing Ohio law, a person who is denied reemployment or reinstatement rights may sue in the appropriate court as described under "**Background – current protections**," 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.<sup>9</sup>

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## HISTORY

ACTION	DATE
Introduced	04-26-16

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<sup>8</sup> R.C. 5903.02(B) and 5923.01(B), not in the bill.

<sup>9</sup> R.C. 5903.02(B), (C) and (G).

